FORCE MAJEURE & COVID-19

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FORCE MAJEURE & COVID-19

I. INTRODUCTION

'Force Majeure' is defined as an event or an effect that can be neither anticipated nor controlled, is unexpected and which prevents someone from doing or completing something that he or she had agreed or officially planned to do.[1] In other words, it is any event which cannot be anticipated and/or is beyond the control of human beings/parties and cannot be avoided despite all possible care by human beings/parties and makes performance of obligations impossible.

The Force Majeure events which make performance of contract impossible may be classified into the following:-

i. Natural Force Majeure Events: It means an 'Act of God'. It includes events such as lightning, drought, fire, explosion, earthquake, volcanic eruption, landslide, flood, cyclone, typhoon, tornado, or exceptionally adverse weather conditions etc.

ii. Non-Natural Force Majeure Events: It means events which are generally associated with governmental action, change in law etc. The non-natural events may either be Direct or Indirect:

a. Direct Non-Natural Force Majeure Events: These are events arising due to change in policies or law by the government. Such as nationalization or acquisition proceedings by government, effecting the assets which are material for the performance of obligations of a party to a contract.
b. Indirect Non–Natural Force Majeure Events: Act of war (whether declared or undeclared), invasion, armed conflict, act of foreign enemy, blockade, embargo, revolution, riot, insurrection, terrorist or military action; or Radioactive contamination or strikes and labor disturbances can be included under the scope of indirect events.

II. EVOLUTION OF THE DOCTRINE OF FORCE MAJEURE

Earlier the law qua performance of contracts was very rigid and based on the Latin principle of *"pacta sunt servanda",* meaning "promises must be kept". However, with the passage of time *"Clausula rebus sic stantibus"*, a Latin phrase meaning "things thus

[1] Black's Law Dictionary, (10th Edn., 2014).

standing" was recognized internationally in Civil Law which allows treaties to become inapplicable because of a fundamental change of circumstances. This is an exception to the general rule of *"pacta sunt servanda"* and is also provided under Article 62 of the Vienna Convention on the Law of Treaties, 1969[2].

In English Law, the rigidity of principle *"pacta sunt servanda"* was relaxed by the decision in *Taylor v. Caldwell*[3] wherein the 'Doctrine of Frustration' was taken into consideration with respect to contract law. The Defendants in the said matter were unable to perform their music concert due to the music hall being destroyed by fire. The Hon'ble Court held that the said situation had led to frustration of contract. Therefore, the Defendants were released from their obligations.

III. FORCE MAJEURE AND PROVISIONS OF LAW IN INDIA

The Force Majeure is a legal concept which has developed gradually through judicial precedents and legislative enactments. Its parlance can be seen in the Indian Contract Act, 1872 (hereinafter referred to as the "Act") and more particularly, Section 32[4] the Act dealing with express or implied contingent contacts. The relief available under the said section depends upon the wording of the contract.

In so far as a force majeure event occurs *de hors* the contract, it is dealt with by a rule of positive law enumerated under Section 56[5] of the Act.[6] Further, Section 108 of the Transfer of Property Act, 1882 can be brought to aid of a party when the force majeure event occurs with respect to a lease deed.[7] These provisions only provide for frustration of contract and not for suspension of contractual obligations. Thus, a party cannot seek relief of suspension of rent or suspension of delivery of goods while approaching the court under these provisions.

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[2] Vienna Convention on the Law of Treaties 1969, Art. 62, available at https://legal.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf (last visited on 7th May, 2020, 23.36 pm.)

[3] 1863 3 B&S 826.

[4] The Indian Contract Act, s. 32 (1872) "Enforcement of Contracts contingent on an event happening – 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".

[5] The Indian Contract Act, s. 56 (1872) "Agreement to do impossible act – (1) An agreement to do an act impossible in itself is void. (2) Contract to do act afterwards becoming impossible or unlawful. A contract to do an act which, after the contract made, becomes impossible or, by reason of some event which the promisor could not prevent, unlawful, becomes void when the act becomes impossible or unlawful. (3) Compensation for loss through non-performance of act known to be impossible or unlawful. Where one person has promised to do something which he knew or, with reasonable diligence, might have known, and which the promisee did not know, to be impossible or unlawful, such promisor must make compensation to such promise for any loss which such promisee sustains through the non-performance of the promise.".

[6] Energy Watchdog v. Central Electricity Regulatory Commission & Anr., (2017) 14 SCC 80.

[7] For detailed discussion refer to section XII of the article.

Even the Manual for Procurement of Goods, 2017[8] finds mention of Force Majeure. It defines force majeure as extraordinary events or circumstances beyond human control such as an event described as an act of God (like a natural calamity) or events such as a war, strikes, riots, crimes (but not including negligence or wrong-doing, predictable/seasonal rain and any other events specifically excluded in the clause).

The Real Estate (Regulation and Development) Act, 2016[9] also recognize the concept of Force Majeure under Section 6 of the Act. It provides for extension of registration due to Force majeure event. The FIDIC Red Book, commonly used in Infrastructure projects in India, deals with the liability arising out of Principal employer and Contractor relationship. It enlists 'epidemics' and 'pandemics' as Force Majeure events. Consequently, extension of time can be given for performance in such projects.[10]

IV. APPLICATION OF DOCTRINE OF FRUSTRATION IN ABSENCE OF FORCE MAJEURE CLAUSE IN A CONTRACT

The parties whose contracts do not have a Force Majeure clause are not completely remediless in the present scenario. The protection for them lies in the well recognized concept of "*doctrine of frustration*", which can be found in judicial precedents and is provided under Section 56 of the Act.[11]

This view can be found in the judgment of the Hon'ble Supreme Court in *Industrial Finance Corporation of India Ltd. v. The Cannanore Spinning & Weaving Mills Ltd. & Ors.*[12] wherein the Hon'ble Court observed that:

> *It may be noticed here that the Statute itself has recognised the doctrine of frustration and encompassed within its ambit an exhaustive arena of force majeure under which non-performance stands excused by reason of an impediment beyond its control which could neither be foreseen at the time of entering into the contract nor can the effect of the supervening event could be avoided or overcome.*

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[8] Manual for Procurement of Goods, ¶ 9.7.7 (2017), available at https://doe.gov.in/sites/default/files/Manual%20for%20Procurement%20of%20Goods%202017_0_0.pdf (last visited on 30th April, 2020,10.00 pm).
[9] The Real Estate (Regulation and Development) Act, s. 6 (2016).
[10] Dzakula Peter, *PANDEMIC FLU RISK FOR MAJOR PROJECTS*, Const. L.J. 2010, 26(3), 160-167
[11] Kesari Chand v. Governor-General-in-Council, ILR 1949 Nag 718.
[12] (2002) 5 SCC 54.

The doctrine of frustration is a special case of the discharge of contract by an impossibility of performance arising after the contract was made, on account of circumstances beyond the control of the parties.[13] It means that frustration is a situation which is not contemplated in a contract, the happening of which frustrates the purpose of the contract, or render it very difficult or impossible, or even illegal, to perform. The happening of event of frustration ends the contract. Hence, the only relief available with the party approaching the court under this doctrine is the termination of the contract. It can be distinguished with the breach of contract; a contract which is frustrated upon happening of an event is a valid contract till the happening of such an event.

The Hon'ble Supreme Court in *Satyabrata Ghose v. Mugneeram Bangur & Co.*[14], has observed that Section 56 of the Act lays down a rule of positive law and allows discharge of obligations on grounds of impossibility if *"an untoward event or change of circumstance totally upsets the very foundation upon which the parties entered their agreement".*

Recently in 2017, in *Energy Watchdog v. Central Electricity Regulatory Commission & Anr.,*[15] the Hon'ble Supreme Court held that *"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. The performance of an act may not be literally impossible, but it may be impracticable and useless from the point of view of the object and purpose of the parties".* However, it remains undisputed that when a contract contains a force majeure clause which on construction by the court is held attracted to the facts of the case, Section 56 of the Act has no application.

V. NECESSARY INGREDIENTS TO AVAIL THE BENEFIT OF FORCE MAJEURE CLAUSE

For entitlement to the benefit of Force Majeure Clause some part of contract must remain to be performed and as such a party invoking the same should:

i. inform the other party about invocation within reasonable time, if specific time period is not provided in the contract;
ii. inform the expected impact on contract on account of such event;

[13] Joseph Constantine Steamship Line Ltd. v. Imperial Smelting Corporation Ltd., (1941) 2 ALL E.R 165.
[14] 1954 SCR 310.
[15] (2017) 14 SCC 80.

iii. reasonable way-outs to mitigate the damages including suspension of contract during the existence of force majeure event and extension of time for completion of obligations, renegotiation of rates/terms;

iv. termination of contract due to occurrence of Force Majeure Event

The occurrence of Force Majeure event automatically does not entitle a party to derive benefits of such event in case of non-performance of obligations of a contract. Rather evidence supporting the fact that due to occurrence of Force Majeure event, the contractual obligations were impossible to be performed, need to be provided. As such evidence shall play a vital role and bearing on the claim. For example, in the present scenario of COVID-19 notification of declaration of lock down and restrictions imposed during the period are directly applicable to the performance of contract. However, it would be important for a party claiming discharge of obligations to prove that it was acting diligently prior to the imposition of restrictions for performing its obligations,[16] such as entering of contracts with sub-contractor, purchase orders for raw materials, agreements with transporter or freight agency, booking and/or cancellation of tickets etc.

It is relevant to point that Manuals, guidelines, notifications of certain commercial activities include the Force Majeure Clause as well as procedure for invoking the same. For example, As per the Manual for Procurement of Goods, 2017, the firm has to give notice of Force Majeure as soon as it occurs, and it cannot be claimed ex-post facto. There may be a Force Majeure situation affecting the purchase organisation only. In such a situation, the purchase organisation is to communicate with the supplier along similar lines as above for further necessary action. If the performance in whole or in part or any obligation under this contract is prevented or delayed by any reason of Force Majeure for a period exceeding 90 days, either party may at its option terminate the contract without any financial repercussion on either side. Notwithstanding the punitive provisions contained in the contract for delay or breach of contract, the supplier would not be liable for imposition of any such sanction so long as the delay and/or failure of the supplier in fulfilling its obligations under the contract is the result of an event covered in the Force Majeure clause.[17]

VI. JUDICIAL EVOLUTION OF FORCE MAJEURE IN INDIA

[16] M/s. Halliburton Offshore Services Inc. v. Vedanta Ltd. & Anr., O.M.P. (I) (Comm.) No. 88/2020 & I.As. 3696-3697/2020 (decided on 29.05.2020).

[17] Manual for Procurement of Goods, ¶ 9.7.7 (2017), available at https://doe.gov.in/sites/default/files/Manual%20for%20Procurement%20of%20Goods%202017_0_0.pdf (last visited on 30th April, 2020, 10.00 pm).

One of the earliest judgments recognizing the principle of Force Majeure is *Edmund Bendit & Anr. v. Edgar Raphael Prudhomme*[18] where the Hon'ble Division Bench of the Hon'ble High Court of Madras, while recognizing the Force Majeure Clause in the contract for supply of groundnuts, discharged the Defendant from the performance of contract for supply. It observed that the contract had become impossible to perform due to outbreak of war. Hence, the outbreak of war was considered as a force majeure event in the case.

One of the most celebrated judgments in India with respect to Force Majeure is the decision of *Satyabrata Ghose v. Mugneeram Bangur & Co.*[19]. It adverted to the second paragraph of Section 56 of the Act. It held that the word 'impossible' has not been used in the Section in the sense of physical or literal impossibility. The performance of an act may not be literally impossible, but it may be impracticable and useless from the point of view of the object and purpose of the parties. If an untoward event or change of circumstance totally upsets the very foundation upon which the parties entered their agreement, it can be said that the promisor finds it impossible to do the act which he had promised to do. It was further held that where the court finds that the contract itself either impliedly or expressly contains a term, according to which performance would stand discharged under certain circumstances, the dissolution of the contract would take place under the terms of the contract itself and such cases would be dealt with under Section 32 of the Act. If, however, frustration is to take place *de hors* the contract, it will be governed by Section 56 of the Act.

The Hon'ble Apex Court in *Bombay Dyeing and Manufacturing Co. Ltd. v. State of Bombay*[20] applied the principle of restitution as enumerated under Section 65 of the Act. It observed that once a contract becomes void or frustrated, any person who has received any advantage under such agreement or contract is bound to restore it to the person from whom he had received it. Therefore, when a contract is frustrated, the consideration received from the other party must be repaid.[21]

In *M/s. Dhanrajamal Gobindram v. M/s. Shamji Kalidas & Co.*[22], the Hon'ble Apex Court dealt with the issue whether the expression *"subject to the usual Force Majeure clause"* was vague and uncertain and renders the agreement void. The Hon'ble Court referred to the English Law laid down in *Bishop & Baxter Ld. v. Anglo-Estern Trading &*

[18] AIR 1925 Mad 626.
[19] 1954 SCR 310
[20] Bombay Dyeing and Manufacturing Co. Ltd. v. State of Bombay, AIR 1958 SC 328.
[21] Smt. Sharda Mahajan v. Maple Leaf Trading International (P) Ltd., (2007) 78 SCL 367 (Delhi).
[22] AIR 1961 SC 1285.

Industrial Co. Ld [23] and *Shamrock S.S. Co. v. Storey*[24] wherein Lord Goddard had observed:

> *Abbreviated references in a commercial instrument are, in spite of brevity, often self-explanatory or susceptible of definite application in the light of the circumstances, as, for instance, where the reference is to a term, clause, or document of a well known import like c.i.f. or which prevails in common use in a particular place of performance as may be indicated by the addition of the epithet 'usual' : see Shamrock S. S. Co. v. Storey (a), where 'usual colliery guarantee' was referred to in a charter-party in order to define loading obligations.*

Further, the Hon'ble Apex Court while referring to *Hillas & Co. v. Arcos Ltd.*[25] and *Adamastos Shipping Co. Ltd. v. Anglo-Saxon Petroleum Co. Ltd.*[26], observed:

> *...the addition of the word "usual" refers to something which is invariably to be found in contracts of a particular type. Commercial documents are sometimes expressed in language which does not, on its face, bear a clear meaning. The effort of Courts is to give a meaning*" and, "*effort should always be made to construe commercial agreements broadly and one must not be astute to find defects in them, or reject them as meaningless.*

Applying these tests in the light of Section 29 of the Act, the Hon'ble Apex Court held that the Contract is not void for vagueness or uncertainty by reason of mentioning of only *"subject to usual force majeure clause"* in a contract. The Contract between the parties or in trade or in dealings includes a force majeure clause and observed that such a clause is capable of being made certain and definite by proof.

VII. WHERE OCCURRENCE OF AN EVENT MAKES THE CONTRACT ONEROUS, WILL IT LEAD TO FRUSTRATION OF CONTRACT?

[23] (1944) 1 K.B. 12.
[24] (1899) 5 Com. Cas. 21.
[25] (1932) All E.R. 494.
[26] (1959) A.C. 133, 153.

There may be instances where occurrence of an event makes the contract as onerous but not impossible to perform. The difference between the contracts turning onerous and force majeure can be seen from some following prominent and illustrative cases:

In *M/s. Alopi Parshad & Sons Ltd. v. Union of India*[27], the Hon'ble Supreme Court, after setting out Section 56 of the Act, held that the Act does not enable a party to a contract to ignore the express covenants thereof and to claim payment of consideration for performance of the contract at rates different from the stipulated rates, on a vague plea of equity. Parties to an executable contract are often faced, in the course of carrying it out, with a turn of events which they did not at all anticipate, for example, a wholly abnormal rise or fall in prices which is an unexpected obstacle to execution. This does not in itself get rid of the bargain they have made. **It is only when a consideration of the terms of the contract, in the light of the circumstances existing when it was made, shows that they never agreed to be bound in a fundamentally different situation which had unexpectedly emerged, that the contract ceases to bind the parties. It was further held that the performance of a contract is never discharged merely because it may become onerous to one of the parties.**

Similarly, in *Naihati Jute Mills Ltd. v. Hyaliram Jagannath*[28], the Hon'ble Supreme Court discussed the English law laid down in *F.A. Tamplin Steamship Co. Ltd. v. Anglo Maxican Petroleum Products Co. Ltd.*[29] on frustration in some detail, and then cited the celebrated judgment of *Satyabrata Ghose v. Mugneeram Bangur & Co.*[30] to conclude that **a contract is not frustrated merely because the circumstances in which it was made stood 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.**

The Hon'ble Apex Court by the forestated judgment has settled the scope of Section 56 of the Act in true perspective. It stated that the doctrine of frustration must always be applied within narrow limits. Further, it summed the 3 essential conditions for the realistic interpretation of the Statute as follows:

i. Existence of a valid and subsisting contract between the parties;
ii. A part of the contract should be pending performance; and
iii. The contract after it is entered into becomes impossible of performance.

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[27] 1960 (2) SCR 793.
[28] 1968 (1) SCR 821.
[29] 1916 2 AC 397.
[30] 1954 SCR 310.

The pronouncement in *Naihati Jute Mills Ltd.* case was on the principle set out in English judgment in the case *of Tsakiroglou & Co. Ltd. v. Noblee Thorl GmbH*[31]. In this case it was held that despite the fact that performance of obligation for contract of sale of groundnuts has become much more expensive due to closure of the Suez Canal, its performance was possible through alternate routes. **The contract of sale was not frustrated as it did not change fundamentally despite being more onerous to perform.** This view has also been echoed in 'Chitty on Contracts'[32]. A rise in cost or expense has been stated not to frustrate a contract. Similar view has been opined by 'Treitel on Frustration and Force Majeure'[33].

In England, in the celebrated *Sea Angel* case[34], the modern approach to frustration is well put, and the same reads as under:

> *111. In my judgment, the application of the doctrine of frustration requires a multi-factorial approach. Among the factors which have to be considered are the terms of the contract itself, its matrix or context, the parties' knowledge, expectations, assumptions and contemplations, in particular as to risk, as at the time of the contract, at any rate so far as these can be ascribed mutually and objectively, and then the nature of the supervening event, and the parties' reasonable and objectively ascertainable calculations as to the possibilities of future performance in the new circumstances. Since the subject matter of the doctrine of frustration is contract, and contracts are about the allocation of risk, and since the allocation and assumption of risk is not simply a matter of express or implied provision but may also depend on less easily defined matters such as "the contemplation of the parties", the application of the doctrine can often be a difficult one. In such circumstances, **the test of "radically different" is important: it tells us that the doctrine is not to be lightly invoked; that mere incidence of expense or delay or onerousness is not sufficient; and that there has to be as it were a break in identity between the contract as provided for and***

[31] 1961 (2) All ER 179.
[32] Hughe Beale, *Chitty on Contracts*, (31st Edn., Sweet & Maxwell U.K. 2012).
[33] Guenter Treitel, *Frustration and Force Majeure*, (3rd Edn., Sweet & Maxwell U.K. 2014).
[34] 2013 (1) Lloyds L.R. 569.

> ***contemplated and its performance in the new circumstances.***

This is echoed in the celebrated judgment of *Peter Dixon & Sons Ltd. v. Henderson, Craig & Co. Ltd.*[35], in which it was observed that **for hindrance to be a force majeure event, the same must be insurmountable and not merely a rise in price.** The hindrance must be for the performance of a contract as a whole. In this case due to the outbreak of World War-I, British ships were no longer available for transportation, although foreign shipping could be obtained at an increased freight. However, such ships were liable to be captured by the enemy and destroyed through mines or sub-marines and could be detained by British or allied warships. In these circumstances, the *Tenants (Lancashire) Ltd.* judgment was applied, and the Court of Appeals held as under:

> *Under the circumstances, can it be said that the sellers were not "hindered or prevented" within the meaning of the contract? It is not a question of price, merely an increase of freight. Tonnage had to be obtained to bring the pulp in Scandinavian ships, and although the difficulty in obtaining tonnage may be reflected in the increase of freight, it was not a mere matter of increase of freight; if so, there were standing contracts that ought to have been fulfilled. Counsel for the respondents urged that certain ship owners, for reasons of their own, chose not to fulfill standing contracts. It was not only shipowners but pulp buyers and sellers. The whole trade was dislocated, by reason of the difficulty that had arisen in tonnage. It seems to me that the language of Lord Dunedin in Tennants, Ld. v. Wilson & Co. is applicable to the present case: "Where I think, with deference to the learned judges, the majority of the Court below have gone wrong is that they have seemingly assumed that price was the only drawback. I do not think that price as price has anything to do with it. Price may be evidence, but it is only one of many kinds of evidence as to shortage. If the appellants had alleged nothing but advanced price they would have failed. But they have shown much more." That is exactly so here. Price, as price only, would not have affected it.* ***They were all standing contracts, but the***

[35] 1919 (2) KB 778.

> ***position has so changed by reason of the war that buyers and sellers and the whole trade were hindered or prevented from carrying out those contracts.***

The concept, scope and applicability of Force Majeure Clause was discussed in detail by the Hon'ble Apex Court in the recent case titled as *Energy Watchdog v. Central Electricity Regulatory Commission & Ors. Etc*[36].

In this case, the Respondent had entered into Power Purchase Agreements with Gujarat Urja Vikas Nigam Limited and Haryana Utilities after being declared a successful bidder. In the process of bid, the bidders were entitled to quote escalable or non-escalable tariff or partly escalable and partly non-escalable tariff, as was considered appropriate by them to cover their respective risks so as to obtain whatever returns are available to them. The Respondent had quoted non-escalable tariff. However, due to a change in law in Indonesia in 2010 and 2011, the export price of coal from Indonesia aligned to international market prices instead of the price that was prevalent for the last 40 years. The petition was filed before the Central Electricity Regulatory Commission seeking relief on the score of the impact of the Indonesian Regulation to either discharge them from the performance of the PPA on account of frustration, or to evolve a mechanism to restore the Petitioners to the same economic condition prior to occurrence of the change in law.

The Hon'ble Supreme Court observed as under:

> ***Fundamental basis of the PPAs remains unaltered.*** *Nowhere do the PPAs state that coal is to be procured only from Indonesia at a particular price. In fact, it is clear on a reading of the PPA as a whole that the price payable for the supply of coal is entirely for the person who sets up the power plant to bear. The fact that the fuel supply agreement has to be appended to the PPA is only to indicate that the raw material for the working of the plant is there and is in order.* ***It is clear that an unexpected rise in the price of coal will not absolve the generating companies from performing their part of the contract for the very good reason that when they submitted their bids, this was a risk they knowingly took.***

[36] (2017) 14 SCC 80.

In summary, the Hon'ble Court held that **neither was the fundamental basis of the contract dislodged nor was there occurrence of any frustrating event.** There was merely a rise in the price of coal pointed out, alternative modes of performance were still available, albeit at a higher price. This does not lead to the contract, as a whole, being frustrated. Consequently, the compensatory tariff could be granted. Hence, merely because a contract has become onerous, it does not lead to frustration of contract.

VIII. FORCE MAJEURE & COVID-19

The outbreak of COVID-19 has changed the relevance of the Force Majeure term and the clause, if any in contract, and presently is one of the most discussed term/clauses of any contract. It is relevant in the present circumstances to understand that whether the widespread onset of the virus and its consequences, would qualify as an impossibility or whether the same would be treated merely as a hardship?

The World is at present facing a commercial turmoil to such an extent that whole world is passing through economic slowdown.[37] The predicted GDP growth of most of the countries has been lowered than what was earlier anticipated.[38] The outbreak of COVID-19 has disrupted the business operations and have made it impossible for the parties to maintain their production as well as perform their respective contractual obligations in the lock down period.

With the acceptance and declaration of COVID-19 as a pandemic by the World Health Organisation, considering the worldwide spread and severity of disease,[39] the question of treating COVID-19 as one of the Force Majeure Event is one of the most discussed and argued topics in the commercial world.

After being declared as "public health emergency" situation by the World Health Organization,[40] the governments of most of the countries have started emergency

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[37] Dr. Linda Yueh, 'Global Slowdown Worries', FORBES, Nov 11, 2019, at https://www.forbes.com/sites/lbsbusinessstrategyreview/2019/11/11/global-slowdown-worries/#5b7223b34a25.

[38] Covid-19 Growth Revisions: Tracking Lower, Fitch Solutions, March 20, 2020, https://www.fitchsolutions.com/country-risk-sovereigns/economics/covid-19-growth-revisions-tracking-lower-20-03-2020.

[39] WHO Director-General's opening remarks at the media briefing on COVID-19, dated 11th March, 2020, available at https://www.who.int/dg/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19---11-march-2020 (last visited on 16th May, 2020, 17.55 pm).

[40] Statement on the second meeting of the International Health Regulations (2005) Emergency Committee regarding the outbreak of novel coronavirus (2019-nCoV), WHO, https://www.who.int/news-

measures to curb the effect of COVID-19 which includes restrictions/suspension/ban on travelling, movements of aircrafts/ships/trains/trucks etc., restrictions on movement of manpower/workforce, besides directions to temporarily shut down of factories, offices, markets etc. Such measures have severely disrupted the trade and business both nationally as well as internationally.

IX. COVID-19 & INDIA

In India, before the outbreak could do widespread harm, the Union Government as a precautionary measure, declared a nation-wide lockdown from 24.03.2020. Initially for 21 days which as on the date of the publication of the article has been extended further till 31.05.2020. In the period of lock down except essential services, all the commercial establishments were directed to be closed.

The nationwide lockdown as well as worldwide restrictions on travel, export-import have triggered the discussion whether this pandemic can fall within the scope of a force majeure event and the same can be invoked to avoid obligations for performance of contract or to avoid any liability arising out of failure to perform or delay in performance of the obligations under a contract. Further, it is also a matter of concern as to the fate of contracts where there is no express provision of Force Majeure event.

X. NOTIFICATION/CIRCULARS/GUIDELINES ISSUED BY MINISTRIES W.R.T. COVID-19

i. Department of Expenditure, Procurement Policy Division, Ministry of Finance, Government Of India and Ministry of New & Renewable Energy and other ministries have issued office memorandums wherein it was notified to treat the outbreak of COVID-19 as natural calamity and Force Majeure Event. The said pertain to the delay caused and to be caused in commissioning of projects "*considering the disruption of supply chain due to spread of COVID-19 in China and other countries".* In this regard, it was clarified by the Ministry of Finance vide order dated 19th February, 2020 that COVID-19 should be considered as a case of natural calamity and Force Majeure clause may be invoked wherever considered appropriate, following the due procedure.[41]

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room/detail/30-01-2020-statement-on-the-second-meeting-of-the-international-health-regulations-(2005)-emergency-committee-regarding-the-outbreak-of-novel-coronavirus-(2019-ncov).

[41] Available at Ministry of Finance, No.F.18/4-2020-PPD, also available at https://doe.gov.in/sites/default/files/Force%20Majeure%20Clause%20-FMC.pdf (last visited on 23rd May, 2020, 14.52 pm).

ii. In pursuance of the declaration of Reserve Bank of India dated 27th March, 2020, banks are allowed to declare a three-month moratorium on all term loans outstanding as on March 1, 2020, as well as on working capital facilities.[42]Further, the Reserve Bank of India vide press release dated 22nd May, 2020, permitted lending institutions to extend the moratorium on term loan instalments by another three months, i.e., from June 1, 2020 to August 31, 2020. Accordingly, the repayment schedule and all subsequent due dates, as also the tenor for such loans, may be shifted across the board by another three months[43].

iii. In pursuance of the declaration of the Reserve Bank of India dated 17th April, 2020 states that in terms of the extant guidelines for banks, the date for commencement for commercial operations (DCCO) in respect of loans to commercial real estate projects delayed for reasons beyond the control of promoters can be extended by an additional one year, over and above the one-year extension permitted in normal course, without treating the same as restructuring. Similar treatment would be extended to loans given by NBFCs to commercial real estate in order to provide relief to NBFCs as well as the real estate sector.[44]

iv. The Ministry of Finance, in light of Para 9.7.7 of the Manual for Procurement of Goods, 2017, declared that any disruption in the supply chains due to spread of corona virus in China or any other country will be covered in the Force majeure Clause in the contract. The Force Majeure Clause may be invoked, wherever considered appropriate, following the due procedure as enumerated in the said Manual.[45]

v. The Ministry of New & Renewable Energy declared that all Renewable Energy implementing agencies of the Ministry of New & Renewable Energy (MNRE), will treat lockdown due to COVID-19, as Force Majeure. Also, the Renewable Energy implementing agencies may grant extension of time for RE projects, on account of lockdown due to COVID-19, equivalent to the period of lockdown and additional

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[42] Available at https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=11835&Mode=0 (last visited on 30th April,2020, 9.30pm).
[43] Available at The Reserve Bank of India, Statement on Developmental and Regulatory Policies, dated 22nd May, 2020, also available at https://www.rbi.org.in/Scripts/BS_PressReleaseDisplay.aspx?prid=49844 (last visited on 23rd May, 2020, 15.04 pm).
[44] Governor's Statement, April 17, 2020, available at https://m.rbi.org.in/Scripts/bs_viewcontent.aspx?Id=3853 (last visited on 8th May, 2020, 01.02 am).
[45] Available at https://doe.gov.in/sites/default/files/Force%20Majeure%20Clause%20-FMC.pdf (last visited on 29thapril, 2020, 6.30 pm).

30 (thirty) days for normalisation after end of such lockdown. Thus, the extension will be for the period of lockdown plus 30 (thirty) days.[46]

vi. The Ministry of Housing & Urban Affairs has issued an advisory for extension of registration of real estate projects due to 'Force Majeure' under the provisions of Real Estate (Regulation and Development) Act, 2016. As per the said advisory, Regulatory Authorities may, in their respective jurisdictions, issue orders/directions to the effect that all registered projects under jurisdiction of Regulatory Authority for which the completion date or revised completion date or extended completion date as per registration expires on or after 25th March, 2020, extend the registration and completion date or revised completion date or extended completion date automatically by 6 months due to outbreak of COVID-19, which is a calamity caused by nature and is adversely affecting regular development of real estate projects by invoking force majeure clause. Regulatory Authorities may, on their own discretion, consider to further extend the date of completion as per registration for another period upto 3 months, if the situation in their respective State or any part thereof, for reasons to be recorded in writing, needs special consideration of invoking 'force majeure' in view of current pandemic[47].

vii. The Union Finance minister in its 20 lakh crore relief package announced during the time of distress due to COVID-19, announced major changes in the regime under the Insolvency and Bankruptcy code, 2016. It was declared that debts incurred due to COVID-19 lockdown will not be treated as "default" under the same. Also, there would be an embargo on fresh insolvency proceedings to be initiated for a period of one year. Further, minimum threshold to initiate insolvency proceedings will be raised to Rs. 1 crore from Rs. 1 lakh.[48]

viii. SEBI, vide its Circular dated March 30, 2020, has declared that if the delay in payment of interest/ principal has arisen solely due to the lockdown conditions creating temporary operational challenges in servicing debt, including due to

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[46] Ministry of New & Renewable Energy (MNRE), 17th April, 2020, available at https://mnre.gov.in/img/documents/uploads/file_f-1587398024891.pdf (last visited on 8th May, 2020, 01.02 am).

[47] Ministry of Housing & Urban Affairs, No. O-17024/230/2018-Housing-UD/EFS-9056405, 13 May, 2020, available at http://mohua.gov.in/upload/whatsnew/5ebcfd70abb23Rera%20Act%202016.pdf (last visited on 8th May, 2020, 01.02 am).

[48] 'Debts Incurred Due To COVID-19 Not To Be Treated As 'Default' For IBC; No Fresh Insolvency For A Year : Finance Minister' , LIVE LAW, MAY 17, 2020, https://www.livelaw.in/top-stories/debtscovid-19-not-to-be-treated-as-default-for-ibc-no-fresh-insolvency-for-a-yea-156892?infinitescroll=1 (last visited on 8th May, 2020, 01.02 am).

procedural delays in approval of moratorium on loans by the lending institutions, CRAs may not consider the same as a default event and/or recognize default. This shall also be applicable on any rescheduling in payment of debt obligation done by the issuer, prior to the due date, with the approval of the investors/ lenders. Also, this relaxation is extended till the period of moratorium by RBI.[49]

ix. The Maharashtra Real Estate Regulatory Authority has revised its 'Project Registration Validity' where completion date, revised completion date or extended completion date expires on or after 15th March 2020 by three months. Also, the time limit of all statutory compliances in accordance with the Real Estate (Regulation and Development) Act, 2016 and the rules and regulations made there under, which were due in March/April/May are extended till 30th June 2020.[50]

x. The Karnataka Real Estate Regulatory Authority has also revised the 'Project Registration Validity' where completion date, revised completion date or extended completion date expires on or after 15th March 2020 by three months. Also, the time limits of all statutory compliances in accordance with the Real Estate (Regulation and Development) Act, 2016 and the rules and regulations made there under, which were due in March/April/May are extended to 30th June 2020.[51]

xi. The Supreme court vide its order dated 23rd March, 2020, took *suo moto* cognizance of the situation arising out of the challenge faced by the country on account of COVID-19 and lock down declared ordered that period of limitation of filing all petitions/applications/suits/ appeals/all other proceedings in respective Courts/Tribunals across the country including the Hon'ble Apex Court shall stand extended w.e.f. 15th March 2020 till further order/s irrespective of the limitation prescribed under the general law or Special Laws whether condonable or not. [52]. Further, the Hon'ble Apex Court vide orders dated 06th May, 2020 extended the

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[49] SEBI, SEBI/ HO/ MIRSD/ CRADT/ CIR/ P/ 2020/ 53, available at https://www.sebi.gov.in/legal/circulars/mar-2020/relaxation-from-compliance-with-certain-provisions-of-the-circulars-issued-under-sebi-credit-rating-agencies-regulations-1999-due-to-the-covid-19-pandemic-and-moratorium-permitted-by-rbi-_46449.html (last visited on 8th May, 2020, 01.02 am).

[50] MahaRERA, Order No. 13/2020, MahaRERA/Secy/25/2020, April 2, 2020, available at https://maharera.mahaonline.gov.in/Site/Upload/PDF/Final%20Order%20for%20Revision%20of%20Duration%20v4.pdf (last visited on 8th May, 2020, 01.02 am).

[51] KRera No. Sec.CR.04/2019-20, April 4, 2020, available at https://rera.karnataka.gov.in/reraDocument?DOC=nbHboHdOzsUUksQRs9UF%2Fw%3D%3D (last visited on 8th May, 2020, 01.02 am).

[52] Suo Motu Writ Petition (Civil) No(s).3/2020, dated 23rd March, 2020, available at https://main.sci.gov.in/supremecourt/2020/10787/10787_2020_1_12_21570_Order_23-Mar-2020.pdf

period of Limitation as well as directed for exclusion of period w.e.f. 15th March, 2020 for the purpose of limitation also in cases of Arbitration and Conciliation Act, 1996 and under section 138 of the Negotiable Instruments Act 1881. The said exclusion/extension period has been ordered to be in effect till further orders. The Hon'ble Apex Court further clarified that , in case where the limitation has expired after 15.03.2020 then the period from 15.03.2020 till the date on which the lockdown is lifted in the jurisdictional area where the dispute lies or where the cause of action arises shall be extended for a period of 15 days after the lifting of lockdown.[53]

XI. IMPACT OF FORCE MAJEURE ON LEASE AGREEMENTS

'Lease' is one of the fields where impact of COVID-19 is being widely discussed. Closure of markets, malls, commercial spaces, etc. has caused business losses to the occupiers and for this reason, breaches are occurring in performance of obligations, primarily of payment of rent.

The invocation of force majeure clause would depend upon the definition of a force majeure event, wordings of clause as well as consequences provided in the Agreement to Lease/Lease Deed, if any.

Generally, the Force Majeure clause provides for 'act of God' or 'natural calamities' and not 'pandemic/epidemic'. Such situation must be examined critically to invoke force majeure clause. However, if the parties have incorporated a pandemic/epidemic situation as one of the Force Majeure events, then invocation of force majeure could be done in the present scenario of COVID-19 as per the wordings of the clause.

In case the consequences of Force Majeure event only provide for suspension of payment of rent or other obligations but not for termination of lease, then the benefits/result of invocation of the same will be limited only to such extent and not beyond the same. Whereas, if the contractual remedy available is only that of termination of contract, then the parties cannot ask for suspension of payment of rent or other obligations mentioned in the contract.

XII. LEASE HAVING NO FORCE MAJEURE CLAUSE

[53] Suo Moto Writ (Civil) No. 3 of 2020, order dated 6th May, 2020, available at https://main.sci.gov.in/supremecourt/2020/10787/10787_2020_31_6_21961_Order_06-May-2020.pdf

The Agreement to Lease where there is no Force Majeure clause may attract the doctrine of frustration as provided under Section 56 of Act. The Hon'ble Supreme Court in the matter of *Raja Dhruv Dev Chand v. Raja Harmohinder Singh*[54] held that Section 56 of the Act can come into operation only where there is an Agreement to Lease and a valid Lease is still to come in existence. Once a valid lease comes into existence the Agreement to Lease disappears and its place is taken by the lease. It becomes a completed conveyance under which the lessee gets an interest in the property. There is a clear distinction between a completed conveyance and an executory contract. Events which discharge a contract do not invalidate a concluded transfer.[55]

Further, another provision which is often referred and discussed with the doctrine of frustration under lease agreements is Section 108 of the Transfer of Property Act which provides for Rights and liabilities of Lessor and Lessee. Section 108 B (e) is also important in this regard which recognizes the doctrine of Force Majeure, which is read as under:

> *(e) if by fire, tempest or flood, or violence of an army or of a mob, or other irresistible force, any material part of the property be wholly destroyed or rendered substantially and permanently unfit for the purposes for which it was let, the lease shall, at the option of the lessee, be void:*
> *Provided that, if the injury be occasioned by the wrongful act or default of the lessee, he shall not be entitled to avail himself of the benefit of this provision;*

Under Section 108B(e) of the Transfer of Property Act, the lessee cannot avoid the obligations of lease because he does not or is unable to use the land for purposes for which it is let to him. The same is only attracted where the material part of the property leased is destroyed or is made substantially and permanently unfit for the purpose for which it was leased. Since, in the current scenario of COVID-19 and lock-down, the leased properties are put to non-use for a temporary period; and spread of COVID-19 neither permanently destroyed nor turned unfit for use of the leased premises permanently, the provisions of Section 108 of Transfer of property Act may not be attracted.[56]

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[54] AIR 1968 SC 1024.
[55] Raja Dhruv Dev Chand v. Raja Harmohinder Singh, AIR 1968 SC 1024; Sushila Devi v. Hari Singh, AIR 1971 SC 1756.
[56] Ramanand & Ors. v. Dr. Girish Soni & Anr., RC. REV. 447/2017, order dated May 21, 2020.

The applicability of Section 32 and 56 of the Act as well as Section 108B(e) of the Transfer of Property Act was discussed by the Hon'ble Delhi High Court in *Ramanand & Ors. Vs. Dr. Girish Soni & Anr.,* in its order dated 21st May, 2020[57], wherein it was observed that frustration of the contract would not apply to lease agreements as they are executed contracts and not executory contracts. Further it was also held that Section 108B(e) also has no application as the same is related with the permanent destruction or non-use of the property and not for temporary period as caused due to lock down.

The spread of COVID-19 has also raised an issue of suspension of payment of lease rentals, more particularly for the commercial spaces on account of restrictions imposed on the operation of commercial activities due to Lock-down. However, any such benefit of suspension of rent fundamentally depends on the wordings of contract (lease Deed) and upon the facts and circumstances of each case. For example if the premises is leased on profit sharing arrangement or the monthly payments are depending on the sales turn-over then the tenant can claim waiver of payment as there is no sales or profits, however such claim is based not on account of force majeure event but on account of actual condition of no sales.

The issue of suspension of rent was also discussed by the Hon'ble High Court of Delhi in the aforementioned case and it was observed that in absence of any specific provision in Lease Deed even suspension of rent cannot be claimed by Tenant.[58]

XIII. JUDICIAL PRONOUNCEMENTS IN THE LIGHT OF COVID-19

1. ***Standard Retail Pvt. Ltd. and Ors. v. M/s. G. S. Global Corp. & Ors[59].***

The Hon'ble Bombay High Court dealt with the plea of force majeure and frustration of contract due to COVID-19 pandemic, raised by a group of Indian Steel importers. The Petitioners sought an injunction on the encashment of Letter of Credits in favour of South Korean exporters. In this case, the Force Majeure clause was expressly formulated in the Contract and stipulated 'epidemics' as one of the events of Force Majeure. However, the said clause only exempted the suppliers from non-performance, and not the importers. The Hon'ble Court held that the force majeure clause does not apply to importers. The court observed that:

> *4. ...in my view the Petitioners are not entitled to any ad-interim reliefs for the reasons stated herein-below:*

[57] Ramanand & Ors. v. Dr. Girish Soni & Anr., RC. REV. 447/2017, order dated May 21, 2020.
[58] Ramanand & Ors. v. Dr. Girish Soni & Anr., RC. Rev. 447 of 2017, order dated 21st May, 2020.
[59] Order dated 8th April 2020 passed in Commercial Arbitration Petition (L) No. 404, 405, 406, 407 & 408 of 2020.

> *a. The Letters of Credit are an independent transaction with the Bank and the Bank is not concerned with underlying disputes between the Petitioners who are buyers and the Respondent No. 1 who is the seller. b.* ***The Force Majeure clause in the present contracts is applicable only to the Respondent No. 1 and cannot come to the aid of the Petitioners.***
>
> *...*
>
> *e. In any event,* ***the lockdown would be for a limited period and the lockdown*** *cannot come to the rescue of the Petitioners so as to resile from its contractual obligations with the Respondent No. 1 of making payments.*

2. ***M/s. Halliburton Offshore Services Inc. v. Vedanta Ltd. & Anr.***[60]

The Applicants in the said matter filed an application under Section 9, Arbitration and Conciliation Act, 1996 to restrain the Respondent from invoking bank guarantees issued in its favour during the period of Lockdown and plea of Force Majeure was sought. The Hon'ble Court granted stay on the encashment of guarantees during the period of lockdown. It went on to observe that:

> *27. The petition, and the rival submissions advanced by learned Senior Counsel for me, unquestionably throw up issues of some factual and legal complexity, which may necessitate a proper affidavit, by way of response, from the respondent, and detailed consideration of all these aspects, so as to arrive at a firm conclusion as to whether, till the normalisation of activities of the petitioner, consequent to lifting, or relaxation, of the restrictions imposed by the executive administration as a result of the -COVID-2019 pandemic, the petitioner would be entitled to an injunction, against the respondent, from invocation of the eight bank guarantees forming subject matter of the present petition. For the present, I am convinced, prima facie, that, in view of the submission, of the petitioner,* ***that it was actually working on the project till the imposition of lockdown on 22nd March, 2020,*** *or at least shortly prior thereto,* ***and in view of the sudden and emergent imposition of lockdown,***

[60] O.M.P. (I) (COMM) & I.A. 3697/2020.

> ***the interests of justice would justify an ad interim injunction, restraining invocation or encashment of the aforesaid eight bank guarantees, till the expiry of exactly one week from 3rd May, 2020, till which date the lockdown stands presently extended.*** *As to whether this interim injunction merits continuance, thereafter, or not, would be examined on the next date of hearing, consequent to pleadings being completed and all requisite material, including all relevant Governmental instructions, being placed on record.* ***The injunction presently being granted, it is reiterated, is purely ad interim in nature, and is being granted only in view of the completely unpredictable nature of the lockdown, and its sudden imposition on 22nd March, 2020, of which the petitioner could not legitimately be treated as having been aware in advance.*** *I am also persuaded, in this regard, by the fact that the government itself has, after imposition of the lockdown, being issuing instructions, from time to time, seeking to mitigate the rigours and difficulties that have resulted, unavoidably, as a result of the imposition of the lockdown. There is no reason, therefore, by the petitioner ought not to be given limited protection, till the next date of hearing, subject to orders which may be passed in these proceedings thereafter.*

3. ***The Hon'ble Karnataka High Court vide its Order dated 24.03.2020***, stayed the auction of properties by Banks during the 21-day Coronavirus lockdown period and held as under[61]:

> *...Prima facie, this Court was of the opinion that any activity by any of the Departments beyond the exceptions provided under the Government Order dated 23.03.2020, including the holding of auctions by Banks, would constitute a violation of the Government Order entailing prosecution...*

4. ***Rashtriya Shramik Aghadi v. The State of Maharashtra And Others***.[62]

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[61] Karnataka High court, Writ Petition Nos. 6632/2020, 6643/2020, 6645/2020, 6641/2020, 6653/2020, vide order dated 24th March, 2020.
[62] WP/4013/2020, order dated 12th may, 2020.

In the present matter, a petition was filed by Rashtriya Shramik Aghadi, a contract labourers' union, which claimed that despite the lockdown, members of the Petitioner Union are willing to be deployed as security guards as well as health workers but they are precluded from performing their duties on account of the clamping of lock-down for containment of COVID-19 pandemic. Also, the payments made by the contractors for the month of March 2020 are slightly lesser than the gross salary and for the month of April 2020 a paltry amount is paid. The Aurangabad bench of Hon'ble Bombay High court held that *prima facie*, the principle of "no work - no wages" cannot be made applicable in such extraordinary circumstances. The Hon'ble Court cannot be insensitive to the plight of such workers, which has unfortunately befallen them on account of the COVID-19 pandemic. The court went on to observe that:

> *6. This Court cannot turn a Nelson's eye to an extraordinary situation on account of Corona virus/ COVID-19 pandemic. Able bodied persons, who are willing and desirous to offer their services in deference to their deployment as contract labourers in the security and house-keeping sector of the Trust, are unable to work since the temples and places of worships in the entire nation have been closed for securing the containment of COVID-19 pandemic. Even the principal employer is unable to allot the work to such employees in such situation. Prima facie, I feel that the principle of "no work- no wages" cannot be made applicable in such extraordinary circumstances. The Court cannot be insensitive to the plight of such workers, which has unfortunately befallen them on account of the Covid-19 pandemic.*
>
> *...*
>
> *9. In the meanwhile, the District Collector, Osmanabad, in his capacity as President of Respondent No.2 Trust/ Principal Employer, shall ensure that full wages, save and except food allowance and conveyance allowance (only with regard to the employees who are not required to report for duties), shall be disbursed by the contractors to the concerned employees for the months of March, April and May, 2020. The principle of "no work- no wages" shall not be invoked until further orders in this petition.*

After the abovesaid order was passed by the Hon'ble Court, the Apex court dealt with a batch of petitions challenging the direction passed by the Union Ministry of Home Affairs to pay full wages to workers without deduction during lockdown.[63] The Apex court issued notices to the Central Government in the said matter. However, in two cases, the Hon'ble Court issued an interim order restraining coercive action against the employer for a period of one week for non-payment of wages as per Ministry of Home Affairs direction[64].

XIV. CONCLUSION

COVID-19 is a public health emergency which has impacted the economy of not only India but the entire world. In these times, people looking to protect themselves from the financial implications often tend to turn to the defense of 'Force Majeure'. As discussed in this article, a person can enforce the doctrine of force majeure to avail **suspension** of contract if there is a clause thereto in the contract. These cases would be governed by Section 32 of the Indian Contract Act, 1872. However, if the force majeure clause only provides for termination, then the parties could not seek suspension of performance of contract. Else the suspension could be by way of a regulation/act issued by the Government/State.

In case a party is seeking cancellation/frustration then the parties even in the absence of Force Majeure clause could turn to the doctrine of frustration of contract or *"impossibility of performance"* which is governed by Section 56 of the Indian Contract Act, 1872. In this regard the parties will have to prove that the performance of the contract would not merely cause hardship but should make the contract frustrated.

The cases of the lease deeds will be governed by Section 108((B)(e) of the Transfer of Property Act, 1882. This Section could come to the aid of a party when the occurrence of a certain event makes the property *"substantially **and** permanently unfit"* i.e. this Section could not be applied where there is only temporary hindrance in the use of the property. Here too, the only remedy available with the lessee is to seek for avoidance of contract by claiming that the property has become *"substantially **and** permanently unfit"*. The Hon'ble Delhi High Court on 21 May 2020 in the matter of *Ramanand & Ors. v. Dr.*

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[63] Ministry of Home Affairs, No. 40-3/2020-DM-I(A), dated 29th March, 2020, available at https://www.mha.gov.in/sites/default/files/MHA%20Order%20restricting%20movement%20of%20migrants%20and%20strict%20enforement%20of%20lockdown%20measures%20-%2029.03.2020.pdf (last visited on 8th May, 2020, 01.02 pm).

[64] Writ Petition (Civil) Diary No(s). 11193/2020, 11281/2020, 10983/2020, 10993/2020, 11041/2020, 11048/2020, 11075/2020, 11094/2020, 11282/2020, 11310/2020; Special Leave Petition (Civil) Diary No(s). 11309/2020, order dated 15th May, 2020.

Girish Soni & Anr.[65] held that lockdown implemented due to COVID-19 is only temporary in nature and thus, Section 108(B)(e) of the Transfer of Property Act would have no application in the present scenario.

* * *

[65] RC. REV. 447/2017, order dated 21st May, 2020.

Ashish Aggarwal (D-455/89)
Gurkamal Hora Arora (D-1617/95)
Amit Bhatnagar (D-1554/02)
Subodh K Pandey (D-3860/12)
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