

FORCE MAJEURE CLAUSE AND ITS EFFECT DURING COVID-19

COVID-19 which has been declared a pandemic has been reached almost every country on this earth and is eating lakhs of humans every day. To protect and control its spread, the government of every country is putting complete lockdown which has ghostly affected the economy. Have you ever imagined what happens to the contract in such situations like pandemic? what happens to the contracts signed everyday for purchase or sale of goods? Do parties get any kind of liberty to get away with their contract in such situations? And if they get what are these terms called?

Well, parties get way with the contracts through the term Force Majeure. It is a French term which literally means greater force. It is an unforeseen event which makes impossible for the parties to perform the contract. For example, a war, riot or any act of god like situation. The events must be external to the parties and is unavoidable.

So basically force majeure clause protects the parties from all the liabilities of non-performing of the contract. But if we see the Indian scenario, the Indian Contract Act, 1872 which determines the enforceability of the contracts in India, is silent about the term force majeure. Though the act allows the non-performing of the agreement by providing an impossible clause under section 56.

A force majeure clause cannot be implied under Indian Law. It must be expressly provided. It means the parties entering into the contract can add this clause and can enforce it.

Is Covid-19 a Force Majeure event?

The term force majeure does not always cover endemic or a pandemic. It is mainly used for earthquakes and Volcanoes. The finance ministry of India had already clarified in February 2020 that disruption in supply chain due to spread of coronavirus qualifies as a force majeure event, and companies and businesses can invoke force majeure clause.

Usually it makes easy for the companies in such situations to add this clause and get away from all the liabilities. But what would happen if this clause is not added to the contract?

From here the doctrine of frustration of contract defined under Section 56 of Indian contract act comes into picture. It says - An agreement to do an act impossible in itself is void. It then explained as:

‘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.’

Frustration is an aspect or part of law of discharge of contract by reason of supervening impossibility or illegality of the act agreed to be done and hence comes within the purview of section 56. But it is quite difficult to enforce compared to the contracts with a force majeure clause.

Due to these large number of cases, the countries have been lockdown from very long and it would be very difficult to maintain the economy of the world even after this pandemic. As many sectors like port sector, cross-border trade, real estate, mergers acquisition deals, etc have been facing many difficulty.

Other countries like China, America are also considering this pandemic as a force majeure situation. So, we are seeing a great impact of this clause during COVID-19 situation which is in positive way helping people to get discharge from the contracts without any liability but it is affecting the trade also.