

Aftermath of the Corona Crisis:

COVID-19 AND CONTRACTS

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I owe my sincere thanks to Metacept's pillar of strength Shri Rodney D. Ryder, Founding Partner, Scriboard [Advocates and Legal Consultants], New Delhi for supporting us in our endeavours and supplementing us with intriguing ideas. We are obliged to have Shri Subhash Bhutoria, Partner, Krida Legal and Shri Sarvesh Giri, Advocate, Bombay High Court on our Advisory Board.

I sincerely hope that this handbook turns out to be a meaningful read for all of you!

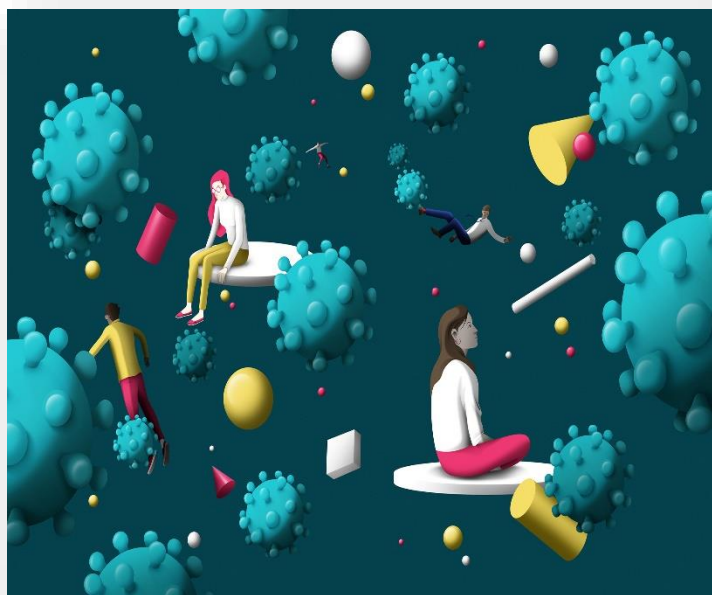
I wish for the good health and happiness for all!

Nikhil Naren
Publishing Editor

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INTRODUCTION

The first coronavirus case was reported in the Hubei province of Wuhan in China in December 2019. Many theories have since then, came up with regards to the origin of the virus. However, scientists have had conclusive reasons to believe that this virus was first seen in bats, and had spread from these bats to the humans. Slowly the virus spread across the whole world, forcing the World Health Organization (WHO) to declare the spread of the virus, a Public Health Emergency, and subsequently, a pandemic. Up until now, the

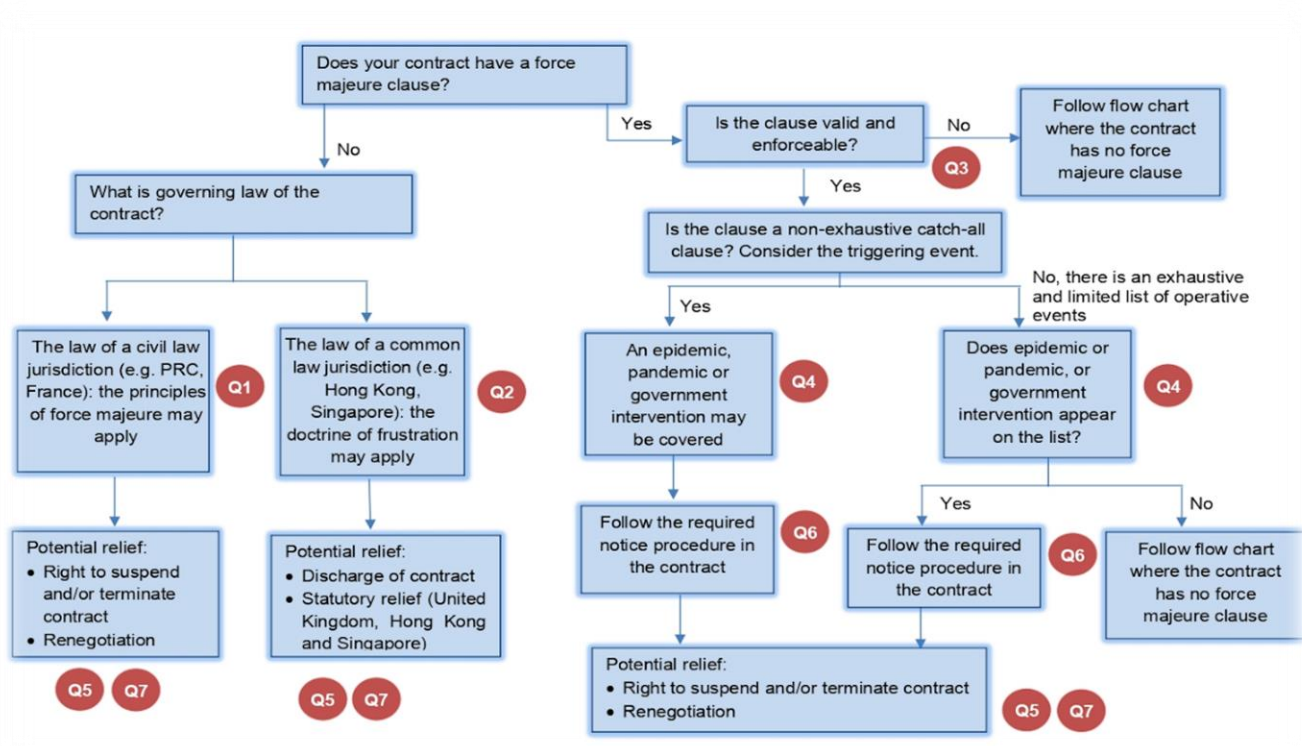


deadly virus has claimed more than 100,000 lives worldwide. It has brought human life to a near standstill with individuals locked down in their homes, with people all over the world surviving on bare essentials. However, it seems as if the world is fighting two pandemics simultaneously- one is the much-dreaded health pandemic, and the other, the equally concerning effects of this pandemic on the economy, and the anxiety associated with it. Given the

current situation, the global economy is expected to take a massive toll and is set to enter a recession, even worse than the Great Economic Depression of the 1930s. Many economists and experts believe that the economy was already nearing recession, regardless of the said pandemic, but the unforeseeable circumstances created by the pandemic, have only contributed, to make the situation worse. With many labourers on the verge of losing their jobs, businesses shutting down, suppliers & contractors not being able to honour their contractual obligations and supply chains completely disrupted; the situation has given rise to many concerns. It has stirred an air of gloom over the global economy. People remain sceptical about the recovery of the economy, and there is a feeling of insecurity and fear amongst everyone. Looking at the current situation from a legal point of view, one can contemplate that a very crucial issue that stands at the doors of the courts is the non-performance or the non-fulfilment of the contractual obligations by business houses, which is going to attract

humongous cases. Thus, it becomes necessary to understand what a Force Majeure clause is and whether COVID-19 is a Force Majeure event or not, to figure out how we are going to deal with such cases, and what would be our step forward.

WHETHER COVID-19 QUALIFIES TO BE A FORCE MAJEURE EVENT?



Force Majeure is a French term meaning ‘superior force.’ It is a common clause in legal contracts that excuses parties to the contract from performing their contractual obligation in cases of unforeseeable and extraordinary events. Force Majeure does not have any specific definition, but it is described as those unforeseeable and uncontrollable circumstances which are beyond the control of the parties. It includes events like wars, riots, acts of the government, the act of God like a flood, earthquake, volcanic eruption, or any other natural calamity.

The first and foremost condition for an event to be a Force Majeure event is that it is unforeseeable. So, if a contract is executed before the coronavirus outbreak when parties had no knowledge of the virus and its classification as a pandemic, it is more likely to fulfil the condition of foreseeability. On the other hand, if the parties executed a contract at a time when they knew about the coronavirus outbreak in China, say in January 2020, such parties would have a weak case while invoking the said clause.

Another important condition is that the affected party must put in all its efforts to avoid the Force Majeure event. For instance, when the lockdown was only advisory for the said parties, and either of them could have fulfilled their contractual obligations, but still failed to do so, then it would form a weak case for the party invoking the clause¹, be it either of them. Similarly, if a supplier has refused to deliver the goods, but the same goods can be procured from another supplier, the party must put in all the efforts to procure the said goods and fulfil its contractual obligations. The burden of proof lies on the party invoking the Force Majeure clause that the event was completely unforeseeable and that it undertook all measures to give effect to the contract, but due to the prevailing circumstances the event could not have been mitigated.

A contract which includes a provision for a Force Majeure clause should expressly provide the events that are to be constituted as Force Majeure. Accordingly, a strict interpretation is to be given in such cases. For instance, a contract that lists an epidemic, a pandemic, a viral disease or a government order, as a probable Force Majeure event, then, in that case, the party invoking the clause has a very strong case for seeking a remedy. In some cases, however, only generic terms are mentioned in the Force Majeure clause like a disaster, an act of God, a disease, etc. The words are to be interpreted by the courts to understand the intention of the parties at the time of entering into the contract. The facts of each case need to be carefully understood and then applied and analyzed in light of the words of the contract.

For instance, the Indian Government has recently issued an order under Section 6(2)(i) and guidelines under Section 10(2)(i) of the Disaster Management Act, 2005 dated March 24, 2020, specifying that all commercial establishments and offices are to remain closed and social distancing to be maintained for preventing the spread of COVID-19 for 21 days commencing from March 25, 2020. This lockdown has further been extended till the 3rd of May 2020. Further, restrictions have been imposed on the movement of people in India, and anybody found violating the guidelines is to be criminally prosecuted. It is worth noting here that Section 6 of the Disaster Management Act authorizes the National Disaster Management Authority to take measures for the prevention of a disaster, or its mitigation, or to ensure preparedness and capacity building for dealing with such a threatening situation, as it may deem

¹ David J. Ball, Contractual Performance In The Age Of Coronavirus: Force Majeure, Impossibility And Other Considerations, National Law Review available at <https://www.natlawreview.com/article/contractual-performance-age-coronavirus-force-majeure-impossibility-and-other> accessed on 8th April, 2020.

necessary. Thus, it becomes clear that the government has recognized that COVID-19 constitutes a ‘disaster’ under the DM Act and is of such nature or magnitude to be beyond the control of individuals and the community and accordingly, has restricted the movement of people in India and has deployed measures to ensure the closure of commercial and industrial establishments². Thus, interpreting the facts in this manner can help in justifying the ongoing state of affairs as a ‘disaster’ and can consequentially help the parties to prove their case. Also, the affected party must give notice to other parties of such a Force Majeure event and the reason for its non-performance within a reasonable time. In cases where the government has provided certificates of Force Majeure, asking to consider the COVID-19 pandemic as a Force Majeure Event, the party can easily rely on it for invoking the clause.

Recently, the Ministry of New & Renewable Energy has directed all the agencies working on renewable energy sources, to treat delay on account of disruption of the supply chain due to the spread of COVID-19 in China and other countries as a Force Majeure and granted extension time to the project developers. The Ministry of Finance has also announced that disruption in the supply chains will be considered as a ‘natural calamity’ and Force Majeure clauses may be invoked under the Manual for Procurement of Goods, 2017. However, this notification relates to the public procurement of goods by government organizations. In private contracts, the question of an event being a Force Majeure event is to be considered by the courts.

If a Force Majeure clause is invoked, it will not terminate the contract there and then. The performance of the contract is suspended until the Force Majeure event exists³. If it exists for a longer time (as mentioned in the contract or say 6-12 months), either party has the right to terminate the contract, and hence no contractual obligations need to be fulfilled. If the effect of Force Majeure is permanent, then parties are excused from all obligations, and the contract comes to an end. Parties which share a good rapport, however, may also consider renegotiating the terms of the contract.

In cases where there is no Force Majeure clause in the contract, the parties may resort to Section 56 of the Indian Contract Act, 1872, i.e., The **Doctrine of Frustration**. To invoke Section 56 of the Indian Contract Act 1872, it is important to prove that the event has frustrated the foundation upon which the contract was made. Proving a case under Doctrine of Frustration is difficult as Indian Courts have

² Pradeep Ratnam & Vishal Bhat, Covid-19: Can Force Majeure be invoked under my contract? Krishnamurthy & Co., available at <https://www.klaw.in/> accessed on 8th April, 2020.

³ COVID-19 Legal Update, L&L Partners available at <https://www.llpartners.com/> accessed on 8th April 2020.

ruled that it may not be a sufficient basis to trigger Section 56 of the Contract Act, merely because an unanticipated turn of events renders the performance of a contract difficult or more expensive. If the foundation of a contract is the timely performance of the contract, then the party may prove in the court of law that due to the lockdown imposed by the government and transport facilities suspended, the obligations cannot be fulfilled on time. This indeed might upset the very basis on which the contract was formed.

Keeping in mind the current scenario of the spread of COVID-19 in the entire country, it is likely that the situation would be considered as a Force Majeure event in many cases, but the final decision rests upon the courts taking into consideration the conditions, the terms of the contract and the intention of the parties. Any case where a Force Majeure clause is invoked merely to extricate oneself from an unfavourable deal or because the performance of the obligations is expensive must not be allowed at all.

DEVELOPMENT OF THE CONCEPT OF FORCE MAJEURE

The principle of Force Majeure is the result of the usages of Mercantile law in the Anglo-American law framework, roughly around 150 years ago. It has not been the standard act of the customary law courts of that time to promptly apply the principle of irresistible force itself as a legal term and to give it a



legal meaning to common law contracts. The

English courts decided not to endeavour to characterize the importance of this term. For instance, on one occasion where the argument was made dependent upon the different conditions of Force Majeure, the court said that the specific expression was so dark, that it was really difficult to assign any exact definition or meaning to it. In view of the lack of definition

and the significance of Force Majeure, the court

contemplated that the intended parties of a contract did not have any intention to be bound and in this way, no understanding was made between them with the result that no agreement was created. The axiom- Force Majeure has been derived from the *Napoleonic French Civil Code* of which Section 1148 clearly states:

“There is no ground for damages and interest when by consequence of a superior force or a fortuitous occurrence, the debtor has been prevented from giving or doing that to which he has bound himself, or has done that from which he was interdicted.”

The term’s origin can also be traced back to the Roman Law which considered the principle, ‘*clausula rebus sic stantibus*’ meaning, “obligations under a contract are binding only as long as matters remain the same as they were at the time of entering into the contract” as a competing principle to the general principle of maintaining the sanctity of a contract.

Development of the concept of Force Majeure seems parallel to that of the standard protection legal term "Act of God", which has a limited scope than the Force Majeure clause. Here, the reason for non-execution or performance of any contractual obligation is dependent on the Act of God is identified

with the law of basic carriage and is currently broadly included as a standard expression in sale contracts. Notwithstanding, missing an Act of God proviso, the general view is by all accounts that Acts of God are those demonstrations which are outside the ability or control of the parties of contract and, due to creation of unpredictable circumstances. Since they are not predictable, there exists no necessity for making contracts legally binding on the parties of those particular events which would make execution impossible.

Edmund Bendit And Anr. vs Edgar Raphael Prudhomme⁴ was the first Indian case where the Madras High Court applied the principle of Force Majeure. The court in its verdict cited the passage from the case of ***Matsoukis v. Priestman and Co.***⁵ wherein, the definition of Force Majeure has been propounded by a famous Belgian lawyer as, "*causes you cannot prevent and for which you are not responsible*". This definition was adopted by the Madras High Court while delivering its judgement. Under both English and Indian law, the principle of Force Majeure doesn't just mean anything outside the control of the parties to an agreement. Its significance, and appropriateness, relies upon the specific agreement, and the specific wording utilized during the contract formation of the contract. It is a legally binding principle, proposed to foresee unexpected occasions and accommodate what happens, if such unexpected occasions do occur.

FORCE MAJEURE

Most of the commercial contracts have a Force Majeure clause, generally covered among the standard provisions. The aim behind such a proviso is to shield the parties of a contract from a breach thereby, in the event that they can't carry out their commitments in light of an occasion that is beyond their ability to do anything about. In opposition to common discernment, there is no common or statutory law meaning of a Force Majeure occasion or the term, Force Majeure itself in English Law. The parties are free to decide which particular situations will be covered under a Force Majeure clause and what would be the subsequent consequences. This implies that there are no non-exclusive responses to inquiries concerning how the Force Majeure clause applies – parties must themselves scrutinize the wording of their agreements to build up how it functions in the applicable conditions.

⁴ AIR 1925 Mad 626.

⁵ (1915) 1 KB 681.

Under the Indian Contract Act 1872, S.32 and S.56 embody the spirit of Force Majeure and Doctrine of Frustration:

“Section 32- 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.”

“Section 56- An agreement to do an act impossible in itself is void.”

The hidden rule as for a Force Majeure event is that, upon the happening of the event that is outside the control of the parties to a contract and is unavoidable, and which prevents the parties from carrying out their contract, either of them will be released from its contractual liabilities/obligations. The party that revokes the contract and invokes the Force Majeure clause is under a contractual liability to prove that it has taken every reasonable undertaking and measure to prevent from, or moderate the Force Majeure occasion and its results. However, this is very subjective and varies from case to case and thus, should be interpreted and invoked as the parties deem necessary. Also, if the period of the Force Majeure event is prolonged then parties are at their liberty to rescind the contract depending upon the difficulties faced by them.

If a party wants to invoke the Force Majeure clause, it needs to prove the following:

1. It is a Force Majeure event making the execution of a contract impossible and not just mere difficulty in carrying out the performance of the contract. Henceforth, monetary difficulties won't be subject to coverage. (See, ***Dhanrajamal Gobindram v. Shamji Kalidas & Co***)⁶
2. The affected party has been delayed or prevented from carrying out its obligations mentioned in the contract and it is stuck in a situation, where if the contract is enforced it would lead to the loss of its whole business.
3. It was unforeseen and the parties took all reasonable measures and precautions mentioned in the contract to prevent it from happening.

⁶ AIR 1961 SC 1285.

DOCTRINE OF FRUSTRATION

Under **Section 56** of the Indian Contract Act, 1872, 'impossibility' doesn't exactly mean inconceivability to perform. It refers to those situations where a supervening occasion past the examination and control of the parties destroys the base upon which the contract was formed. Therefore, making the performance of a contract impossible and considered useless, taking into account the parties' objective and intention behind entering into the contract.

Frustration clause will only be invoked when an unanticipated occasion makes it incomprehensible without any fault of either party to execute the contract. Yet, it is not exactly catered for that. This unforeseen occasion is central to such an extent in a contract that it strikes at the base of it. It makes further execution of the contract impossible, unlawful or makes it drastically unique in relation to the idea which was thought during the formation of the contract.

In ***Tsakiroglou & Co. Ltd. v. Noble Thorl GmbH***⁷, the court held that, regardless of the Suez Channel's closure, and despite the standard course for the delivery of the products being practically possible only through the Suez channel, the contract of sale was not frustrated, although it would need to be performed by an elective method of execution which was considerably more costly, in particular, that the boat would now need to travel from the Cape of Good Hope, which is multiple times the good ways from Hamburg to Port Sudan. Regardless of this, the House of Lords unanimously held that although the agreement had gotten increasingly cumbersome to perform, it was not on a very basic level. Where execution is, in any case, conceivable, plainly a negligible ascent in cargo cost would not permit one of the parties to a contract to state that it stands revoked due to its impossibility.

An Indian court in ***Satyabrata Ghose v. Mugneeram Bangur***⁸ cited ***Naihati Jute Mills Ltd. v. Hyaliram Jagannath***⁹ and held, "A contract is not frustrated merely because the circumstances in which it was made are altered. The Courts have no general power to absolve a party from the performance of its part of the contract merely because its performance has become onerous on account of an unforeseen turn of events."

⁷ 1961 (2) All ER 179.

⁸ *Satyabrata Ghose v. Mugneeram Bangur* 1954 AIR 44.

⁹ 1968 (1) SCR 821.

Before **Taylor vs. Caldwell**¹⁰ judgement, laws in England were very strict but after its decision, the English court held that insisting upon the performance of a contract when it becomes impossible to perform in the light of the occurrence of an unforeseen event would be unjust on the part of the parties to the contract since the fundamental basis of the contract got shattered. Otherwise, before this decision, notwithstanding the very fact that the performance of a contract becomes impossible because of the occurrence of some unforeseen event, parties still had to carry out the contract.

In **Davis Contractors Vs Fareham Urban District Council**¹¹, Lord Radcliff has summarized the Doctrine of Frustration as:

".... frustration occurs whenever the law recognizes that without default of either party, a contractual obligation has become inapplicable of being performed because the circumstances in which the performance is called for would render it a thing radically different from that which was undertaken by the contract. '.... It was not this that I promised to do.' There is, however, no uncertainty as to the materials upon which the Court must proceed. 'The data for decision, on the one hand, the terms and conditions of the contract, read in the light of the then circumstances and, on the other hand, the events which have occurred.' In the nature of things there is often no need for any elaborate enquiry. The Court must act upon a general impression of what its rule requires. It is for that reason that special importance is necessarily attached to the occurrence of an unexpected event that, as it were, changes the face of the things. But even so, it is not hardship or inconvenience or material loss itself which calls the principle of frustration into play."

¹⁰ [1863] EWHC QB J1.

¹¹ [1956] A.C. 696.

ANALYSIS OF THE DOCTRINE OF FRUSTRATION AND THE FORCE MAJEURE CLAUSE IN VIEW OF COVID-19



COVID-19 has adversely impacted the world economy and the chain of all the domestic markets at their very core. The prompt outcomes of this pandemic were: production and supply disturbances, 'inadvertent' and unavoidable deferral in the execution and performance of the 'legally binding' contracts. The various contracts, ranging from manufacturing and supply agreements to construction contracts, have all been affected by COVID-19, the impact of which, is without a doubt massive. Moreover, it brings out difficulties against land procurement, deferral in designing and mechanical research and headways and financing of large projects. Counterparties, including professional assistants like for example free consultants and accountants or any other market supplier or may look to maintain a strategic distance from quick execution, by referring to postpone or non-execution borne out of an unforeseen occasion. Parties may refer to this pandemic as a ground for selecting re-arrangement of cost and terms of the agreement. At this tragic situation, all legal experts and parties

of commercial contracts, nationally and globally are consistently exploring and evaluating their legally binding arrangements for looking for reasonable rights and commitments, explicitly on the potential courses for releasing the business plan or agreement, especially Force Majeure. It decisively creates a defence against the standard of *pacta sunt servanda* i.e. "understandings must be kept".

The major question that is presented before all the legal experts are, whether COVID-19 will come under the category of "Force Majeure" or a contract that has been "frustrated". A question that features some reasonable issues for an organization to consider. While the clause of Force Majeure is a creature of a contract, the Doctrine of Frustration is a principle of common law. Force Majeure clause has no settled meaning in the common law and therefore, it must be expressly defined and mentioned in a contract.

Justice R.F.Nariman of the Hon'ble Supreme Court of India has clearly stated the entire jurisprudence behind the subject in ***Energy Watchdog vs. CERC***.¹² He said, "*Force Majeure is governed by the Indian Contract Act, 1872. In so far as it is relatable to an express or implied clause in a contract, it is governed by Chapter III dealing with the contingent contracts, and more particularly, Section 32 thereof. In so far as a Force Majeure event occurs de hors the contract, it is dealt with by a rule of positive law under Section 56 of the Contract*".

APPLICABILITY OF FORCE MAJEURE & DOCTRINE OF FRUSTRATION DURING PANDEMIC

A carefully drafted contract with a Force Majeure clause can either expand the rule or provide protection under the doctrine of frustration. However, if a Force Majeure clause is not complete under a contract, say, for instance, it is not covering cost allocation under a contract, then, in that case, the provisions of the Indian Contract Act, 1872 and Doctrine of Frustration can be applied together to deal with such a situation.

In the current situation emerging because of the COVID - 19 pandemics, the Indian Government has likewise found a way to protect the interests of the parties to a contract. The Ministry of Finance has

¹² (2017) 14 SCC 80.

proclaimed that in case of any disturbance to the supply and distribution chains because of the spread of this disease in China or some other nation, such circumstance will be canvassed in the Force Majeure clause in the agreement vide an office memo dated 19.02.2020 as of late explained, in the 'Manual for Procurement of Goods, 2017'. Such a circumstance ought to be considered as an unforeseen natural calamity and Force Majeure condition might be conjured after the application of the due procedure¹³. The Manual has been issued to different Ministries/Departments which have been assigned to make arrangements for themselves under the Delegation of Financial Power Rules, which must be practised in congruency with the 'Procurement Guidelines'.

The wordings of the clause(s) mentioned in a contract turns out to be significant. Some contracts provide for time limitation under which either party to a contract may rescind it after sending in written communication to the other, some contracts provide for a clause that provides for putting the contract on hold until the Force Majeure situation gets resolved, while other provides for a clause mentioning the contract to be in effect until the unforeseen situation is resolved. The burden of proof will always lie upon the one who wants to invoke the Force Majeure clause to rescind the contract.

Parties to a contract also have the option to invoke various other clauses, such as material adverse change clauses, exclusion or limitation clauses, price adjustment clauses to limit the liabilities and obligation arising due to partial or non-performance of the contract, etc. Therefore, the effects of COVID-19 would be decided on a case to case basis depending upon the wordings, case laws used and how it is being interpreted by courts, tribunals and any other adjudicatory bodies with regards to the various facts and circumstances.

¹³ No. F18/4/2020-PPD, Ministry of Finance.

DOWNSTREAM EFFECTS OF THE FORCE MAJEURE CLAUSE



With many companies and businesses invoking these Force Majeure clauses, the worst affected will be the ones at the most vulnerable part of the supply chain, the MSMEs (Micro Small and Medium Enterprises). The effect of invoking a Force Majeure clause will transmit down the chain until it stops with the party that cannot invoke it. For example, India's largest two-wheeler company, Hero MotoCorp, recently said it couldn't

pay its vendors and suppliers their dues as sales have come to a standstill. It makes sense for Hero, which is probably using its cash reserves to pay its employees. So, what happens? The suppliers invoke the Force Majeure clause as well, with their suppliers. And down the chain, it goes. Where does it end? It all ends at the most vulnerable part of the supply chain, i.e., the MSMEs (Micro, Small and Medium Enterprises), which form part of the starting point of the auto supply chain.¹⁴

Another problem is that companies are invoking a Force Majeure clause just to avoid their obligation, which is against business ethics. Uttar Pradesh Power Corporation Limited (UPPCL) invoked a Force Majeure clause because it could not pay dues to its suppliers. The notice claimed that the lockdown is likely to affect a significant proportion of consumers' capacity to pay electricity bills on time. Eventually, there will be a ripple effect reaching the upstream utilities in the power sector value chain¹⁵. But Force Majeure is for situations that prevent delivery or supply, both of which are unaffected. Thus, it cannot be invoked because one thinks that they won't get paid by their consumers. This is an example of how this clause is and further, can be misused by the companies because eventually, it is the vulnerable ones that will fall prey to it.

¹⁴ Arundhati, The Downstream effects of Force Majeure, The Ken available at <https://the-ken.com/bfo/5/> accessed on 9th April at 11 AM.

¹⁵ Id.

Big business houses have enough resources to meet their electricity expenses, wages, and the salaries of their employees, but MSMEs have limited resources, and it is difficult for them to cope up with the current situation. Already due to low demand before the COVID-19 pandemic even started, the MSMEs were reeling, and this health crisis is going to make their situation worse. Before the MSMEs get destroyed, and many workers are rendered jobless, it is the prerogative of the government to provide financial support to them with their policies. Although the government has announced many reliefs these are not enough for MSMEs. The Ministry of Finance is considering a part waiver of fixed electricity charges and support in salary payment to the workers¹⁶. But all these reliefs have to be announced as soon as possible to provide liquidity and stabilize the industry.

IMPACT OF COVID-19 ON ECONOMY

The outbreak of Coronavirus which originated in China has caused havoc not only in China but also in other countries. A lot of many lives have been lost to this deadly virus in different countries and yet, no reliable solution to tackle the same has been figured out. India and many other developed countries at this point are not in a good economic situation because of COVID-19. Many countries have been devastated by this disease. The countries that come in the category of developed countries and have better health care facilities than India too, haven't coped up much better, when it comes to saving lives, and mitigating the crisis. The increasing growth rate in the number of deaths is a conclusive fact that this pandemic will cost us a lot more than that was initially expected. Seeing the spread of Virus in different parts of the world compelled the World Health Organization (WHO) to declare it as a Public Health Emergency. In this current situation, the global economy will see the worst financial crisis amidst several days of lockdown. According to the UN Conference on Trade and Development, this outbreak might cause the global economy, a loss of around \$1-2 trillion in 2020. Consequentially, the impact of this outbreak has also been seen in the Indian economy as well.

The Indian economy was already reeling, before getting hit by the virus. The virus has only made the situation worse. These days, people are being asked to stay indoors. There is fear in the mind of many people whether they will be able to get their jobs back, how much their salary will be cut, whether they

¹⁶ Nirbhay Kumar, Coronavirus-hit MSMEs, exporters to get relief package available at <https://www.businesstoday.in/current/economy-politics/coronavirus-hit-msmes-exporters-to-get-relief-package/story/399885.html> accessed on 7th April 2020 at 11:30 AM.

will be subject to receiving their salaries during the period of lockdown etc. The people working in the unorganized sector will suffer the most, since they already had no surety about their jobs, with the current pandemic, only making the matters worse for them. The daily wage labourers and contractors too are highly vulnerable because they don't have permanent employers, to whom, they can go and ask for their remuneration.

The impact of the coronavirus pandemic and the lockdown it has triggered is visible in financial markets. But there is still no clarity on the deeper impact that it is having across businesses and industrial sectors. The effect is also seen in organized sectors. Many sectors are facing severe losses because the production and consumption of their products aren't taking place. The service-based industries like aviation; transportation etc. has not functioned at all amidst lockdown. At this time, they are not able to generate basic revenues. As a result, they are decreasing the salary of their permanent employees and are not able to provide anything to daily wage workers, contractors and suppliers etc.

IMPACT ON DIFFERENT INDUSTRIES

LEGAL

As has been evident in various other industries, the legal industry too might come off worse from the coronavirus pandemic. From a legal perspective, the question inter alia circles around how epidemic-related disruptions of production and supply chains shall be handled appropriately. We have already been dealing with the Force Majeure clause throughout the entirety of this report. However, there still exist other methods which might help tackle the legal side effects of this pandemic.



First of all, it's important to note that courts all across the country have been shut down (at least physically, they have been). The courts though, have adopted a progressive attitude, and are experimenting with various digital modes of conducting trials and hearings, such that the pendency of cases, in the already heavily burdened judicial framework of the country, doesn't increase. Companies and various parties to a dispute are also opting for

methods of Alternate Dispute Resolution (ADR) in these testing times, such that they could reach a mutual agreement over their contracts, such that neither parties are at an absolute loss. Various ADR methods include Arbitration, Conciliation, Mediation and adjudication. All these methods have different scope and implications, but discussing the same is beyond the purview of this report, and won't do justice to these highly sustainable methods. The only thing worth remembering here is that these methods are the future of the legal industry, and the current pandemic might act as the biggest example of why they are being touted as the future. Supply and Production related relationships have been affected for the worse. Consequentially, ADR based solutions have come to the rescue, since either of the parties can mutually reach terms, without the need for any actual physical meet and greet.

The post-COVID-19 world could either make or break the legal industry as we see it today. It is much like a double-edged sword. The legal industry might be one of the few industries, that stand to benefit

in the long run from the virus. Such a statement might sound baseless at first, however, bringing the legal industry in the digital era, especially in India, where the law firm culture hasn't caught up, neither has the industry so effortlessly ushered into the digital era, like the other jurisdictions across the world. However, the pandemic will propel law into the digital age and reshape its landscape. The entire legal ecosystem will be affected—consumers, providers, the Academy, and the judicial system. The courts across the country have embraced digital methods of conducting hearings, including the Kerela HC, Bombay HC, and now, even the Supreme Court. Classes are being conducted online through mediums like Impartus, Zoom, Blue Jeans, etc. Law Firms are virtually dealing with their clients. Thus, despite the short term losses or troubles the legal industry might have to deal with, the said crisis stands to benefit the industry, in its pursuit of betterment and digitalisation.

TECHNOLOGY

COVID-19 has affected this sector both positively and negatively. On a negative side, ten major tech conferences including Facebook F8, Google I/O, SXSW, Mobile World Congress, Electronic Entertainment Expo (E3) etc. stands cancelled due to novel coronavirus affecting the investors of the conferences. On a positive side, many techies have gained advantage due to it, since this pandemic has made people shift to a digitalized workspace to practice social distancing without hampering their office work. Therefore, downloading and use of apps like Zoom, Skype, PayTm, GPay, online shopping apps like Amazon, Flipkart, have hiked but, as every coin

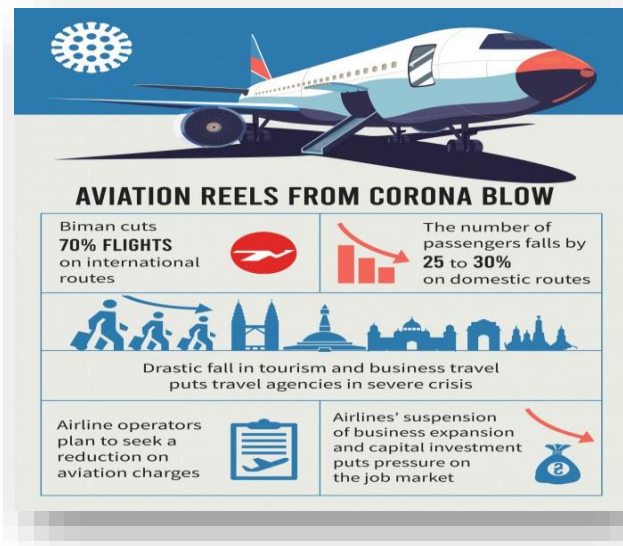


has two sides, the advantage of such applications brings with itself disadvantages as well. Privacy policies used by such applications is the major privacy concern by many of us. Many users are not fully aware of the use of these applications which leads them to share

their confidential data and location. Until and unless people are aware of the privacy policies of such applications, we cannot say that the use of such apps has made our life easier, rather have made more complex and have put our privacy on risk.

AVIATION

The aviation sector is the worst affected sector in these times of crisis. Due to community transmission of this virus, some countries have put a total ban on the movement of people from the virus affected countries. Some countries have imposed an absolute ban. This has led to the fall in the revenues of this industry. On Indians being advised to refrain from unnecessary travel, as per the CII report, almost 28 million-plus Indians are estimated to have travelled outside India in 2019 and there were almost 1.8 billion domestic tourist footfalls. As a result, airfares to such destinations have fallen by 20-30 per cent. Domestic traffic growth is also gradually being affected by domestic travellers postponing or cancelling their travel plans¹⁷. Some airline companies have reported more than 30 per cent drop in domestic travel this summer compared with last year. Airfare in the popular domestic routes has been reduced by 20-25 per cent and airfares are expected to remain subdued for the summer season as well. Cash reserves of airline companies are running low and many are almost at the brink of bankruptcy. Moreover, the crisis could lead to a loss of jobs and pay cuts. Some airlines have asked many of their employees to go on leave without pay. Air Deccan has suspended operations and sent employees on unpaid leaves.



¹⁷ The Economic Times. (2020). *How bad is the impact of coronavirus on India's airlines?* Retrieved from <https://economictimes.indiatimes.com/markets/stocks/news/how-bad-is-the-impact-of-coronavirus-on-indias-airlines/articleshow/75080538.cms>.

Many airlines will not be able to meet their fixed cost if things go like this only. This will lead to more and more people losing their jobs and the worst impact is yet to go. Many airlines have to suspend their operations.

TOURISM



The impact on the aviation sector is bad, but consequentially, the tourism industry might fare even worse. Tourism to affected countries will be dropped to a greater rate. Tourism industry which currently contributes 10% towards the global GDP, will be affected to a greater extent. Asia will be the worst affected continent as the outbreak was in China which is in Asia and the worst affected countries are also in Asia¹⁸. According to the World Travel and Tourism organization, the COVID-19 pandemic could cut 50 million jobs worldwide in the travel and tourism industry. This will again be a setback for the whole world especially, Asian countries as it will take approx 10 months to recover once this outbreak is over. The impact also depends on the government policy being made and their restrictive measures with respect to the tourism sector. Several nations have framed certain restrictive policies like the U.S. administration's travel ban to and from Europe and China, which are the worst affected countries in this crisis.

¹⁸ World Economic Forum. (2020). *This is how coronavirus could affect the travel and tourism industry*. Retrieved from <https://www.weforum.org/agenda/2020/03/world-travel-coronavirus-covid19-jobs-pandemic-tourism-aviation/>.

Even our nation's government policy will further serve as a restrictive measure. The government has suspended all visas, with the economic impact being assessed to run into thousands of crores of rupees. According to industry chamber CII, this is one of the worst crises ever to hit the Indian tourism industry impacting all its geographical segments - inbound, outbound and domestic, almost all tourism verticals - leisure, adventure, heritage, MICE, cruise, corporate and niche segments. There are highly discouraging signs, evident from the various cancellations of important global travel marts which are marketplaces for contracting for the next season.

HOSPITALITY

The aviation, tourism and hospitality industry are linked together so if one industry is seeing a decline, then the other industries will no doubt be affected too. The hospitality industry will be hit hard from this pandemic. The cascading effect of the coronavirus (COVID 19) pandemic will cost the Indian hospitality industry losses to the tune of ₹620 crore¹⁹. The hotel chain and standalone hotel segment are staring at losses over ₹130-155 crore, whereas the alternate accommodation is likely to make losses of over Rs. 420-470 crores. In this scenario when there are no bookings of a hotel, no pre-bookings either, which is leading to small hotels to be closed down. This has led to a large number of layoffs in this sector and a large number of pay cuts. Since the government has shown no sign of removal of lockdown so there is no ray of hope for the hospitality industry. There is a complete ban on visas of any form by the government so there is no stage of the hospitality industry currently blooming.

From this pandemic, even the restaurant industry hasn't been able to save itself. Restaurants have reported a decline of 30-35% in business recently, which is meagre as compared to some of the other industries since the government is allowing home delivery by some restaurants, such that they can function and some economic activity is shown. Malls have also been saved from losses.

ENGINEERING AND CONSTRUCTION SECTOR

With the advent of this pandemic, the market is facing a shortage of raw materials and subcontractors because of which various supply chains have been disrupted and government have stopped all the

¹⁹ Business Line. (2020). *Coronavirus impact: Hospitality industry suffers losses upto Rs. 620 crores*. Retrieved from <https://www.thehindubusinessline.com/economy/coronavirus-impact-hospitality-industry-to-suffer-losses-to-the-tune-of-620-crore/article31106611.ece>.

ongoing activities of various sectors to control expenses. Due to the fear of contracting coronavirus, many of the workers have either returned to their villages or are staying away from their work sites. Leading to a decline in construction works. President of Confederation of Real Estate Developers Associations of India, Mr Satish Magar has said that “Most of the sites are running at just half of our usual run rate as fear about the infection is keeping workers’ attendance at less than 70% and we cannot do much as these are extraordinary situations and we need to understand their concerns too.”

The situation infers that the development work will be moderate, pushing costs upward given the intrigue and obligation overhauling required for that additional period. This would likewise bring about loss of day by day compensation for labourers however some contractual workers are looking for minimum basic allowances to hold over their quick needs. Since many of the workers have eventually lost their daily wages.



The ongoing channel checks by HDFC Securities shows²⁰ that the call for Janata curfew has brought about venture destinations gazing at the conclusion. Players of the engineering and construction sectors, street development and building sections are for the most part seeing their ongoing undertakings and projects getting affected because of the Central and state governments' orders for curfews and lockdowns.

In the background of disruption in ongoing engineering & construction activities, given the ridiculous and abnormal occasion that have occurred, they have likewise proposed²¹ that COVID-19 should be proclaimed as 'force majeure' under Section 6 of the Real Estate (Regulations and Development) Act (RERA) that gives augmentation of undertakings enrollment conceded to advertisers.

²⁰ Jauhari, U. (2020, March 24). Covid-19 impact on infrastructure capex may be worse than seen in 2008. Retrieved from https://www.business-standard.com/article/companies/covid-19-impact-on-infrastructure-capex-may-be-worse-than-seen-in-2008-120032401258_1.html

²¹ Babar, K. (2020, March 21). COVID-19 impact: Construction projects hit as workers keep away. Retrieved from <https://economictimes.indiatimes.com/industry/services/property/-/construction/covid-19-impact-construction-projects-hit-as-workers-keep-away/articleshow/74738820.cms>

REAL ESTATES

The pandemic of COVID-19 has been declared by the World Health Organization (WHO) as a Public Health Emergency of International Concern (PHEIC). This has prompted many other countries to impose restrictions on international travel and trade which has led to a delay in deciding upon the space of real estates but, even if the decision is taken, nobody knows its long-term impact since the longevity of this pandemic is uncertain.

Amidst the ongoing lockdown in India due to COVID-19, the nation's real estate sector has been posed with serious challenges. Advertisers will be not able to comply with venture time constraints because a large number of their labourers have come back to the places where they grew up, and home purchasers

should stand by longer to pick up ownership. The festive season of our nation is considered to be a more prosperous and promising season for propelling new ventures and purchasing new properties but, due to this pandemic this time, the festive season of 2020 will not be able to provide this opportunity to real estate sectors.

The housing market witnessed some footing in the course of the last few quarters however attributable to the infection episode and different variables like commonly moderate economy and weight on liquidity, this pattern is going to change. A change which is not positive for this sector. Completion of various projects has been obstructed due to work deficiency and the inability of purchasers to invest in it due to financial uncertainty. From news report²² one thing is clear that the shortage of raw materials and labours is going to delay all the projects from six months to one year and even if the ongoing lockdown is lifted, experts believe that it will take six months approximately to stabilize the



²² Kumar, K. S. (2020, April 16). Covid-19 infects India's real estate sector. Retrieved from <https://asiatimes.com/2020/04/covid-19-infects-indias-real-estate-sector/>.

market and material-labour supply. Which will eventually affect sales and profit and will have an adverse effect on inflows of the real estate developers. Since it can lead to a rise in inventories of unsold properties and fall in sales since the price will also fall.

Currently, the concerned executives and board members of various estates are focusing on the safety of their visitors and tenants, preserving liquidity and value of their current estates and complying with the guidelines of the government. This pandemic is a truth which nobody can deny, therefore, the real estate managers must try to take out the best solution to tackle with this uncertainty. Apart from taking into consideration the well-being and safety of their people, they should also pay attention to short term liquidity needs and must focus on remote working factors which play a major role in real estate sectors like, process of financial reporting, access to data and information of their estates, various inner controls including location and constraints related to IT and cyberinfrastructure but, all this must be taken into consideration without compromising with the privacy and security of one's estates and people involved in it.



ENTERTAINMENT AND SPORTS

This sector also plays a major role in contributing to the rise in the national economy by organizing various television shows, award functions, sports events, concerts, live performances. Since many sponsors invest their money for organizing such events, many people come from outside India to attend it which leads to a rise in travel and tourism, some of them also organize to raise funds for a noble cause thus, helping in contributing to the

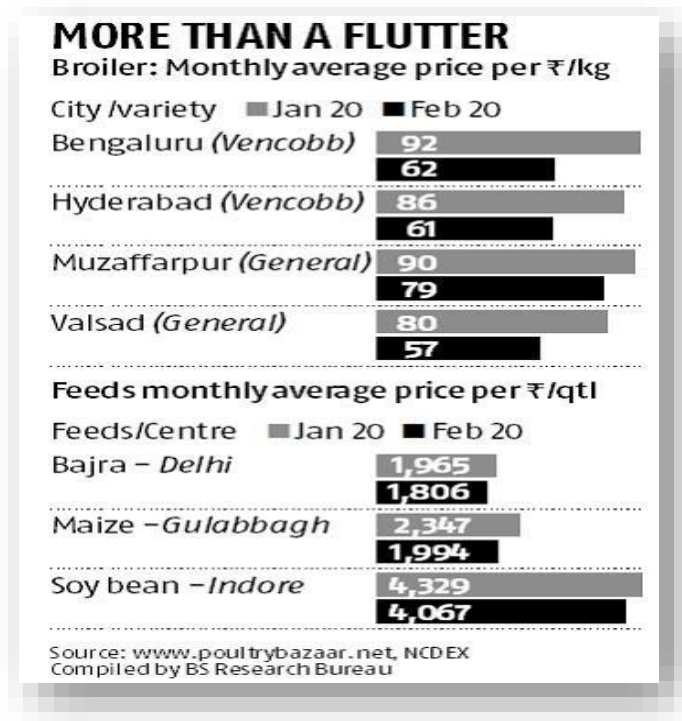
rising GDP of our country. But, COVID-19 has prompted the people of these sectors, to stop all their ongoing projects and practice social distancing which has hit this sector very hard. All the struggling actors and musicians have lost their job, Huge loss has occurred to those who have invested for upcoming sports events such as IPL, shootings have stopped, stakeholders of various sports events such

as, sponsors, coaches, athletes and fans who have already bought tickets are confused as to what to do now.

APPARELS

The COVID-19 pandemic has completely halted the production of any sort of order or exports in lockdown. Since this sector doesn't qualify as essential goods, so a fraction of production is also not allowed by the government. Even the goods which were exported before the lockdown, the payment of those goods has also been delayed since the customers are not willing to buy in this present situation, when the disposable income of people is low and they want to spend their money only on essential goods, mainly focusing on eatables and other essential items. The home textile industry has seen shipments being held up and faces bleak uncertainty over its operations being resumed in the short term. A handful of larger players have sufficient liquidity to manage the tough times but if the impact of the coronavirus is larger or longer than expected, the outcome will be grim for the smaller companies. The apparel sector accounts for 43 per cent of India's textiles exports in value terms and for 5 per cent of overall exports, which is set to face a setback²³. From manufacturing through to retail, the garment industry employs close to 25 million people. If the current situation continues beyond a month from now, nearly a quarter of the jobs in the industry will be lost, according to the Clothing Manufacturers' Association of India (CMAI). If the industry can resume operations after May 3rd, i.e., when the lockdown is scheduled to be lifted, a 15-20 per cent annual basis loss is expected on the top line. The bottom line will be even worse because of fixed expenses. If the lockdown is extended, the losses will rise vertically. The loss caused by a pandemic which has hit a large industry will have a greater impact on small and wage workers whose daily life is dependent on small orders by these large

²³ Narasimhan, T. E. (2020). *Coronavirus lockdown: Textile industry stares at Rs. 12,000 crore loss*. Business Standard. Retrieved from https://www.business-standard.com/article/economy-policy/coronavirus-lockdown-textile-industry-stares-at-rs-12-000-crore-loss-120040801598_1.html.



industries or by customers. They don't have as such, a fixed source of income. They are all dependent on others for work. There are some places in Rajasthan, Tripura, etc. where the whole village is involved in this industry and have been doing so for many years. Geographically and economically, the whole place will sink if a situation like this continues. The only viable way out of this is that the government should allow a fraction of production to go forward so that our textile industry can be functional.

POULTRY

The coronavirus outbreak is also seen in the poultry industry. This outbreak and the consequent lockdown have pushed the poultry sector in the country into a crisis with losses projected at Rs 22,500 crore beginning February this year. The All India Poultry Breeders Association (AIPBA) has asked for the restructuring of loans, interest subvention among others from the government. This industry has faced dual effects, one from lockdown and second from the rumours of the people. There are rumours spread by some people that chicken and eggs should not be consumed as they spread this virus. This industry employs 10 lakhs poultry farmers and contributes Rs 1.3 lakhs to country GDP directly. Poultry farming offers direct and indirect employment to over five crore Indian citizens engaged in poultry production, trading, feed manufacturing, agriculture crops, logistics, exports and others. The decreasing price of chicken is conclusive of the fact that how much loss the poultry industry has to bear.

The impact of the rumours and outbreak has devastated this industry. Even though the World Organization for Animal Health (OIE) has clarified that coronavirus is transmitted through human contact, and there has been no evidence of the virus communicating from animals to humans or

humans to animals²⁴, people continue to believe the hoax. Thereby, the impact is evident in the poultry industry. When a lockdown is over this sector will take a long time to recover.

The world economy is facing the worst crises it has in years currently, and in the coming days if there is going to be a complete lockdown for any type of trade and commerce then the impact of this will be grown and will become worse. This is different from the recession which we have faced in the past. This is not a slowdown for a business cycle but the whole economic order of the world is shaken up. Companies are apprehending the scale of losses made by this pandemic. This is going to make many changes in the economy. Some of the industries are showing no sign of relief shortly like the tourism, hospitality sector. They will continue to face a recession even after the lockdown. There will be a sigh of relief for textile, consumer durable, FMCG goods for these goods' demand may rise in the near future but not to the number which were earlier. Small and marginal workers who work for these industries will face layoffs, pay cuts and many more things. The worst impact will be seen on small businesses if they don't continue soon, they may be in a situation to shut their business. This pandemic has hit hard in all the sectors of the industry. It will take time to recover and come in its original form.

²⁴ The Economic Times. (2020). *Coronavirus: Chicken price fall, poultry industry affected*. Retrieved from <https://economictimes.indiatimes.com/news/economy/indicators/coronavirus-chicken-prices-fall-poultry-industry-affected/articleshow/74546189.cms>.

CONCLUSION

The Coronavirus pandemic has had its impact on everything starting from the life of a person, health, economy, contracts, demand and supply chain etc. The impact on health was such that the World Health Organization (WHO) has declared a Public Health Emergency for the benefits of the people. The government has declared lockdown and looking into the current scenario there are chances of extension of it. So, in this type of atmosphere where the priority of the government is to save more and more lives and prevent the infection of this virus, everybody has been asked to stay indoors.

In the current state of events, the contracts which were earlier entered into will struggle with regards to their possible performance amidst the lockdown. This creates a situation of the legal impossibility of contract. There are unforeseen events which were never thought of. In November when people were entering in a contract for the completion of the task which was bound to be fulfilled at a later stage, there was no knowledge of this virus and so nobody thought of this situation. The contract made in the affected period will qualify for Force Majeure as it fulfils all the conditions necessary, as there was no foreseeability. This has created a situation of legal impossibility for this contract. As such contracts of all types like imports and exports of essential commodities are affected, demand and supply chains are affected, which has consequentially had a devastating impact on the economy. Nearly all types of industry are affected by this as they are not able to operate. Some sectors like aviation and transportation which were showing a decline before the lockdown, are set to fair much worse, now that their operations have been completely halted. Some sectors like tourism and hospitality will be depressing after the lockdown is over. Sectors like automobiles, petrochemicals etc. will also need time to recover. Industries are being ruined by lockdown, but certain industries are also suffering because of the hoax and ruckus created by certain people like the poultry sector etc. The impact on the economy is set to become worse. Many people are going to lose jobs, small businesses will be shut down, large amounts of a pay cut would be experienced across sectors, etc. The government should start partial trade and commerce so that demand and supply chain is maintained somehow.

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