

CLIENT UPDATE

March 2020

COVID - 19

FORCE MAJEURE ADVISORY

Doctrine of Force Majeure

Force Majeure is a common clause in contracts, which frees parties from carrying out their obligations when an extraordinary event or circumstance beyond their control takes place and prevents contractual performance.

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Advisories by the Government of India on COVID – 19 being Force Majeure

- Ministry of Finance

The Department of Expenditure, Procurement Policy Division, Ministry of Finance has issued an Office Memorandum in relation to the government’s ‘Manual for Procurement of Goods, 2017’; relevant portion of the Office Memorandum is extracted below:

*“2. A doubt has arisen if the disruption of the supply chains due to spread of corona virus in China or any other country will be covered in the Force Majeure Clause (FMC). **In this regard it is clarified that it should be considered as a case of natural calamity and FMC may be invoked, wherever considered appropriate, following the due procedure as above.**”*

[emphasis supplied]

- Ministry of New & Renewable Energy

The Ministry of New & Renewable Energy has issued an Office Memorandum on time extension in the scheduled commissioning dates of renewable energy projects, considering disruption of supply chains due to the spread of coronavirus and treating it as a force majeure event; relevant portion of the Office Memorandum is extracted below:

*“(3).(a) All Renewable Energy implementing agencies of the Ministry of New & Renewable Energy (MNRE) are hereby directed **to treat delay on account of disruption of the supply chains due to spread of coronavirus in China or any other country, as Force Majeure.**”* [emphasis supplied]

Contracts Frustrated or Void where Performance becomes Impossible

Section 56 of the Indian Contract Act provides that a contract to do an act which, after the contract is made, becomes impossible, becomes void when the act becomes impossible. Relevant portion of Section 56 is extracted below:

*“**Contract to do an act afterwards becoming impossible or unlawful.**—A contract to do an act which, after the contract is made, becomes impossible, or, by reason of some event which the promisor could not prevent, unlawful, becomes void when the act becomes impossible or unlawful.”*

Contracts Frustrated or Void where Performance becomes Impractical and Useless

The Supreme Court in *Energy Watchdog v. Central Electricity Regulator Commission and Anr.* observed:

*“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 Act. **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.**” [emphasis supplied]*

Is Financial Hardship Force Majeure?

In the case of *M/s Alopri Parshad & Sons Ltd. V. Union of India*, the Supreme Court had observed:

*“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.” [emphasis supplied]*

Conclusion

COVID – 19 may constitute a Force Majeure event for your business, entitling you to claim relief.