

“Contracts after COVID: Act of God”**Megha Solanki**Fairfield Institute of Management and Technology,
IP University****Surbhi Khurana**Fairfield Institute of Management and Technology,
IP University***ABSTRACT**

COVID 19, an unpredictable virus with the potential to eradicate the human mass has till date taken 12 million lives globally with 548,000 positive patients. The virus was first discovered within the city of Wuhan, China. The generation, cause and antidote of the virus is still unknown to the world, while lockdown is the only method anticipated till date which can help control the spread of virus. Lockdown in the affected nations have proved to slow down the speed of virus and has proved to be in the best interest of citizens. However, the nationwide lockdown has severely impacted the economy, financial markets and business contracts all around the globe.

The outbreak of COVID 19 pandemic has barged on the personal, professional, financial and commercial lives to a point that rendering performance is impossible. Such negative impact has affected the domestic market chain, while the citizens due to ongoing COVID 19 are directed to stay at home, the contractual liabilities remain unfulfilled. Although various businesses have remained virtually open, allowing its employees to continue working from home, the volume of business has considerably declined. The adverse pressure might leave businesses in position unable to sustain pay rolls hence leading to suspension or termination of contracts.

This research aims to discuss the pandemic of COVID 19, its effect on the contractual performance, failure of companies to fulfill its obligation towards its employees and counterparties; and remedies available at the hands of the employer.

KEY WORDS: COVID 19, PANDEMIC, CONTRACTS, FORCE MAJEURE, DOCTRINE OF FRUSTRATION

INTRODUCTION

“The world is at battle with a virus affecting human lives and economy. If economy is considered of utmost importance, it would cost several lives and if saving the human life is the prime goal, the world would witness a never seen like before economical crises”

The impact of COVID 19 has been hugely disruptive; it has adversely affected all spheres of employment from real estate, large and smallscale industries to all possible private and government institutions. The frighten of COVID 19 pandemic which has confined citizens to their homes, has either led to hardships to some parties in performance of contracts while rendering others completely incapable of performance. The pandemic has created enormous amount of uncertainty, while essential services are in operation, the pandemic is not a friend to them either.

The rights and obligations of parties as a part of contract in motion are surrounded by doubt. The variety of contracts which are likely to be affected by the spread of COVID 19 is humongous. This never imagined scenario has brought challenges not only to employers who have to pay salaries in spite of no income; the solution to them depends on the fact specific determination of contract entered by the parties but also to employees who may lose their employment and have to find alternate means to sustain this pandemic. The parties to contracts with the assistance of legal experts may continuously review and assess the contractual provisions in order to discharge the agreement or contract. Negotiation of price and reconsideration of terms of contracts might prove to provide a temporarily settlement.

The ministry of finance via notification dated 19th Feb 2020 declared the disturbance in supply chains due to the spread of COVID 19 be considered as case of natural calamity and force Majeure may be invoked, wherever found appropriate. It states that Force Majeure is an event that can neither be anticipated nor controlled which is not an excuse for non- performance but only suspends it for the duration of force Majeure. However, it was cleared that if performance in whole or any part remains suspended due to force Majeure for the period exceeding ninety days, either party may terminate the contract without any financial losses.

In case of impossibility of establishing Force Majeure, the doctrine of frustration embodied in the Contract Act 1872 comes into existence striking the root of contract. Contract after COVID can be regarded as the balance between employer's inability and employee's privileges.

EFFECT OF COVID 19 ON CONTRACTS

Contracts are indispensable part of every day. It governs in carrying out business smoothly and effectively while being protected by law in case of breach. From standard residential accommodation to contracts between two states, there is no sphere of business and employment which is not governed by contract.

The major kind of contracts hard hit by the biggest challenge after independence, corona virus are employer- employee contract, contract with independent contractors and contracts with intermediaries.

Due to the ongoing pandemic, as the nation is under a lockdown, citizens are stuck at home with inability to fulfill contractual obligations which were executed prior to pandemic. Many businesses with the optimal IT structure have allowed its employees to work from home however still the businesses are unable to receive its anticipated work goal. Businesses are shut down and the contract between intermediaries have adversely affected as shipments are delayed. Low production disruptions impact business sentiments.

The employers are mandated to provide salaries to its employees amid lockdown so that they have access to fulfill their basic necessities. Many companies do not have the financial stability to provide salaries from profits after a prescribed period which would untimely lead to termination of employee's contract, suspension of employees on leave without pay.

Air India, the national carrier has temporarily suspended 200 pilots¹ who were re-employed after retirement as international and domestic flights are shut down by the central government till further notice. Air India has suspended employees in its operational departments who were re-employed after their retirement. The Tirupati Balaji Board (TTD) has ousted 1300 contractual workers amid the coronavirus outbreak². The workers engaged shrine's sanitization and hospitality work were fired from 1st of May 2020. Go Air, a low- fare carrier has sent employees on rotational leave without pay program.

1. Press Trust of India, Corona virus effect: Air India suspends contracts of 200 pilots amid the lockdown, India today, April 2 2020.
2. Business today, India's richest shine TirupatiBalaji temple fires 1300 contract workers, May 3 2020.

Coronavirus is not a battle of one or two weeks, it is a long haul. Aviation consultancy forecasts that many airlines will be put through bankruptcy amid the crises of coronavirus.

According to FICCI Survey, 53% businesses have specified an impact due to lockdown. Restaurants have been closed, and as people are scared to eat from outside, the employers have no other option but to put workers on leave without pay. The unemployment has climbed by 16% from April 24th increasing the unemployment rate to 26%

It is true that termination or suspension of jobs would not only deepen the crisis and weaken the financial conditions but also hamper their morale to combat the pandemic.

DECLARING COVID 19- AN ACT OF GOD

The term act of god is commonly used in contract but the term is not defined under the statute. An “act of god” can be defined as “an act or event beyond the control” which might trigger delay to perform contractual obligations, suspend or terminate the contract. Act of god includes both act of nature such as earthquake, fire or act of human such as riots, war or any situation which prevents parties from fulfilling its contractual obligations.

The term “act of God” has endured from ancient law and is said to “comprehend all misfortunes and accidents arising from inevitable necessity which human prudence could not foresee or prevent”

The Government of India has already invoked the provisions of the Epidemic Diseases Act, 1897 and has declared Covid-19 a ‘notified disaster’ under the provisions of the disaster Management Act, 2005. The Ministry of Finance, Government of India, by virtue of its Office Memorandum dated 19 February 2020, has declared that the spread of Covid-19 falls within the definition of ‘Act of God’ as a ‘natural calamity’.

Without giving a tyrant meaning of an 'act of God', Courts have defined the following three key contemplations pertinent to deciding whether an event constitutes an 'act of God':

- Did the event emerge because of natural causes and not human mediation?
- Was it difficult to sensibly predict occurrence of the event or its results?
- If it could have been anticipated, was prevention through the use of sensible aptitude and precautionary measures impractical?

The COVID 19 can be regarded as an act of god. The speed at which the infection has spread, the challenges in containment suggest that it has emerged due to eccentric natural causes. Parties whose contractual performance will be hindered by the coronavirus activity will invoke act of god, reasoning that an unknown and unexpected natural disease has occurred such that non-performance or delay can be excused.

However, it is necessary to understand that whether the non-performance is caused due to the event or as a human response to Act of god. The reason of non-performance of contract or delay should be the result of governmental restrictions.

To establish non-performance or delay "an act of god" must constitute impossibility, impracticality and force majeure. It must be noted that establishing whether COVID 19 can be regarded as act of god depends on the type of contracts and its specific fact determination.

SOLUTIONS (SETTLEMENT MECHANISMS)

While the world is wrestling with the outbreak of the novel Coronavirus (Covid-19), the staggering impact that COVID-19 continues to unleash on human beings and countries globally, and its effect has also reached commerce and business. The global COVID-19 outbreak has resulted in lockdowns and restricted movements in countries. It has either made performance difficult or unfeasible. It has caused commercial suffering to a number of parties in performance of their contractual obligations, while rendering others completely impotent of performance.

Commercial contracts often contain a provision which excuses performance by affected parties upon the occurrence of 'force majeure, popularly known as an 'Act of God'. If the contract does not include such provision, impossibility and illegality in the performance of the contract would be governed by the Doctrine of Frustration under Section 56 of the Indian Contract Act, 1972.

WHAT IS FORCE MAJEURE?

Force majeure is the occurrence an unavoidable accident which the party, in spite of taking necessary and caution couldn't have reasonably predicted. The term "force majeure" is a French phrase and genuinely translates to mean a 'superior or greater force'. It derives from old Roman law which recognizes unpreventable and irresistible events which may prevent a contracting party from performance.

Force majeure clauses can usually be found in majority of contracts like supply contracts, agreements between property developers and residential buyers, manufacturing contracts, distribution agreements etc. Which expressly contain a clause due to which the contract would stand suspended or discharged on the happening of certain circumstances. In such cases, the dissolution of the contract would occur under the terms of the contract. Although in India they might be restrained under section 32 of the Indian Contract Act 1872³, which deals with contingent contracts or similar other provisions contained within the Act.

A typical force majeure statement or unavoidable accident in contracts peruses as:

"No party to the contract shall be accountable for any kind of delay, restraint in performance, loss or destruction due to occurrence of Force Majeure event not restricting to, war, fire, flood, earthquake, accident, strike, act of god or any other damage or loss that none of the parties could.

3. Enforcement of contracts contingent on an event happening

Contingent contracts to do or not to do anything if an uncertain future event happens, cannot be enforced by law unless and until that event has happened. Contingent contracts to do or not to do anything if an uncertain future event happens cannot be enforced by law unless and until that event has happened." If the event becomes impossible, such contracts become void".

Could have reasonably controlled

Which by their effects render unfeasible or hinder the performance of any obligation or the exercise of any rights under this Agreement or cause the failure or omission to comply with this Agreement?"

The foremost purpose beyond the force majeure is to save the performing party from the consequence of events that are beyond its control. Although all happenings cannot be force majeure events. It has to gratify the crucial for the dismissal of contractual obligations. In the English case of **SEADRILL GHANA OPERATIONS LTD V TULLOW GHANA LTD [2018] EWHC 1640 (Comm)** it was held that a party which relies on a force majeure clause to excuse it from nonperformance of obligation bears the burden of proof that: "a Force Majeure Event has occurred and that it had the effect specified in the contract, its failure to perform due to circumstances outside its control, and there was nothing which could reasonably have done to avoid the Force Majeure Event or reduce its effects.

There is also a situation where the unforeseen event may render performance unfeasible only during the limited time within which the event is in operation, thereby providing a window for resuming normal contractual obligation after the event ceases to work. The concept of *force majeure* comes into play in such circumstances.

According to Black's Law Dictionary⁴ as an event that can be neither anticipated nor controlled. It is a statement which shows the risk of loss if performance becomes unthinkable or impracticable exposed to conditions, particularly because of an occasion that parties could not have envisioned or it is used with relevance to all circumstances independent.

4. Black's Law Dictionary, Edition 11 (2019)

Need of man, and which, it is not in his power to manage and such unavoidable casualty is sufficient to justify the non-execution of a contract.

The essential ingredients of a force majeure clause are as follows:

1. An unpredictable/unforeseen intervening event take place;
2. The parties to the agreement presumed that such event will not happen;
3. Such an event has made the performance of the obligations under the contract unfeasible;
4. The parties have taken all such course of action to discharge the obligations under the agreement or at least to mitigate the loss/damage; and
5. The affected party professing relief under force majeure will have the onus of proof to indicate that the force majeure event has affected such party's performance of the contract.

From a contractual point of view, a force majeure clause provides temporary suspension to a party from carrying out its obligations under a contract upon occurrence of a force majeure event. Some contracts also contain a provision that if such inevitable accident continues for an extended time period, the parties could even be permitted to discontinue the contract.

ANALYSIS OF GOVERNMENT NOTICES

- **Govt. of India vide its Memo No. F. 18/04/2020 PPD dated 19.02.2020**

COVID- 19 has been announced as a pandemic by the World Health Organization ⁵ and the Ministry of Health and Family Welfare has issued recommendatory guidelines on social distancing⁶ w.r.t. mass gathering and has forced various travel limitations to forestall the spread of COVID-19. World Health organization, rolling updates on Coronavirus disease, 19th May 2020 (<https://www.who.int/emergencies/diseases/novel-coronavirus-2019/events-as-they-happen>

5. Ministry of health & Family welfare, advisory on social distancing in the view of spread of Covid-19 disease, 30th of March 2020 (<https://www.mohfw.gov.in/pdf/SocialDistancingAdvisorybyMOHFW.pdf>

In the light of Covid-2019, on 19th February, 2020, *vide* an office memorandum O.M. No. 18/4/2020-PPD ⁷ the Ministry of Finance issued an Office Memorandum on 'Force Majeure Clause' providing that "Coronavirus should be considered as a case of natural calamity and force majeure may be invoked, wherever considered appropriate, following the due procedure (in the Office Memorandum)". It states that "a force majeure clause does not justify non-execution of a party entirely, however exclusively suspends it for the duration of the force majeure. The firm has to give a notice of force majeure as soon as it occurs and it cannot be asserted ex-post facto... If the performance in whole or in part or any obligation under the contract is prevented or delayed by any explanation of force majeure for a period surpassing ninety days, either party may at its choice terminate the agreement with no repercussion on either side".

- **The Ministry of New & Renewable Energy vide Office Memorandum bearing no. 283/18/2020-GRID SOLAR dated March 20, 2020**

The occurrence of coronavirus is termed as a Force Majeure Event. Vide the said notification; the Ministry of New & Renewable Energy has decided to concede time extension in Scheduled Commissioning Date of RE Projects considering interruption of the supply chains due to spread of covid-19 in China or any other country as a Force Majeure occasion.

- **The Ministry of New & Renewable Energy vide Office Memorandum bearing no. F. No. 283/18/2020-GRID SOLAR dated April 17, 2020**

The occurrence of Covid-19 has been reiterated as a Force Majeure Event. It is appropriate to note that it has been provided to treat the deferred on account of disturbance of the supply chains due to spread of covid19 in China or in any other country, as Force Majeure.

6. Office Memorandum No. F. 18/4/2020-PPD , ‘Force Majeure Clause’, issued by Department of Expenditure, Procurement Policy Division, and Ministry of Finance. and has coordinated for the grant of suitable augmentation of time for RE ventures due to coronavirus. However, such augmentation shall be based on the evidence produced by the developers in support of their individual declaration of such disturbance of the supply chains due to spread of covid19 in China or in any other country. It has been further provided that all the Renewable Energy implementing agencies of the Ministry of New and Renewable Energy (MNRE) will treat lockdown due to Covid-19 as Force Majeure. It has been directed that all the Renewable Energy implementing organizations may grant augmentation of time for the aforesaid ventures on account of lock down due to Covid-19, proportionate to the period of lock down and additional 30 days for standardization after end of such lock down.

FORMAL REQUIREMENTS:

In a prospective case of force majeure, contracts may require satisfaction of formal prerequisites by a party proposing to defend itself from non-performance. For instance, a business seeking to rely on a force majeure clause must also comply with any procedural requirements under the contract, such as a prerequisite of communication its intention via notice to rely on the clause to the other party within particular timescales, including any formalities required for the service of notices. An illustration of a force majeure clause with notice requirements is provided below:

“A Party witnessing Force Majeure outcomes shall:

A) Inform the other Party by notice, giving details of the Force Majeure event without delay;
B) Inform the other Party when the Force Majeure event is at an end and resume performance of this Agreement forth with thereafter unless the Parties have decided otherwise. Should the hindrance, impossible performance, or delay resulting from such Force Majeure event persists beyond a period of ninety (90)calendar days, and therefore the Parties have did not reach to an agreement or find means, then any of the effected parties may request the termination of the Agreement by way of a notice.”

A party seeking to depend on a force majeure clause must also show that:

- the force majeure event was the cause of the incapacity to perform or delayed performance;
- non-performance was due to conditions beyond their control; and
- There were no reasonable steps that they could have taken to avoid its consequences.

INVOCATION OF FORCE MAJEURE IN INDIAN CONTRACTS

Various contracts may not contain the Force Majeure clause clearly to define the procedures to be conducted to claim benefits under the clause due to the COVID-19 outbreak. If a contract does not expressly include a Force Majeure clause, the affected party can claim relief under the ‘Doctrine of Frustration’ discussed in Section 56 of the Indian Contract Act, 1872.⁸

The doctrine of Frustration speaks about the impossibility of performance of the contract. Where the execution of a contract becomes unfeasible by reason of ensuing occasions, doctrine of frustration comes into existence resulting in dismissal of the contract.

7. Agreement to do impossible act.—an agreement to do an act impossible in itself is void.
—An agreement to do an act impossible in itself is void.”

Contract to do act afterwards becoming impossible or unlawful.—A contract to do an act which, after the contract is made, becomes impossible, or, by reason of some event which the promisor could not prevent, unlawful, becomes void when the act becomes impossible or unlawful.

1 —A contract to do an act which, after the contract is made, becomes impossible, or, by reason of some event which the promisor could not prevent, unlawful, becomes void when the act becomes impossible or unlawful.

2" Compensation for loss through non-performance of act known to be impossible or unlawful.—Where one person has promised to do something which he knew, or, with reasonable diligence, might have known, and which the promisee did not know, to be

impossible or unlawful, such promisor must make compensation to such promisee for any loss which such promisee sustains through the non-performance of the promise. —Where one person has promised to do something which he knew, or, with reasonable diligence, might have known, and which the promisee did not know, to be impossible or unlawful, such promisor must make compensation to such promisee for any loss which such promisee sustains through the non-performance of the promise."

The term 'frustration' has been defined in the Black's Law Dictionary⁹ as "The prevention or hindering of the attainment of a goal, such as contractual performance". Frustration is an act outside the contract because of which the accomplishment of a contract becomes unfeasible. After the parties have terminated a contract, circumstances beyond their control might happen which may frustrate the point of their agreement, or render it very difficult or unfeasible or as even illegal, to perform. As an instance, it can be where a hall, which has been reserved for the performance of a play, is demolished by fire, after the contract has been concluded, but prior to the date of performance.

Under English law, frustration is described as the change in circumstances that alters the base of the contract as a whole or in case of performance makes it different with that which was in consideration by the parties in the beginning and is concluded by the legal order.¹⁰

Section 56 of the Indian Contract Act is based on the maxim "les non cogita dim possibilia" which means that 'the law will not compel a man to do what he cannot possibly perform'.

It is impossible to lay down a comprehensive list of situations to which the doctrine of frustration can be applied to excuse performance of obligation. Yet there are certain accepted grounds of frustration which are as follows:

1. Destruction of subject matter;
2. Death or incapacity for personal service;
3. Non- existence or non- occurrence of a particular state of things;
4. Intervention by legislative or executive authority;
5. Change of circumstances of particular state of things;
6. Intervention of war.

8. Black's Law Dictionary Ninth Edition

9. Chitty on Contracts, Volume I, 31st Edition, Sweet & Maxwell

The Supreme Court of India in the case of **Satyabrata Ghose v. Mugneeram Bangur & Co., 1954 SCR 310** described the concept of frustration, the Hon'ble Apex Court had adverted to Section 56 of the Indian Contract Act. The Supreme Court bench stated that the word "impossible" has not been used in the Section in the sense of physical impossibility. To determine whether a force majeure event has occurred, it is not necessary that the performance of an act should become entirely impossible, a mere impracticality of performance, from the point of view of the parties, will also be considered.

Subsequently, in **Naihati Jute Mills Ltd. v. Hyaliram Jagannath, 1968 (1) SCR 821**, the Supreme Court referring to the English law on frustration, concluded that a contract is not frustrated merely because the situations in which it came into existence are altered. In general, the courts do not have the power to exempt a party from the performance of its part of the contract merely because its performance has become onerous on account of unanticipated events.

In order to excuse oneself from difficulty of performance on account of Covid-19, the party will need to prove the necessary prerequisites for the application of frustration:

- There should be an existence of a valid and subsisting contract between the parties with some consideration.
- There must be some part of the contract which is yet to be performed and without performing it the ultimate purpose of the contract is not fulfilled.
- That the contract after it has been entered into has become unfeasible to perform and cannot be performed and therefore contract stands void.

The doctrine of frustration is however applicable only in the following cases:

- If the purpose of the contract has become impossible to perform.
- An event has occurred making the performance of the contract to be unfeasible beyond the Control of promisor.
- Where a party to the contract has died after entering into contract or the party is incompetent of performing the contract, in such circumstances the contract will be held void.
- Where, a law promulgated after the contract is compel, makes the performance of the agreement impossible and thereby the agreement becomes void.

- Where there was no physical impossibility of performance of the contract, but because of the change in circumstances, the main object for which the contract was entered has been defeated.

In the case of **Energy Watchdog v. CERC (2017) 14 SCC 80**, It was held that the Force Majeure shall not include:

- a. any event or circumstance which is within the reasonable control of the parties and the following conditions, except to the extent that they are consequences of an event of Force Majeure:
- b. Unavailability, late delivery, or changes in cost of the plant, machinery, equipment, materials, spare parts, fuel or consumables for the Project;
- c. Delay in the performance of any contractor, sub-contractors or their agents excluding the conditions
- d. Non-performance resulting from normal wear and tear typically experienced in power generation materials and equipment;
- e. Strikes or labour disturbance at the facilities of the Affected Party;
- f. Insufficiency of finances or funds or the agreement becoming onerous to perform; and
- g. Non-performance caused by, or connected with, the Affected Party's:
 - i. Negligent or intentional acts, errors or omissions;
 - ii. Failure to comply with the Indian Law;

Consequences of frustration of contract

The consequence of a contract getting frustrated is that the contract becomes 'void'¹¹. In layman language, on the occurrence of an event which makes the contract impossible, the Contract stands discharged. When frustration occurs, it avoids the contract itself and discharges both parties mechanically.

Section 56 of the Contract Act, however, provides for *compensation to be payable for loss of non-execution if the equivalent was known to such party*. If a promisor knew or could, with reasonable diligence have known that the obligation which he had promised to perform was impossible or unlawful, but the same was not known to the promisee, in such a situation the promisor is liable to make compensation for the damage which the promisee may suffer due to non-performance by the promisor.

It is also worthwhile to note Section 65 of the Contract Act in the context of the frustration of contract. Section 65 postulates that When an agreement is discovered to be void, or when a contract becomes void, any person who has received any advantage under such agreement or

contract is sure to restore, it, or to grant compensation for it, to the person from whom he received it.

CONCLUSIONS

As the Corona virus epidemic continues to ravage the world and also the cases increasing daily, the international business community and the Government should take a time to

10. The law of contract by P.C Markanda, Second Edition, 2008, Pg No. 893.

Reflect going forward on the ephemerality of life and the uncertainties of contracts execution. It is important that the inevitable events are well constructed for by ensuring that commercial contracts contain clauses that might cater for unforeseen circumstances just like the Coronavirus. Nobody could have thought just few months ago, that the world economic order and international trade would be so disrupted by this ravaging pandemic.

The circumstances on account of the outbreak of corona virus, the lock downs and restrictive movements as announced by the Indian Government and a halt to the monetary activities is something which no reasonable and normal contracting party could have predicted. Based on the present jurisprudence as it stands, the aforesaid in evitable events may only conclude in prosecution in a catena of commercial contracts. It is then a matter of interpretation by the courts whether a contract consisting of a force majeure clause would cover such limitations in movement and lock downs forced by the Government. The latest interim Order in **M/s Halliburton Offshore Services Inc. v. Vedanta Limited (supra)** of the Hon'ble High Court of Delhi is certainly a step in advancing the statue towards this path.

With substantial disturbance in business, manufacturing and transport by virtue of pandemic named COVID-19 the stage seems set for India to see a flood of 'force majeure' invocations. It is presumed that over a stretch of time large number of Indian companies may invoke 'force majeure' statements in their contracts. Whereas a force majeure is contractual provision with respect to conditions which may result in suspension of performance of contractual, obligations and thus the rights of parties thereunder until such event continue and typically do not absolutely defend parties from playing out these commitments.

It is just a temporary deferment of contractual obligation due to unfeasibility but not a defense to fleeing liability due to impracticality.

Further, in cases where a contract does not have an express provision on force majeure, there may be situations where parties may try to seek safeguard under Section 56 of the Contract Act

and seek doctrine of frustration of a contract. The doctrine of frustration comes into play when an unforeseen event occurs rendering the performance of the contract impossible. It makes the contract void and also discharges the parties from any liability. This doctrine is an exception to the general principles of contract where compensation is usually granted for breach of contract. There shall be no accountability of the parties to compensate in such happenings where the doctrine of frustration is applicable. The courts will then have to determine whether the contract has gotten unfeasible to perform and whether the doctrine of frustration of contract could be made appropriate to such an agreement.

Thus force majeure clauses assist parties to avoid or lessen their obligations in case of an inevitable event which is beyond their control and which is not attributable to them. In the same way if these force majeure clauses doesn't seem to be present in the contract then the concept of frustration of contract as present within the common law and recognized by the statute (Sec 56 of The Indian Contract Act) would operate to save the parties.

Lockdowns need to be contemplated as force majeure and there is a need of a codified law rather than piece meal notifications, which shall discharge an affected party from discharging or performing its obligations during the interval of such lockdown, under the contract. Hence, the time has come that we must have a systematized law related to force majeure instead of drawing light from Section 32 of the Indian Contract Act or the contractual provisions.

RECOMMENDATIONS

- Law must change with the changing needs of society; efforts must be made to include Force Majeure as a statutory provision.
- Contract laws all across the globe have proved to be incompetent to provide remedy to current disruptions caused in fulfilling contractual obligations. Countries must strengthen their contract laws; widening the ambit of the law to include all possible disruptions and their remedies.
- Force Majeure must be considered for long term contracts and the remedy of re-negotiation for short term contracts.
- During this period of uncertainty, Cooperation and good communication must be the key to managing the impacts and steering projects through this period of uncertainty.
- There must be recognition of “Epidemic” as an excusable delay with provided extended equitable time.
- Private and Cross border contracts need to be evaluated considering country specific law on Force Majeure. The law governing the contract and parties will materially have an effect on how an organization addresses any issue.

- Where the employer is not in a position to provide salaries and termination of employee contract is the only resort, termination shall begin from employees who are close to retirement age.
- Where the employer is not in a position to provide salaries, suspension of employee's contract on leave without pay must be conducted through an alternative program.
- To elude the termination of the contracts, the parties with mutual consent should explore the possibilities of resorting to the provisions of novation and alteration of contracts.
- The parties should formulate a strategy for renegotiation and save the sanity of contract. There is always a choice to renegotiate the contract/ agreement, extend its performance period and resolve genially.
- The potential and real effect of COVID 19 on works in progress ought to be checked cautiously, alleviation measure taken where conceivable.
- COVID 19 must be accepted as an open door by partners in the banking area to reevaluate their legally binding commitments.
- Before analyzing the remedy, the effect of recent events on key provisions of material contracts must be identified (i.e. warranties/conditions/covenants).
- Copies of critical correspondence and other interchanges should be maintained in case disputes emerge later. This can be particularly significant in establishing that the organization has done all that was reasonably possible to relieve the losses.
- Legal perspective should be obtained on whether the force majeure clause in key contracts is open-ended or comprehensive in relation to the list of force majeure occasions.