

## **Contractual Obligations and COVID-19**

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### **Introduction**

The outbreak of COVID-19, the virus, has been extensively reported and the sufferings are still going on. The World Health Organization declared the outbreak of the disease to be a Pandemic. Nations around the world have imposed mass travel bans, temporary lockdowns, and have limited the human movement. It is not just the people who have been stopped from working but also the world economy that has been paralyzed. Domestic and multinational trade has also come to an unfortunate halt, which instantly resulted in disturbance, and hence, a disorder of the supply chain.

In these circumstances, parties to commercial contracts and legal professionals are thinking over and evaluating their contractual positions, trying to come up with a reasonable solution or manner to fulfill their contractual obligations in such trying times. Whether it be manufacturing contracts or construction contracts, sports events or supply agreements, the virus has had a detrimental impact on every form of contract.

Considering the economic disruption because of the prompt outspread of COVID-19, the question arising is that whether the parties could be held liable to pay damages for breach of contract or losses suffered by the third party due to the circumstances which are beyond their control, or does the law provide an assistance for these terrible circumstances. To answer the above question accurately, the principles of Force Majeure and Doctrine of Frustration can be applied.

### **Force Majeure**

A *force majeure* clause in contracts is a clause regarding an undesirable situation in which the performance of the contract would be released or suspended temporarily. The fundamental principle in *force majeure* is invoked upon the happening of any unavoidable circumstance that is not in the restraint of either party, that results in the delay of the performance of some or all of the contractual obligations.<sup>1</sup> Owing to the subjectivity of this clause, it differs from

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<sup>1</sup> *Coronavirus and Contractual Obligations*, BATES WELLS (Mar. 27, 2020), <https://bateswells.co.uk/2020/03/coronavirus-and-contractual-obligations/>.

case to case. In some cases, the contract is either amended or terminated. Making reference to the case of demonetization in 2016, the Government of India, in the absence of a preceding notice announced the demonetization of the currency notes. Many commercial contracts were either suspended, amended, or terminated. It had a negative impact on various sectors of the economy which dealt with cash transactions.<sup>2</sup>

To classify the ongoing pandemic in this clause, it should be within the scope and bounds of the same, that is, putting a stop to the performance of duties under the contract due to any government restriction or any unmeant and unplanned circumstance which makes a hindrance in the attainment of the contractual obligations. Thus, this global health emergency is surely a force majeure event.

However, in some contracts, the *force majeure* can be invoked only in some limited circumstances, referring to the different clauses in the agreement. Due to that reason, this clause would not do much good. It would only be beneficial if both the parties mutually decide to suspend the contract for some period of time. Even after this, if either of the parties does not agree and one of the parties could not perform its contractual duties, one could plead with the doctrine of frustration.

### **The Doctrine of Frustration**

The doctrine of frustration is used to put the contract aside when an unforeseen event occurs and makes the contract impossible to perform. This principle is expressed in Section 56 of the Indian Contract Act<sup>3</sup> which states – “A contract to do an act which, after the contract is made, becomes impossible or becomes unlawful by reason of some event which the promisor could not prevent, becomes void when the act becomes impossible or unlawful.” The doctrine of frustration comes from a case, *Taylor v. Cardwell*.<sup>4</sup> The case was about a contract in which a music hall was hired for certain dates but the music hall was burned down. The plaintiff wanted financial compensation from the owner, but the court held that looking at the circumstances, it was impossible for the owner to do so. Hence, the contract was eventually frustrated.

If a contract is frustrated, it is terminated. The parties are dismissed from performing future

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<sup>2</sup> *COVID-19 and Contractual Obligations*, KPMG LAW (2020), <https://assets.kpmg/content/dam/kpmg/ca/pdf/2020/03/contractual-obligations-vcf.pdf>.

<sup>3</sup> Indian Contract Act, No. 09 of 1872, INDIA CODE (1993), § 56.

<sup>4</sup> *Taylor V Caldwell*, [1863] 3 B&S 826.

duties and following the regulations stated under the contract and neither party will be held liable for the non-performance. Certain contracts, which are impossible to perform, could be terminated under S.56 of the Indian Contract Act (1872). In the case of *Satyabrata Ghosh v. Mugneeram Bangur & Co.*<sup>5</sup>, it was held that the performance of the contract doesn't need to precisely become impossible in order to decide whether the contract is frustrated or not. However, if the basic unsuitability of the performance has changed the view of either of the parties (the object of the contract will also be considered), the doctrine can still be applied, adhering to the conditions.

### **Other Provisions Under the Law**

*The force majeure* clause and the doctrine of frustration do provide a toehold for the contract to be rendered void by the parties in case of unforeseen circumstances. Nevertheless, where these principles do not work, S.3 of the Epidemic Diseases Act, 1897<sup>6</sup> comes into play. It claims that any person who disobeys the regulation under it would be punishable under the Indian Penal Code, 1860<sup>7</sup>. Also, Section 4 of the Epidemic Diseases Act, lays down that no legal proceeding shall be made against the person under this act. In addition to this, S.73 of the Disaster Management Act, 2005<sup>8</sup> states that no action could be taken in opposition to the person who is taking measures in good faith in the implementation of the regulation and duties drafted under it.

### **Conclusion**

In light of the provisions discussed in this article, we come to the conclusion that the non-performance of the duties and regulations under the contracts cannot lead to the legal proceedings because the non-performance is due to an unforeseen and uncertain event. The lockdown imposed by the government, along with other kinds of hindrance caused by COVID-19, has resulted in the non-performance of the contractual obligations.

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<sup>5</sup> *Satyabrata Ghose v. Mugneeram Bangur and Co.*, 1954 A.I.R. S.C. 44.

<sup>6</sup> Epidemic Diseases Act, No. 3 of 1897, INDIA CODE (1993), § 3.

<sup>7</sup> Indian Penal Code, No.45 of 1860, INDIA CODE (1993), § 188.

<sup>8</sup> Disaster Management Act, 2005, No. 53, Acts of Parliament, 2005, § 73.