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FORCE MAJEURE IN THE TIME OF COVID-19

- AN OVERVIEW

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Introduction

While the world is grappling with the outbreak of the novel coronavirus (Covid-19), the lockdowns and restrictions that have been imposed to contain this pandemic, have brought businesses to a grinding halt. In such unprecedented times, when the wheels of global and regional supply chains are clogged, it becomes imperative to have a relook at all existing contractual arrangements, so that bullets of breaches and damages may be dodged in time.

Commercial contracts often contain a provision which excuses performance by affected parties upon the occurrence of '*force majeure*'[1], more popularly known as an 'Act of God'. In the absence of such a provision, impossibility and illegality in the performance of the contract would be governed by the doctrine of frustration enshrined in Section 56 of the Indian Contract Act, 1872 ("**Act**").[2] A plea of *force majeure* or frustration of contract, if upheld, exempts a person from performance of its obligations under the contract, without being held liable for a breach thereof. This defence is of a paramount importance, since present day contracts are complex creatures, covering a number of deterrents to ensure performance, such as guarantees, deposits and liquidated damages.

The purpose of this paper is to discuss, in the context of the Covid-19 outbreak, the enforceability of *force majeure* clauses in commercial contracts and the boundaries of the doctrine of frustration under the Act.

A Provision for Force Majeure

Covid-19 as a Force Majeure Event

While the term '*force majeure*' has not been defined under the Act, the Supreme Court of India has provided the following succinct definition of *force majeure* in the case of *Dhanrajamal Gobindram* v. *Shamji Kalidas and Co.*[3], approving the view taken by Mr. Justice McCardie in *Lebeaupin* v. *Crispin*[4]:

> "*The expression "force majeure" is not a mere French version of the Latin expression "vis major". It is undoubtedly a term of wider import. Difficulties have arisen in the past as to what could legitimately be included in "force majeure". Judges have agreed that strikes, breakdown of machinery, which, though normally not included in "vis major" are included in "force majeure". An analysis of rulings on the subject into which it is not necessary in this case to go, shows that where reference is made to "force majeure", the intention is to save the performing party from the consequences of anything over which he has no control.*" (emphasis supplied)

In commercial contracts, a force majeure clause, may not only provide for the manner in which the parties intend to deal with the occurrence of an event of force majeure, but may also provide for a

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[1] 'Force Majeure' can be defined as an event or effect that can be neither anticipated nor controlled. The term includes both, acts of nature (e.g., floods and hurricanes) and acts of people (e.g., riots, strikes and wars) – Black's Law Dictionary, *11th Edition*; Page 788.

[2] Section 56 of the Indian Contract Act, 1872: *An agreement to do an act impossible in itself is void.*
Contract to do an 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.
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. (emphasis supplied)

[3] AIR 1961 SC 1285.

[4] (1920) 2 KB 714.

list of events which would constitute '*force majeure*' within the meaning of the said contract. Some contracts may contain a broad laundry list of force majeure events that capture, in addition to Acts of God, all circumstances beyond the control of the parties such as acts of terrorism, war, labour disputes, strikes, unavailability of material, political events, etc., while some others may contain an equally long list of exclusions to *force majeure*.

It may be pertinent to note that traditionally Indian Courts have provided a narrow interpretation of *force majeure* provisions in contracts[5], presumably on the basis that the same reflect the commercial understanding between the parties. Hence, in the present context, if a contract specifically includes pandemics, outbreak of diseases, natural calamities, or governmental actions (in view of the lockdown and other restrictions imposed), then subject to the wording of the contract, the Covid-19 outbreak may squarely fall within the meaning of *force majeure*. However, in the absence of inclusion of such particular events, reliance may have to be placed on the residual words of the provision, if any, such as '*other events beyond the reasonable control of the parties*'. With respect to the scope of such generic language in a *force majeure* clause, the Orissa High Court in *Md. Serajuddin* v. *State of Orissa*[6], has held that:

> "*Therefore the words "any other happening" must be given Ejusdem generis construction so as to engulf within its fold only such happenings and eventualities which are of the nature and type illustrated above in the same clause with close attention to the nature and terms of the lease, and would not reasonably be within the power and control of the lessee.*" (emphasis supplied)

The long standing rule of *ejusdem generis*, is that where a general term follows a specific one, the general term is required to be construed to encompass only events which are similar in nature to the events enumerated by the specific words.[7] Hence, whether the Covid-19 outbreak falls within the ambit of a *force majeure* provision, will have to be analysed on a case to case basis.

Invoking Force Majeure

Assuming that the Covid-19 outbreak can be a triggering event for *force majeure* under a contract, the next step would be to invoke such a provision. Enforcement of *force majeure* provisions has been explained by the Supreme Court in *Satyabrata Ghose* v. *Mugneeram Bangur and Company and Ors.*[8], as follows:

> "*According to the Indian Contract Act, a promise may be express or implied (vide Section 9.). In cases, therefore, where the Court gathers as a matter of construction that the contract itself contained impliedly or expressly a term, according to which it would stand discharged on the happening of certain circumstances the dissolution of the contract would take place under the terms of the contract itself and such cases would be outside the purview of Section 56 altogether. Although in English law these cases are treated as cases of frustration in India they would be dealt with under, Section 32 of the Indian Contract Act which deals with contingent contracts or similar other provisions contained in the Act.*" (emphasis supplied)

It was further held:

> "*It must be pointed out here that if the parties do contemplate the possibility of an intervening circumstance which might affect the performance of the contract, but expressly*

[5] *Energy Watchdog and Ors.* v. *Central Electricity Regulatory Commission & Ors.* [(2017) 14 SCC 80].
[6] AIR 1969 Ori 152. Also see *TGV Projects & Investments Pvt. Ltd.* v. *National Highways Authority of India* [2019 (173) DRJ 717], and *Simplex Concrete Piles (India) Ltd.* v. *Union of India* [(2010) ILR 2 Delhi 699].
[7] *U.P. State Electricity Board & Ors.* v. *Hari Shanker Jain & Ors.* [1978 SCC (4) 16] and *Interore Fertichem Resources Sa* v. *MMTC of India Limited* [2007 (4) ARBLR 242 Delhi].
[8] AIR 1954 SC 44.

stipulate that the contract would stand despite such circumstance, there can be no case of frustration because the basis of the contract being to demand performance despite the happening of a particular event, it cannot disappear when that event happens."

Accordingly, upon invocation of the *force majeure* clause, the parties are bound to act in the manner stipulated in the contract, including ensuring compliance with any notice or mitigation requirements that may be contained therein. Further, the parties would continue to be governed by the suspension/ termination provisions and reliefs provided in the contract itself. For instance, if in the contract, the parties had agreed to an alternate mode of performance in a *force majeure* condition, then the parties would continue to be liable to perform in such alternate mode during the period of *force majeure*.[9]

When it comes to interpretation of force majeure provisions, a 'one size fit all' approach has not been taken by the Courts in India, as each case has been examined in light of the language of the relevant contractual provisions applicable thereto. Therefore, questions as to whether an event constituted *force majeure*, or if an event was beyond the control of the parties, or did an event prevent or hinder performance, etc., have been ascertained by the Indian Courts on a case to case basis.[10]

Impossibility of Performance

Frustration of Contracts

After delving into *force majeure* clauses and the enforceability thereof, it would also be essential to understand the remedies available to a party in the absence of such an express provision in a contract. A perusal of the Act provides a legal remedy in such situations, which is postulated in Section 56 of the Act evincing the doctrine of frustration[11]. The provision deals with an 'initial impossibility' and a 'subsequent impossibility' to act upon the terms of the contract, both of which would render a contract void. A subsequent impossibility under Section 56 of the Act arises after execution of a contract, if the performance of an act is rendered impossible or illegal by some event which could not be prevented by the party slated to perform such act. The Supreme Court in *Satyabrata Ghose* v. *Mugneeram Bangur and Company and Ors.* (supra)[12] has provided the following analysis of Section 56 of the Act:

"*The first paragraph of the section lays down the law in the same way as in England. It speaks of something which is impossible inherently or by its very nature, and no one can obviously be directed to perform such an act. The second paragraph enunciates the law relating to discharge of contract by reason of supervening impossibility or illegality of the act agreed to be done. The wording of this paragraph is quite general, and though the illustrations attached to it are not at all happy, they cannot derogate from the general words used in the enactment. This much is clear that the word "impossible" has not been used here in the sense of physical or literal impossibility. The performance of an act may not be*

[9] *Bharat Heavy Electricals Limited* v. *G+H Schallschutz GMBH*, decided on July 9, 2018 by the High Court of Delhi.

[10] *Energy Watchdog and Ors.* v. *Central Electricity Regulatory Commission & Ors.* [(2017) 14 SCC 80], *TGV Projects & Investments Pvt. Ltd.* v. *National Highways Authority of India* [2019 (173) DRJ 717], *Gimpex Limited* v. *Indian Barytes and Chemicals Limited & Ors.* [1996 (4) ALT 423], *MMTC of India Ltd.* v. *Interore Fertichem Resources Sa* [AIR 2012 Delhi 123], and *Oil & Natural Gas Commission Ltd.* v. *Dilip Construction* [AIR 2000 Cal 140].

[11] Halsbury's Laws of England, Vol. 7, page 213: "*Where it appears from the nature of the contract and the surrounding circumstances that the parties have contracted on the basis that some specified thing without which the contract cannot be fulfilled will continue to exist or that a future event which forms the foundation of the contract will take place, the contract, though in terms absolute, is to be construed as being subject to an implied condition that if before breach, performance becomes impossible without default of either party and owing to circumstances which were not contemplated when the contract was made, the parties are to be excused from further performance.*" *Narasu Pictures Circuit Vs. P.S.V. Iyer and Ors.* [AIR 1953 Mad 300].

[12] Also see *Sushila Devi v. Hari Singh* [AIR 1971 SC 1756].

literally impossible but it may be impracticable and unless from the point of view of the object and purpose which the parties had in view; and if an untoward event or change of circumstances totally upsets the very foundation upon which the parties rested their bargain, it can very well be said that the promisor finds it impossible to do the act which he promised to do." (emphasis supplied)

It is pertinent to mention that unlike a *force majeure* clause which is mutually agreed to by parties to a contract, Section 56 of the Act lays down a rule of positive law that does not leave the matter to be determined according to the intention of the parties.[13]

Essentials of the Doctrine

In order to determine whether the Covid-19 outbreak would fall within the ambit of Section 56 of the Act, an understanding of the essentials of the doctrine is required, which has been enunciated by the Courts in India time and again:

Fundamental Changes

In order to succeed in a plea under Section 56 of the Act, the underlying event causing the impossibility or illegality should be an intervening event or change in circumstance which is so fundamental as to be regarded by law striking at the root of the agreement and beyond what was considered by the parties when they entered into the agreement.[14] Therefore the party must prove that the situation has been '*so radically changed subsequently that the very foundation which subsisted underneath the contract as it were gets shaken*'[15]. If the said event does not dislodge the fundamental basis of the contract, there is no frustration.[16] For instance, in the context of the Covid-19 situation, the lockdowns imposed by governments may be considered as fundamental changes in manufacturing or construction contracts, as all work has ceased under the orders of the government. Similarly, for supply contracts, since all railway and flight operations have been suspended during the period of the pandemic, a plea of fundamental change in the contract may be taken.

Onerous Obligations

In a catena of decisions, Courts in India have consistently held that merely because an obligation has become onerous, the same does not frustrate a contract under Section 56 of the Act.[17] It has further been held that, under Section 56 of the Act, the Courts have no general power to absolve a party from the performance of the contract solely on the basis of its obligation becoming arduous on account of an unforeseen turn of events.[18] Also, commercial unprofitability would not be a ground for frustration, since "*to attract the doctrine of frustration, burdensomeness is not the necessary consideration; the impossibility of performance of the contract is the true criterion*".[19] Hence, increased costs, unavailability of materials or disruptions in supply chain will rarely lead to a frustration of the contract.

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[13] *Boothalinga Agency v. V.T.C. Poriaswanmi Nadar* [AIR 1969 SC 110].

[14] *Satyabrata Ghose* v. *Mugneeram Bangur and Company and Ors.* [AIR 1954 SC 44], *Energy Watchdog and Ors.* v. *Central Electricity Regulatory Commission & Ors.* [(2017) 14 SCC 80], *Naihati Jute Mills Ltd. v. Khyaliram Jagannath,* [AIR 1968 SC 522], and *Hari Singh and others v. Dewani Vidyawati* [AIR 1960 J&K 91].

[15] *Hamara Radio and General Industries Ltd. Co. v. State of Rajasthan* [AIR 1964 Raj 205].

[16] *Energy Watchdog and Ors.* v. *Central Electricity Regulatory Commission & Ors.* [(2017) 14 SCC 80].

[17] *Alopi Parshad & Sons Ltd.* v. *Union of India* [1960 (2) SCR 793], *Naihati Jute Mills Ltd. v. Khyaliram Jagannath,* [AIR 1968 SC 522], and *Energy Watchdog and Ors.* v. *Central Electricity Regulatory Commission & Ors.* [(2017) 14 SCC 80].

[18] *Naihati Jute Mills Ltd. v. Khyaliram Jagannath,* [AIR 1968 SC 522].

[19] *Amuruvi Perumal Devasathanam v. K.R. Sabapathi Pillai* [AIR 1962 Mad 132].

Unforeseen Events

Another essential point of consideration while examining the doctrine has been the un-foreseeability of the event which allegedly leads to frustration. If the supervening circumstances are such which were within the contemplation of the parties at the time of the contract or which could reasonably be within their contemplation, the same would fall out of the purview of Section 56 of the Act.[20] Also, events such as an abnormal rise or fall in prices or a sudden depreciation of currency, do not by themselves affect the bargain made by the parties[21], as these are risks generally assumed by parties to commercial contracts.

Alternative Means

A contract cannot be said to have been frustrated where there are alternative means of performance available to a party. In the recent decision of *Energy Watchdog and Ors.* v. *Central Electricity Regulatory Commission & Ors.*[22], the Supreme Court of India has explained this principle by referring an English decision as follows:

> "*37. It has also been held that applying the doctrine of frustration must always be within narrow limits. In an instructive English judgment namely, Tsakiroglou & Co. Ltd. v. Noblee Thorl GmbH 1961 (2) All ER 179, despite the closure of the Suez canal, and despite the fact that the customary route for shipping the goods was only through the Suez canal, it was held that the contract of sale of groundnuts in that case was not frustrated, even though it would have to be performed by an alternative mode of performance which was much more expensive, namely, that the ship would now have to go around the Cape of Good Hope, which is three times the distance from Hamburg to Port Sudan. The freight for such journey was also double. Despite this, the House of Lords held that even though the contract had become more onerous to perform, it was not fundamentally altered. Where performance is otherwise possible, it is clear that a mere rise in freight price would not allow one of the parties to say that the contract was discharged by impossibility of performance.*"

Act of Parties

In one of the earlier cases in the jurisprudence on frustration of contracts, it was held that "*the essence of "frustration" is that it should not be due to the act or election of the party and it should be without any default of either party and if it was a party's own default which frustrated the adventure, he could not rely on his own default to excuse him from liability under the contract*".[23] This principle has since then been applied by the Indian Courts from time to time, and in cases where frustration of contract has been found to be self-induced, such plea has been rejected.[24]

To recapitulate, for proving that a contract has been frustrated by the Covid-19 pandemic, the affected party may need to demonstrate that, not only has there been a change in the fundamentals of the contract as a result of the outbreak, but also that there are no other means of performing under the same. Courts in India have time and again held that solely because certain obligations have become onerous, the contract does not get frustrated. Further, for contracts that have been executed after the outbreak of Covid-19, it may be difficult to prove that the same had not been contemplated by the parties.

At this juncture, a reference may be made to an early decision of the Bombay High Court in

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[20] *Man Singh v. Khazan Singh* [AIR 1961 Raj 277].

[21] *Alopi Parshad and Sons v. Union of India* [AIR 1960 SC 588]; *Continental Construction Co. Ltd. v. State of Madhya Pradesh* [(1988) 3 SCC 82].

[22] (2017) 14 SCC 80.

[23] *Maritime National Fish Ltd.* v. *Ocean Trawlers Ltd.* [AIR 1935 PC 128 (A)].

[24] *Lal Mohan Ghosh* v. *Ramanath Shaha & Ors.* [AIR 1954 Tri 17] and *Gambhirmull v. Indian Bank Ltd*. [AIR 1963 Cal 163].

Bombay and Persia Steam Navigation Company Limited v. *Rubattino Company Limited*[25] which dealt which a plea of illegality in the performance of contract due to an outbreak of small-pox. In that case, the defendant had taken a ground that in carrying out its obligation, it would contravene the provisions of Section 269 of the Indian Penal Code, 1860[26] which made it illegal for a person to do any act that is likely to spread a disease. Interestingly, this contention of the defendant was rejected by the Court and the defendant was directed to honour the terms of the contract.

Hence, the occurrence of the Covid-19 outbreak does not by itself automatically entitle a party to take a plea under Section 56 of the Act, as the bar of proving that a contract has been frustrated has been set quite high by the Indian Courts, which have always leaned towards adopting a narrower approach while considering this plea.

Force Majeure *v.* Frustration

The rule of law that has been clearly laid down by the Supreme Court of India is that when a contract contains a clause on *force majeure*, which has been upheld by the Courts, then in that event, the parties cannot take a plea of frustration under Section 56 of the Act.[27] In such cases the parties are bound by the confines of the contract. The rationale behind this position is that, the parties should not be absolved from performing their obligations in entirety on the happening of an event that was contemplated by them in the contract, and the recourse to be adopted by them on the happening of such event has been expressly stipulated therein.[28] For instance, if the *force majeure* provision in a contract only allows for suspension of activities and not termination of the contract, the parties cannot take advantage of a plea for frustration, which would render the contract void.

On the contrary, if a contract does not contain a provision on *force majeure*, a party invoking frustration of contract must be mindful of the fact when taking a plea of frustration under Section 56 of the Act, that the dissolution of the contract occurs automatically if such plea is accepted. Further, such dissolution does not depend on the ground of repudiation or breach, or on the choice or election of either party.[29] Hence, there is no flexibility of keeping a contract alive, as is with the case of a *force majeure* provision.

Covid-19 and Performance Guarantees

Almost all long term supply, construction and/or procurement contracts today, require parties to provide performance security in the form of bank guarantees. Bank guarantees maybe invoked in accordance with the terms of the contract, in cases of non-performance, breach of obligations or failure to comply with service levels, as the contract may specify. In the present circumstances where performance of contracts has been severely hindered as a result of the Covid-19 pandemic, it may be relevant to briefly touch upon the recourses that may be available against invocation of performance bank guarantees during such period.

Numerous judgements of Courts in India have crystalized the law pertaining to bank guarantees,

[25] (1889-90) ILR 13-14 Bom (VI) 555.

[26] Section 269 of the Indian Penal Code, 1860 – *"Whoever unlawfully or negligently does any act which is, and which he knows or has reason to believe to be, likely to spread the infection of any disease dangerous to life, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both"*.

[27] *Satyabrata Ghose* v. *Mugneeram Bangur and Company and Ors.* [AIR 1954 SC 44] and *Energy Watchdog and Ors.* v. *Central Electricity Regulatory Commission & Ors.* [(2017) 14 SCC 80].

[28] *NTPC Limited* v. *Voith Hydro Joint Venture* [2019 (176) DRJ 241] and *Bharat Heavy Electricals Limited* v. *G+H Schallschutz GMBH*, decided on July 9, 2018 by the High Court of Delhi.

[29] *Satyabrata Ghose* v. *Mugneeram Bangur and Company and Ors.* [AIR 1954 SC 44], and *Bharat Heavy Electricals Limited* v. *G+H Schallschutz GMBH*, decided on July 9, 2018 by the High Court of Delhi.

which is now well settled.[30] A bank guarantee is an independent and separate contract, which is absolute in nature[31], and is not concerned with the underlying agreement between the parties.[32] The bank giving such a guarantee is bound to honour it as per its terms irrespective of any dispute raised by its customer.[33] Hence, the Indian Courts will not ordinarily grant injunctions to restrain the realization of a bank guarantee. Only two (2) exceptions have been carved out to this rule of non-interference: *firstly*, where there is a fraud in connection with the bank guarantee, and *secondly*, where special circumstances or special equities exist which are likely to result in irretrievable harm or injustice to the party concerned.[34]

For the purpose of this paper, we are concerned with the second exception stated above, so as to understand whether the Covid-19 outbreak would fall within the ambit of such exception. From a perusal of the earlier decisions of the Supreme Court of India in *Svenska Handelsbanken* v. *Indian Charge Chrome*[35] and *U.P. State Sugar Corporation* v. *Sumac International Limited*[36], it appears that for taking recourse under the special equities exception, there must be extraordinary circumstances, which are likely to cause irreparable harm or injustice if the requested relief is not granted. Further, the allegations of irretrievable harm or injustice, must be certain and not speculative. Considering that the Covid-19 pandemic is an unprecedented and unanticipated event, which has crippled the economy in its wake, it may very well be argued that the present circumstances are special and that if bank guarantees are invoked for non-performance during such period when businesses have been mandatorily closed and/ or have suffered, the same would cause an irretrievable harm and be an injustice to the party providing the performance security. Nevertheless, such a plea would have to be explored on a case to case basis.

Conclusion

The Government of India *vide* its office memorandum dated February 19, 2020[37], has referred to the definition of '*force majeure*' which is appearing in the Manual for Procurement of Goods, 2017, and has categorised the Covid-19 outbreak as a natural calamity. In pursuance of the aforementioned office memorandum, other governmental authorities such as the Ministry of Railways and the Ministry of New & Renewable Energy (MNRE)[38] have also followed suit, declaring the outbreak as a *force majeure* in certain situations. Many corporates in various sectors

[30] *U.P. State Sugar Corporation* v. *Sumac International Limited* [AIR 1997 SC 1644], *U.P. Co-operative Federation Ltd.* v. *Singh Consultants and Engineers (P.) Ltd.* [(1988) 1 SCC 174], *Svenska Handelsbanken* v. *Indian Charge Chrome* [(1994) 1 SCC 502], *Hindustan Steel Works Construction Ltd.* v. *Tarapore and Co.* [1996 AIR SCW 2861], *Himadri Chemicals Industries Ltd.* v. *Coal Tar Refining Co.* [(2007) 8 SCC 110], *Ansal Engineering Projects Ltd.* v. *Tehri Hydro Development Corporation Ltd.* [1996 SCR (4) SUPP 226], *Hindustan Construction Co. Ltd.* v. *Satluj Jal Vidyut Nigam Ltd.* [AIR 2006 Delhi 169], and *Pasithea Infrastructure Limited* v. *Soler Energy Corporation of India Ltd. and Ors.*, decided on January 10, 2018 by the High Court of Delhi.

[31] *Himadri Chemicals Industries Ltd.* v. *Coal Tar Refining Co.* [(2007) 8 SCC 110], and *Pasithea Infrastructure Limited* v. *Soler Energy Corporation of India Ltd. and Ors.*, decided on January 10, 2018 by the High Court of Delhi.

[32] *State of Maharashtra* v. *National Construction Company, Bombay* [JT (1996) 1 (SC) 156], and *Himadri Chemicals Industries Ltd.* v. *Coal Tar Refining Co.* [(2007) 8 SCC 110].

[33] *U.P. State Sugar Corporation* v. *Sumac International Limited* [AIR 1997 SC 1644].

[34] *U.P. State Sugar Corporation* v. *Sumac International Limited* [AIR 1997 SC 1644], *Svenska Handelsbanken* v. *Indian Charge Chrome* [(1994) 1 SCC 502], *Hindustan Steel Works Construction Ltd.* v. *Tarapore and Co.* [1996 AIR SCW 2861], and *Ansal Engineering Projects Ltd.* v. *Tehri Hydro Development Corporation Ltd.* [1996 SCR (4) SUPP 226].

[35] (1994) 1 SCC 502.

[36] AIR 1997 SC 1644.

[37] Office Memorandum no. F.18/4/2020-PPD dated February 19, 2020, issued by Ministry of Finance (Department of Expenditure – Procurement Policy Division), Government of India. May be accessed at https://doe.gov.in/sites/default/files/Force%20Majeure%20Clause%20-FMC.pdf.

[38] Notification No. TC-I/2019/201/2 dated March 27, 2020 issued by the Railway Board, Ministry of Railways, Government of India and Office Memorandum No. 283/18/2020-GRID SOLAR dated March 20, 2020 issued by the MNRE, Government of India.

have also started sending out notices invoking *force majeure* in contracts.[39] It is however difficult to assess how Courts in India will tackle the Covid-19 outbreak, considering that performances under a myriad of contracts have been affected to various degrees by this unprecedented calamity. While we are all still watching and waiting for circumstances to normalise, this may be a good time to carry out an in-depth assessment of all subsisting contracts to understand the legal recourses that may be available, and to devise a strategy to proceed accordingly.

This paper has been written by Nidhi Arya (Partner), Radhika Misra (Associate) and Debanik Bid (Associate) with invaluable inputs from Partners - Soorjya Ganguli, Adity Chaudhury and Vinod Joseph.

[39] https://economictimes.indiatimes.com/industry/energy/power/shuttered-buyers-send-force-majeure-notices-to-energy-cos/articleshow/74920676.cms?from=mdr; https://www.livemint.com/news/india/indian-oil-mangalore-refineries-declare-force-majeure-to-curb-mideast-oil-supply-11585359906009.html; https://www.thehindubusinessline.com/economy/six-power-distribution-utilities-invoke-force-majeure-clause-tell-private-sector-generators-not-to-expect-payment/article31233126.ece.

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