



A DELIBERATIVE CONCEPTION OF THE PRINCIPLE OF FORCE MAJEURE AND IMPACT ON BUSINESS DUE TO COVID-19

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ABSTRACT

The COVID-19 outbreak, across borders and geographies, has had a devastating effect on almost the entire world and continues to pose a serious threat to global economic visibility. Due to the closure announced by the Indian Government, the economy may slow down in the next few months. For many businesses, declines could be in the form of a disruption of supply, a collapse of demand, and pressure on the banking and financial sector. COVID-19 undoubtedly has a 'significant impact' on Indian businesses, considering next month's jobs are at high risk because firms will be demanding a certain reduction in workers. The analysis unequivocally points out that Covid-19 has affected every sector, and E-Commerce seems to have gotten a little boost along despite the adversity. The proliferation of coronavirus in all countries has hampered the delivery and demand in the domestic economy due to large industry leaders reducing their remittances in the last quarter of the FY20. All of these factors have contributed unfavourably for the investors, which has subsequently led to market failure. A detailed conception of business in relation to the pandemic in this research paper, has highlighted that while some businesses are struggling; others are thriving and successfully expanding. Such compelling examples may include Internet-based businesses, such as those related to online entertainment, food delivery, online

shopping, online education, and remote work solutions etc. People also tend to modify their consumption patterns, such as increasing the need for intake, snacks, and alcohol and cleaning products as we spend more time in our homes. Other flourishing industries are those related to health care and medicines as well as herbs and vitamins. From all the analytical and critical analysis, it can be subsequently concluded that often whilst studying the markets, they are thought to be static, which a natural conclusion since they tend to change imperceptibly. However, through the detailed conception of this paper, we can ratiocinate and appraise that due to COVID-19 the markets are strong and moving very fast.

Keywords: *business, covid-19, force majeure, market, lockdown.*

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INTRODUCTION

The outbreak of Covid-19 pandemic has shocked the Indian economy. With open global closures, global economic downturns and associated disruptions with the supply of goods, the economy is likely to face a period of recession. The magnitude of the economic impact will depend on the duration and severity of the health crisis, the timing of the closure and the nature of the situation when the closure is released. This pandemic has brought national shutdown to almost all economic activity. Disruption of demand and supply may continue even after the lockdown has been raised. It will take time for the economy to return to normal and the mechanisms of social crisis will continue for a long time as long as the health crisis spreads. Therefore, demand is unlikely to be



restored in the next few months, especially the demand for non-essential goods and services.

The COVID-19 pandemic has changed the business condition for numerous sectors around the world, and has featured the significance of having the option to respond, adjust and set up emergency management instruments so as to climate circumstances of vulnerability and uncertainty. The effect of COVID-19 on domestic and international markets is extreme, across nations and divisions. There are a lot of changes in commercial sector and market all around the globe that resulted due to coming of this pandemic.

The most widespread outbreak of the COVID-19 outbreak, across borders and geographies, has had a devastating effect on almost the entire world and posed a serious threat to global economic visibility. Due to the closure announced by the Indian Government, the economy may slow down in the next few months. For many businesses, declines could be in the form of a disruption of supply, a collapse of demand, and pressure on the banking and financial sector. COVID-19 is having a 'significant impact' on Indian businesses, as next month's jobs are at high risk because firms demand a certain reduction in workers.

The COVID-19 crisis has caused an unprecedented decline in economic activity over the past few weeks. The current situation has a huge impact on the "very high standard" of their business. Its spread has left businesses around the world calculating costs and wondering how they can recover. It is

measured by the change in the percentage of total domestic production, or the amount of goods and services produced, usually over a period of three months or a year. But the IMF says the global economy will shrink by 3% this year. It described the decline as the worst since the Great Depression of the 1930s.¹

In this study we will be initially looking up for the major impact of COVID-19 on business and then we have given insight about the legal recourses available to business entities to avoid and mitigate losses during and after such situations; and in the end we will be giving our readers a review of impact of COVID-19 on various sectors.

MAJOR IMPACTS ON BUSINESS:

The outbreak of COVID-19 has had a global impact and is felt across industries. The outbreak is said to be a national emergency by the World Health Organization. In India the three main contributors to GDP namely private consumption, investment and foreign trade are all affected. The Global and Indian Economy is trying to reduce the health risks of COVID-19 through economic risks and the necessary steps will be taken to improve that. Impact of this pandemic on industries, commercial houses and other business entities is multi-dimensional and is pervasive at all levels. Few major effects on industry and business has been enlisted below:

➤ Supply Chain Disruption:

For a business to convey its guarantee to its clients, it must have an appropriately working supply chain. Without an unblemished supply chain, a manufacturer will starve for key contributions to its product creation

¹ Lora Jones, Daniele Palumbo & David Brown, *Coronavirus: A visual guide to the economic impact*,

BBC NEWS (30 June 2020)
<https://www.bbc.com/news/business-51706225>.



procedure and a retailer will have empty racks.

What began as a health scare in a single province in China has morphed into a global pandemic that has now spread to almost every country in the world, putting much of the global population in partial or total lockdown. Border restrictions and lockdown measures are set to cause a massive negative short-term impact on consumer spending, investment and disruptions to international trade and global supply chains, and the long-term impact remains uncertain.

COVID-19 has now unleashed a global supply chain crisis across a huge number of organizations, stemming from a lack of understanding and flexibility of the multiple layers of their global supply chains and a lack of diversification in their sourcing strategies.² Due to outbreak of coronavirus, disruption in trade activities has been observed in the form of delayed fulfilment, cancellation of orders, and interrupted or part accomplishment of contracts. Not only has this affected sale-purchase activities but also production activities. Counterparties or suppliers to contracts may pursue to delay and/or avoid performance (or liability for non-performance) of their contractual duties and/or abort contracts, either because COVID-19 has reasonably thwarted them from performing their contractual obligations, or because they are attempting to exploit it as a pretext to liberate themselves from a calamitous deal.

Parties may begin to cite COVID-19 as a substructure for renegotiation of price or

alternative fundamental contractual provisions. The party advancing force majeure is generally under an obligation to demonstrate that it has taken all legitimate endeavors to avert or mollify the event and its aftermath effects. This is a subjective paradigm and will be interpreted on a case-to-case basis.

Many industries and even numerous sectors lost their business and consumer base due to this pandemic. The whole world is experiencing breach of contractual obligations and delay in accomplishment of the work decided as per contract. Where some entities have genuinely been affected, there also stand commercial houses those took undue advantage of this situation to hoard their goods and services and there by intentionally avoiding performance of their liability.

It's imperative to check whether COVID-19 shall be considered as 'Force Majeure' event or not. But to the universal concern it can apply be concluded that COVID-19 is not likely to give rise to a valid force majeure defence, because every contract is different and legislations governing them are also different. In furtherance situation and circumstances of every place is different and hence there is ardent need to assess the situation with due care and then decide for the same. Therefore proper scrutiny is needed to decide and recognise that whether COVID – 19 pandemic lead to non-accomplishment of contract or otherwise.

The Government of India *vide* its office memorandum dated February 19, 2020³, has

² Baker McKenzie, Beyond COVID-19: Supply Chain Resilience Hold Key to Recovery, Oxford Economics.

³ "Manual for procurement of goods 2017" Office Memorandum No. 18/04/2020, Ministry of Finance, Department of Expenditure Procurement Policy



referred to the definition of ‘*force majeure*’ which is appearing in the Manual for Procurement of Goods, 2017, and has categorized the Covid-19 outbreak as a natural calamity⁴ which serves as a guideline for procurement by the Government. The Office Memorandum adequately states that the Covid-19 outbreak could be camouflaged by a force majeure clause on the basis that it is a ‘natural calamity’, caveating that ‘due procedure’ should be pursued by any Government department probing to conjure it.

However, while such a certificate may be benefitted to contend that a contract cannot be performed. Covid-19 is remotely to boost a legitimate force majeure defense under every contract and in every circumstance, as different contracts and ruling laws designate different requisites for disparate situations. Therefore, Companies are commended to proactively administer the analogous legal risk and thoroughly appraise which party must conclusively carry the financial losses induced by Covid-19.

It is a settled provision that contracts will be affected severely by the pandemic and the current lock-down situation. However, in the future, we may be getting accustomed to interpretation of clauses, terms, and parameters of performance of contracts under these unanticipated circumstances paired with notifications and directions by the government. Indubitably, the law relating to Force Majeure is prone to undergo a

tremendous evolution in view of this covid-19 pandemic.

Bankruptcy and Insolvency:

COVID-19 has not only affected supply chain but has also made companies to face financial crisis. As on one hand business entities busy finding solutions to mitigate the loss due to termination of contracts and disruption in supply chain, on the other hand they are losing their customer and hence facing finance problems.

Business is well known for its risk factor indulgence and heavy debts; now this spread of coronavirus has landed them in such a situation that neither they are getting their payments nor are they able to spend from their reserves as they have heavy debts and uncertainty at their heads. As a result of which there are many industries facing insolvency issues.

Management Issues:

Each and every sector had to adapt to new modes of work, and this has all been levied on the entrepreneur. Businessman has to now not only think for expanding his business and work to strive best for his business but also has to take care that his employees and his entity is safe and healthy for work in relation to this virus, and to the concern it is that he has to do this all by himself without any government help.

To ensure safety of workforce and to ensure a healthy and safe working environment, entrepreneur has to do everything possible irrespective of the cost involve because for

Division,
<https://doe.gov.in/sites/default/files/Force%20Majeure%20Clause%20-FMC.pdf>.

⁴ Nidhi Arya, Radhika Misra and Debanik Bid, *Force Majeure in the time of Covid-19— an overview*, ARGUS

PARTNERS SOLICITORS AND ADVOCATES (Apr. 03, 2020), http://www.argus-p.com/papers-publications/thought-paper/force-majeure-in-the-time-of-covid-19-an-overview/#_ftn26.



his entity his employees is the most valuable asset. India's Ministry of Finance has declared solar project developers who miss contractual obligation deadlines because of coronavirus prompted supply chain disruption can invoke Force Majeure clauses to avoid financial penalties.⁵

➤ Shipping and Trade Issues:

Indian government in its advisory has guided travellers to refrain from travelling to China, Iran, South Korea and Italy, and has also advised to avoid non-essential travel to other COVID-19 affected countries. Due this trade and commerce has also affected as no exports and imports happening. India has incidentally suspended visa on arrival for nationals of Japan, China, Iran, Italy and South Korea and has cancelled all flight activities to and from China, Hong Kong and Iran.

IMPACT ON E-COMMERCE & DIGITAL ECONOMY:

On the one side COVID-19 has affected every sector, E-Commerce has got a little boost along with getting affected. The difference is E-Commerce has medium to trade and people are preferring it over primitive buying methods. Factors that contributed to the growth of the e-commerce market before the COVID-19 epidemic were the strong and sustainable growth of internet users and the growing awareness of online shopping, launching products online, low purchases and so on.

In addition, lower commodity prices and economies contribute to the growth of the global e-commerce market because of the growing number of unique products in the

market and the direct distribution channel. Furthermore, after the COVID-19 pandemic, social unrest and being at home are likely to push consumers towards online shopping. However, uncertain consumer demand and supply chain issues affect the e-commerce industry.

The COVID-19 pandemic also affects large retailers such as Walmart, where they accidentally fall short of shopping, supply chain interruptions and purchases of essential toilets, groceries and other products. Leading Chinese e-commerce service provider Alibaba has struggled to sustain growth in its domestic market during the economic downturn and has faced uncertainty over the spread of coronavirus. Leading companies affected in the market are Alibaba Group Holdings Limited, Amazon.com, Inc., JD.com, Walmart Inc., Shopify, Rakuten Group, and eBay Inc., and others.

IMPACT ON FOREIGN DIRECT INVESTMENT (FDI):

While COVID-19 has undoubtedly changed the economic situation, Indian businesses have shown resilience in the face of adversity. Businesses will need to make adjustments in order to adapt to changing environments that will be a new standard for the foreseeable future. Coronavirus' rapid spread to other countries and the disruptions experienced in international markets have also had a negative impact on financial markets. Equity Markets has witnessed a sharp correction over the past few weeks around the world, and the resulting turmoil is likely to have negative effects on credit,

⁵ Uma Gupta, Solar projects reprieved as Indian government declares coronavirus a force majeure, PV Magazine (Feb 24, 2020) [https://www.pv-](https://www.pv-magazine.com/2020/02/24/solar-projects-reprieved-as-indian-government-declares-coronavirus-a-force-majeure/)

[magazine.com/2020/02/24/solar-projects-reprieved-as-indian-government-declares-coronavirus-a-force-majeure/](https://www.pv-magazine.com/2020/02/24/solar-projects-reprieved-as-indian-government-declares-coronavirus-a-force-majeure/).



especially in institutions that rely heavily on loyalty in the near future.

In India and around the world, the impact of the coronavirus epidemic is not limited to a few sectors but is evident to all economic actors. Monetary activity in the Indian ecosystem has seen a disruptive investor meetings. The proliferation of coronavirus in all countries has hampered the delivery and demand in the domestic economy due to large industry leaders reducing their remittances in the last quarter of the FY20. All of these factors have contributed to the negative for investors, which has led to market failure. According to estimates by the United Nations Conference on Trade and Development (UNCTAD), the outbreak of COVID-19 could result in a 5% -15% increase in global FDI, due to the decline in the manufacturing sector combined with the closure of the industry.⁶ The negative effects of COVID-19 on FDI investment are expected to be high in the energy, automotive and aviation industries. As a result of the global COVID-19 epidemic, manufacturers of automobiles, chemicals, electronics and aircraft are facing concerns about the availability of underdeveloped materials. In the electronics sector, Smartphones and consumer electronics companies have begun to reduce product performance and delay the introduction of new products associated with the COVID-19 outbreak, which in turn disrupted the supply of nutrients.

⁶ United Nations Conference on Trade and Development, *Investment Flows to Transition Economies will decline by Around 38% Due To COVID 19*, UNCTAD/PRESS/PR/2020/017 (16 June 2020)

LEGAL RECOURSES AVAILABLE IN SUCH SITUATIONS:

Force Majeure:

The French term *Force Majeure* stands for “superior force”. A force majeure clause enables the seller, the ability to meet his bargain end, when performance of the contract and meeting the contractual obligations goes out of hand. There arises an impossibility to perform the contract. Force majeure stands for an event that can neither be foreseen or restrained. It could include act of nature and act of people as well, almost making it versatile in legal terms. This defence is of paramount importance since it saves the burden of performance of a contract when it seems preposterous.

The latin term “*vis major*” or popularly known as Act of God exclusively relates to act of nature, be it a natural calamity, an epidemic or forces of nature. Since Force majeure envelopes the act of nature in itself too. One could de facto establish that Act of God is a subset of what Force majeure stands for.

The provision of Force Majeure has been stated under Section 56 of the Indian Contracts Act of 1861⁷. If a plea of frustration of Contract or Force majeure is upheld, it exempts the person to execute the contractual obligations without being held accountable or liable for the same. In the case of *Dhanrajamal Gobindram v. Shamji Kalidas and Co*⁸, the Supreme Court of India, approving the view taken in an English case

<<https://unctad.org/en/pages/PressRelease.aspx?OriginalVersionID=557>>.

⁷ §. 56 The Indian Contract Act, 1872, No. 09, Acts of Parliament, 1872.

⁸ *Dhanrajamal Gobindram v. Shamji Kalidas and Co*, AIR 1961 SC 1285.



of *Lebeaupin v. Crispin*⁹ drew a line between the defenses of Act of God and Force majeure. The Apex Court held that customarily quarantines, lockdowns, state obligations are not included under the defence of Act of God but are included under the defence of Force Majeure. The intention of the law here is to protect the performing party from the consequences, he has no control over. One may conclude that the sine que non for conjugation of Section 56 are: a valid contract between parties, the contract must not have been performed yet and the contract must have become impossible to execute due to the law or fact.

Although the Indian Courts haven't yet ruled out a proper case law to determine whether a pandemic like covid-19 is under the ambit of Act of god but the argument can derive support from the recent case of *The Divisional Controller, KSRTC v. Mahadava Shetty*¹⁰ that the expression 'Act of God' bespeaks the operation of natural forces free from human intervention with the caveat that every unforeseen natural event does not operate as an excuse from liability if there is a reasonable possibility of anticipating their happening. Similar judgments have been passed in the case of *K. Kalasami Nadar v. Ponnuswami Mudaliar*¹¹ and *R.R.N. Ramalinga Nadar v. V. Narayana Reddiar*¹².

In an American case law of *Rexing Quality Eggs v. Rembrandt Enterprises*¹³ the Southern District Court of Indiana held that

that a plunge in the supply of eggs due to the avian flu may be an act outside the reasonable control of a party and thus constitute the defence of 'act of god'.

Doctrine of Frustration:

Section 56 of the Indian Contracts Act is based on the legal principle "*les non cogit ad impossibilia*" which means 'the law compels no man to do vain or impossible'. The frustration of a contract can be performed in the following circumstances: Death or incapacity of a party, Frustration by virtue of legislation and frustration due to change in circumstances. In the case of *Robinson v. Davison*¹⁴, it was upheld that where a party in a contract has died or can execute the contract, the contract will be void. In the case of *Rozen Mia v. Tahira Begum*¹⁵, it was held that whereby after entering into a contract, the legislation is such passed by the state that the contract itself becomes illegal, such a contract shall be declared frustrated. Lastly, those cases, where due to change in circumstances, the entire purpose of the contract was defeated, shall be declared void.

According to section 56(1) of the Indian Contracts Act, an agreement impossible to perform in itself becomes void. The reason could be physical impossibility or legal impossibility that renders the contract void. The doctrine applies primarily to all types of contracts, be it a service agreement, sale agreement, principal agent agreement, rental agreement, master servant agreement etc.

⁹ *Lebeaupin v. Crispin*, (1920) 2 KB 714.

¹⁰ *The Divisional Controller, KSRTC v. Mahadava Shetty*, 2003 7 SCC 197; *Province of Madras v. I.S and G Machado*, AIR 1955 Mad 519.

¹¹ *K. Kalasami Nadar v. Ponnuswami Mudaliar*, AIR 1962 Mad 44.

¹² *R.R.N. Ramalinga Nadar v. V. Narayana Reddiar*, AIR 1971 Ker 197; *Kerala Transport Co. v. Kunnath Textile*, 1983 KLT 480.

¹³ *Rexing Quality Eggs v. Rembrandt Enterprises*, 360 F. Supp. 3d, 817.

¹⁴ *Robinson v. Davison*, (1871) LR 6 Ex 269.

¹⁵ *Rozen Mia v. Tahira Begum*, AIR 2007 SC 288 [11].



The Indian Contracts Act contains two legal provisions relating to principle of Force Majeure and Act of God. Section 36 of the Act deals with contingent contracts and *therefore* states that if a contract is based on the happening of a future event and such event becomes impossible, the contract becomes void. In the case of *Satyabrata Ghosh v. Mugneeram Bangur*¹⁶ and *Energy Watchdog v. CERC*¹⁷, the Supreme Court held that when a force majeure event is relatable to a clause (express or implied) in a contract, section 2 of the Act is applicable, whereas if a force majeure event occurs out of the contract, Section 56 of the Act applies. In one of the early decisions under section 56 of the Contracts Act, *Inder Pershad Singh v. Campbell*¹⁸, the Calcutta High Court interpreted the word 'impossible'. Though the court does not seem to have expressed it in so many words in the case but the decision could be justified on the ground of 'disappearance of the foundation' on which the contract was entered into by the parties. It had not become either absolutely impossible of performance or useless in the changed circumstances.

The Nagpur High Court in *Kesari Chand v. Governor General-in Council*¹⁹ deliberated the question of frustration and came to the conclusion that the doctrine comes into play when a contract becomes impossible to perform, on account of circumstances beyond the control of the parties. The Court also stated that the doctrine is a major case of

impossibility, and as such comes U/S 56 of the Act and this view had been taken in full agreement by the Supreme Court of India.²⁰ Frustration generally arises through delay, attributable to the fault of neither party, of such a character that the fulfilment of the contract, in the way or ways contemplated and practicable, is so uncertainly postponed that the execution of the contract when the delay is over, will not accomplish the object which both the parties to the contract had in mind whilst entering into the contract.²¹

Causation and Mitigation:

The defence of frustration can, however, be defeated by the proof of fault and the burden of proof lies on the party alleging the same.

Even if we assume that a pandemic like covid-19 falls under the ambit of the force majeure clause, the performance of the contract would still entirely depend on whether the fulfilment of the contract has become immensely impossible. The response of the government authorities would be the key to determine the execution of the contract.

In the recent case decision of the Bombay High Court in *Standard Retail Pvt. Ltd. v. M/s G.S. Global Corp & Ors*²², the absence of a direct causal link between Covid-19 pandemic and the non-performance was one of the other grounds on which the Court refused to grant an injunction. An injunction was sought deliberating on the fact that it had become impossible to transport steel amidst

¹⁶ *Satyabrata Ghosh v. Mugneeram Bangur*, [1954] SCR 310; *Alopi Parshad & Sons Ltd. v. Union of India*, [1960] 2 SCR 793.

¹⁷ *Energy Watchdog v. CERC*, (2017) 14 SCC 80.

¹⁸ *Inder Pershad Singh v. Campbell*, (1881) 7 Cal, 474.

¹⁹ *Kesari Chand v. Governor General-in Council*, (1949) Nag. 718.

²⁰ *Satyabrata Ghose v. Mugneeram & Co.*, (1954) S.C.R. 310, 318.

²¹ LORD SIMONDS, HALSBURY'S LAWS OF ENGLAND 190 (3rd ed. 1954).

²² *Standard Retail Pvt. Ltd. v. M/s G.S. Global Corp & Ors*, Order dated April 8, 2020 passed by the Bombay High Court in Commercial Arbitration Petition (Lodging) No. 404 of 2020.



the covid-19 pandemic. Nonetheless, the(ii) Court observed that distribution of steel was an indispensable service and, since there were no constraints on its movement, performance of the contract was not affected. The language of a force majeure clause must have affected on the direct causal link(iii) between the force majeure event and the non-performance of the contract sought to be excused. The parties must also adhere to make the best alternative efforts available in order to fulfil the contract. In *Coombs v. Nolan*,²³ the Court paid special attention to(iv) the alternative methods adopted by the party to execute the contract.

It is a given that many parties may seek refuge from the performance of the contract by relying on section 56 of the Act. However, it must be taken in consideration that the onus(v) of demonstrating whether Covid-19 hindered(vi) performance of the specific contractual obligations in a particular case lies heavily on the party seeking to have its non-performance excused.

➤ **Doctrine of Efficient Breach:**

When a promise or agreement is broken by any of the parties of the contract, it is known as a breach of contract. In such a case, the remedies to the breach of contract include-
(i) Recession of Contract, according to Section 65 of the Indian Contract Act²⁴, the party that rescinds the contract must restore any benefits he got under the said agreement. Furthermore, section 75 of the Act²⁵ stipulates that the party that rescinds the contract is entitled to receive damages and/or compensation for such a recession.

²³ *Coombs v. Nolan*, 6 F. Cas. 468, 7 Ben. 301.

²⁴ §. 65 of The Indian Contract Act, 1872, No. 09, Acts of Parliament, 1872.

²⁵ §. 75 of The Indian Contract Act, 1872, No. 09, Acts of Parliament, 1872.

²⁶ *Chandler v. Webster*, (1904) 1 K.B. 49.

Sue for Damages, Section 73 specifies that the party who has been affected, since the other party has broken promises by the nonfulfillment of the contract, can claim compensation for damages caused to them in the normal course of business,

Sue for Specific Performance, if either of the party fails to perform the contract, the court may order them to do complete the performance of the contract. This is a decree of specific performance and is granted instead of damages,

Injunction, an injunction is a court order restraining a person from carrying out a certain job or an act. Therefore, a court may grant an injunction to prohibit a party of a contract from doing something he promised not to do,

Quantum Meruit, this term literally translates to “as much is earned”. When one party of the contract is prevented from finishing his performance of the contract by the other party, he can claim quantum meruit for the services that have already been provided by the party.

In India it has been held that the inequitable and stringent rule of *Chandler v. Webster*²⁶ would not apply in the face of the provisions of section 65 of the Indian Contracts Act., according to which each party is bound to return any payment and advantage received i.e. the quantum meruit.²⁷

In one of the earlier case of *Maritime National Fish Ltd. v. Ocean Trawlers Ltd.*²⁸, it was held that in the jurisprudence on frustration of contracts, the essence of

²⁷ *Textile Manfg. Co, Ltd. v. Solomon Brothers*, (1916)40 Bom. 570; *Babulal Agarwala v. Firm Vijaya Stores*, A.I.R. 1955 Or. 49.

²⁸ *Maritime National Fish Ltd. v. Ocean Trawlers Ltd.*, [AIR 1935 PC 128 (A)].



"frustration" is that it should not be due to the act of the party and it should be bereft of fault by any party. If it was a party's own default which frustrated the adventure, he could not entrust himself on his own default to exonerate him from liability under the contract.

This principle has since then been applied by the Indian Courts in tomentum, and in cases where frustration of contract has been found to be self-cajoled, such plea has been denied by the courts.²⁹

In a Bombay High Court case of *Bombay and Persia Steam Navigation Company Limited v. Rubattino Company Limited*³⁰, which dealt with a plea of illegality in the performance of contract due to an outbreak of small-pox disease. The defendant, in the case had taken a ground that in carrying out its obligation, it would impugn the provisions of Section 269 of the Indian Penal Code, 1860³¹ which made it illegal for a person to do any act that can be anticipated to spread a disease. However, this argument of the defendant was rejected by the Court and the defendant was directed to credit the terms of the contract.

SECTORS ADVERSELY AFFECTED:

The outbreak of the COVID-19 epidemic has forced many businesses to close, leading to unprecedented commercial disruption in many industrial areas. Retailers and products face many short-term challenges, such as those related to health and safety, supply

chain, performance capacity, cash flow, consumer demand, sales and marketing. However, successfully navigating these challenges will not guarantee a promising future, or any future. This is because once we have passed through this epidemic, we will come from a very different country compared to this one before the outbreak. Many markets, especially in the tourism and hospitality industry, are virtually non-existent. All of the organisation's activities are intended to prioritize and streamline expenditure or to reverse activities that will not bring benefits to the current environment. Companies, especially start-ups, have used endless time. At the same time, online communication, online entertainment, and online shopping are seeing unprecedented growth.

- **Textile: Textile industry has got affected due to this epidemic, due to uncertainty in regards to availability of raw material; in addition there is loss of labour as labour supply has been disrupted because labourers have travelled back to their places due to unavailability of ample work and wages. Further this sector has also been affected due to decrease in purchasing power of public.**
- **Tourism: Covid-19 has adversely affected tourism sector, as this disease has led to break in movement of people. This sector is not at all given any governmental support and due to this lockdown their business shut. In the coming future as well travel and tourism would be an unlike thing to observe. As visas are suspended and tourists are permanently closed, the entire series of tourism prices,**

²⁹ Lal Mohan Ghosh v. Ramanath Shaha & Ors., [AIR 1954 Tri 17]; Gambhirmull v. Indian Bank Ltd. [AIR 1963 Cal 163].

³⁰ Bombay and Persia Steam Navigation Company Limited v. Rubattino Company Limited, (1889-90) ILR 13-14 Bom (VI) 555.

³¹ § 269, The Indian Penal Code, 1860, No. 45, (Enacted 06-10-1860), Acts of Parliament 1860.



including hotels, restaurants, attractions, providers, and employees are expected to face an estimated loss of thousands of countries. The World Travel and Tourism Council (WTTC) estimates the crisis to cost the tourism sector at least USD 22 billion, the travel sector shrinking by up to 30% in 2020, resulting in a loss of 100 million jobs. WTTC analysis also shows a sharp escalation in the economic loss to the world economy, up to US\$2.7 trillion of GDP, from US\$2.1 trillion just a month ago. The punishing impact of the COVID-19 crisis has led to over one million jobs already being lost every day.³²

Tourism is seeing a sharp decline in demand during the COVID-19 pandemic. Despite the strong resilience of the tourism industry which has sometimes been unprecedented, the impact of the current epidemic could last longer on tourism in other countries. However, the tourism industry should not re-emerge but also re-evaluate and transform the next normal economic sequence. Currently, there is a lack of research on how problems can change this sector, how the industry adapts to changes in crisis strategies, and how research that can establish the following goals can be conducted.

- **Hotel and Hospitality:** Coming up of virus resulted in lockdown and shutdown in all economic activities. Ban on travel and movement of people has a magnanimous effect on hospitality sector, i.e. hotels, rest rooms, hostels, restaurants, cafes and bar etc. This scenario has resulted in shutdown of

hospitality industry. “Given this scenario, ICRA expects steep increase in credit distress to mount in the coming months in the Indian hospitality industry, with several hotels shuttering shop permanently,” Pavethra Ponniah, Vice President and Sector Head, ICRA said. At present the hospitality industry in India is operating at 10-15 per cent occupancy and losses are mounting. It is expected that there will be a 30-50 per cent decline in revenue per available room (RevPARs) during FY2021.³³

The losses can only be avoided by invoking Force Majeure clause to get rid of their obligations and other liabilities thereby suspending payments to avoid further losses until things come back to normal. Hotel owners and operators are suffering huge loss of capital. Furthermore this sector would be facing impossibility to perform contracts and hence there would be frustration of contracts. A contract is frustrated when there is a supervening event that changes the nature of the outstanding contractual rights and/or obligations to the extent that the parties could not have reasonably contemplated such change at the time of the execution of the contract.³⁴

- **Aviation:** Ban on international travel for trade and tourism by the government has lead aviation industry to suffer huge losses. Outbreak of this disease has a magnanimous destructive effect on the aviation sector. The whole department has incurred huge losses due to upcoming of this pandemic.

³² WTTC now estimates over 100 million jobs losses in the Travel & Tourism sector and alerts G20 countries to the scale of the crisis, World Travel & Tourism Council, (Dated April 24, 2020) Press Release: <https://wttc.org/News-Article/WTTC-now-estimates-over-100-million-jobs-losses-in-the-Travel-&-Tourism-sector-and-alerts-G20-countries-to-the-scale-of-the-crisis>.

³³ Arshad Khan, *COVID-19 impact: Several hotels may shut down permanently because of rising credit level*, THE NEW INDIAN EXPRESS, <https://www.newindianexpress.com/business/2020/may/28/covid-19-impact-several-hotels-may-shut-down-permanently-because-of-rising-credit-level-2148992.html>.

³⁴ National Carriers Ltd v Panalpina (Northern) Ltd, (1981) 1 All ER 161.



Government's will to sell the estate of Air India to private entity clearly portrays the present condition of Aviation Sector.³⁵ Force Majeure clause can be invoked in current situation, as it will give the company right to suspend its obligations of performance to the extent that it is prevented to do.

- It won't be wrong to state that in the coming future Aviation sector will be suffering huge losses in future, but the losses can be reduced to a considerable amount by invoking such clause. Taxation and Other Laws (Relaxation of Certain Provisions) Ordinance, 2020 has brought amendment in the present laws and has inserted Section 168A, and this empowers government to extend time limit of Force Majeure clause. This ordinance will give some sort of relieve too many companies from its legal responsibility and further avoid insolvency and downfall of the industry.
- **Automobile:** The reason for downfall of this industry mainly lies due to lack of demand, recession all over the globe and degrading consumer buying capacity. Disruption in supply of automotive has caused heavy loss for this industry. Moreover, most of automobile parts are manufactured in industries set up in China and due to this disease being originated from there companies are in great fear to do business from there and are doing their best to either shift their base from china to other country or to opt such measures which are safe for their professional growth. Automobile sector is suspected to suffer a loss of approximately

\$1.5 Billion per month.³⁶ Covid-19 would not only affect the common public but also stakeholders including all suppliers and dealers. Usually all commercial contracts consist Force Majeure clause but those have a wide ambit.

- **Real Estate:** Another sector has been unpleasantly impacted by COVID-19 and that is Real Estate. This pandemic has led to loss of maximum of people's savings while taking care of their daily expenses. Most of builders, stake holders have suffered massive loss due to lockdown, they lost their labour and the raw material stands unused and in addition as per Force Majeure clause they'll have to incur those loss all on their own. Usually building contracts have Force Majeure, the major trouble is for lessees who got their property on lease and now due this sudden uncertainty they are incurring heavy losses. In Lease Contracts there is no Force Majeure clause as per Section 56 on Indian Contract Act for either parties to contract. Hon'ble Supreme Court observed that, Section 56 has limited application to covenants under a lease and does not apply to cases where there is a completed transfer. The court further observed that a lessee cannot avoid the lease because he does not or is unable to utilize the land for the purpose for which it is let to him if the land is fit for usage and as such, section 56 of the Indian Contract Act does not apply in that scenario.³⁷

While some businesses are struggling, some businesses are thriving. This is true of many

³⁵ ET Bureau, *Bids invited again for Air India sale, govt aims to seal deal by March-end*, THE ECONOMIC TIMES, <https://economictimes.indiatimes.com/industry/transportation/airlines/-aviation/govt-to-sell-100-pc-stake-in-air-india-issues-bid-document/articleshow/73651745.cms?from=mdr>.

³⁶ ETAuto Contributor, *Opinion: COVID-19 impact on Indian automotive industry- Taking action in troubled times*, ET AUTO Times, <https://auto.economictimes.indiatimes.com/news/industry/opinion-covid-19-impact-on-indian-automotive-industry-taking-action-in-troubled-times/74944847>.

³⁷ *Raja Dhruv v. Raja Harmohinder Singh*, AIR 1968 SC 1024.



Internet-based businesses, such as those related to online entertainment, food delivery, online shopping, online education, and remote work solutions. People also change their consumption patterns, increasing the need for intake, snacks, and alcohol and cleaning products as we spend more time in our homes. Other industries that do well are those related to health care and medicines as well as herbs and vitamins. Often, when studying the markets, they are thought to be static, a natural conclusion since they tend to change slightly. However, if there is one thing that has been pointed out by COVID-19, that the markets are strong and it keeps moving no matter what.

CONCLUSION:

The epidemic has crippled the economy, forcing businesses to rethink their strategies. Companies will need to build their financial structure and focus on building a narrower structure to further stable the unstable business environment. The global Covid-19 epidemic has been causing a catastrophic human catastrophe and worsening the country's economy. Across the industry, companies must work now to protect workers and their customers - and now prepare the world for beyond coronavirus.

Globalization, coupled with its durability and longevity, is expected to transform the business environment in the form of changing trade flows, investments and spending patterns. Therefore, the most important thing for businesses should be to design a comprehensive plan to take risks and address major challenges. There is no doubt while claiming that this pandemic will be having a great impact on not only India's economy but on every country's economy as this has not left any economy being

unaffected. Recovery of the economy in this state will be slow and it might take another year or two to settle things back to normal. To uplift the economy back, along with governmental aid contributions would be required by stakeholders, common public and corporates.

This pandemic has affected economy inside-out, up to down but this has also unbolted the new ways to continue business and economy. The economy has witnessed upcoming of new areas of business and has contributed to the birth of novice business sectors, mainly comprising the ones on digital platforms, such as chat rooms, conference rooms, online sale and purchase mediums etc. Moreover there will more promotion of e-ways of trade and commerce and this will bring a shift in the economy from a primitive one to a high tech business enterprises.

This time is to reset the modes of business, because the entity which does not adapt to the new modes of business will be shut and will not be able to revive again. On the bright side, the COVID-19 epidemic offers great opportunities for companies to actively participate and their common participatory strategy (CSR) and their agenda. The post-COVID-19 market will vary unnoticed. Organizations will need to review their ideas, activities, and objectives to report changes to their customers and competitors, among other things. A major feature of this is the huge increase in digital communication and change. If business entities strive to achieve their goals they have to fix the upcoming challenges in accordance with their firm's objective along with the society around. The most important lesson from a legal point of view due to this pandemic is to include Force Majeure clause in every commercial



contracts. All entrepreneurs must review their contracts in order to invoke this clause. In furtherance business shall always maintain proper liquidity ratio and not depend solely on credits. Once things come back to normal every entity should explore every possible legal solution to avoid economic damage to their entity in the coming future.

Now business entities are more concerned and strive to be secure after the epidemic. The resources to be prepared when the unexpected happens again. Countries begin reduction in importing many items such as food, machinery, and medicines and are preparing to produce them locally. It is also important that large global firms have reliable supply chains that are not broken. As a result, the epidemic may have caused these companies to reconsider their supply chains and, possibly, move shipping chains closer to where they are needed to avoid future production delays. In addition, authorities have stated that some foreigners are as dangerous as they might be in carrying the virus. A closed border means that the threat comes from outside. In addition, international flights may not be an option for many in the coming years. Together, these conditions mean that nations are more likely to be national and international. This could be a dangerous development, as long-term protection from the effects of an epidemic may require global effort and resource sharing. Such cooperation is also vital in combating other global challenges that we may face in the future.
