



The Institute of Chartered Accountants of India

(Set up by an Act of Parliament)
Alappuzha Branch of SIRC of ICAI

E-News
letter



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**APRIL
2020**



CA Abbas Mukundan. FCA.
Chairman



Dear Members & Students,

First of all Thank You All very much for electing me as the Chairman of Alappuzha Branch of SIRC for the year 2020-2021. I take this opportunity to thank my parents, my teachers, senior members & friends for lighting lamp in the paths I walked through.

All of you know, India and the rest of the world is engaged in a battle against the spread and damage caused due to COVID-19. Combating the coronavirus pandemic has created a war-like situation of complete lockdown, curfew and restrictions on movement of people and goods. Apart from the tragic human consequences, there is a complete standstill of business and economic activity resulting in uncertainty about the future of the global economy. Amongst all the gloomy and negative propaganda on the event, we should learn and practice to think positively and act accordingly to overcome fear and negative thoughts that can cause unhappiness. We need to focus on the good things, positive thoughts, spend time with positive-thinking people, learn to enjoy nature, be thankful and have gratitude and above all keep faith and hope. Positive thoughts de-stress the mind, help in having a positive outlook, improve mental health, thus leading to living a successful and happy life.

India's strengths, flexibility and adaptability have withstood many such challenges in the past. Ancient Indian leaders have encouraged us, as a human race, to adapt to new ideas, absorb shocks and face challenging circumstances with equanimity. Over the years, we have developed endurance and resilience to fight any eventuality. I am sure that we will bounce back quickly and emerge as a more powerful, united and happier Nation in the days to come.

Yes, this storm will also pass, humankind will survive, all of us will still be alive — we will build a different world.

I remind you all that ICAI is taking all efforts to keep the members engaged by providing online updations & online classes. I request all to make use of all such facilities and keep engaged, keep updated.

Jai hind.....Jai ICAI.



Appeal to contribute in “ICAI Covid-19 Relief Fund”.

The COVID-19 pandemic marks an unprecedented time in modern history that will require the best of humanity to overcome. Little would have we realised the unfolding of epidemic like this, which situation is yet unfolding, and have brought the economic momentum to a much lower trajectory. Situation like this would need support to collaborate with the government initiatives to scale up governmental efforts to help those in distress. At this moment, the affected people in India will need help to tide over the viral disease, and in this scenario, ICAI has decided to stand with our distressed fellow countrymen, and actively participate in the national effort to support them at this difficult time. Due to the ongoing lockdown, much needed on the ground of social distancing and therefore 'stay home' advisory from the government; some of our fellow countrymen will need extensive support from the government. Further, we need to contribute to the government initiatives to bolster necessary infrastructure and human ware to fight this epidemic.

To provide much-needed relief for the people affected by the viral disease and those who are in distress; ICAI appeals to all its Members and Students to donate generously for this noble cause.

Donations can be made through the ICAI Alleppey Branch Bank Account having the following details:

In case members wish to opt “Chief Ministers Disaster Relief Fund” please mention that in the intimation message.

Branch BANK Details

| | |
|---------------------------|--|
| Beneficiary Bank | - Axis Bank Alappuzha . |
| Beneficiary Name | - Alleppey Branch of SIRC of ICAI |
| S.B.Account number | - 911010034660887 |
| IFSC | - UTIB0000354. |



Managing Committee for the year 2020-2021

The new Managing Committee of our branch for the year 2020-2021 was installed on 27th Feb - 2020. The installation was done by the Central Council Member CA.Babu Abraham Kallivayalil in the presence of CA.Jomon K George, SIRC member. The installation ceremony was attended by all the members & students of the Branch. CA.Martin Joseph presented the action plan for the coming one year. The grand function was concluded by Musical Night & Dinner.

The New managing Committee

| | |
|------------------|----------------------|
| Chairman | : CA.Abbas Mukundan. |
| Vice Chairman | : CA.Rajaneesh.R |
| Secretary | : CA.Martin Joseph |
| Treasurer | : CA.John Mathew |
| Committee member | : CA.Indu.S.N |

Social Media Platform for professional updates.

In the COVID-19 circumstance & social distancing to prevent the COVID-19, use of social media as a medium for exchange of ideas & news is considered to be the only effective way. Hon: President has formed a “whats up group” with all Chairmen of branches and the President is communicating with branch Chairmen. This seems to be an effective communication. Adopting the same lines Alleppey branch also formed a “whatsapp group” with all members of the branch. All professional updates & news will be informed to the members using this method. Requesting all members to join the group. In addition to this several “Webminars” are conducted by our Institute for the benefit of our members. Requesting all members to use these modes for updating the knowledge.



Force Majeure – Frustrate or not?

-An analysis on how the legal term works during Covid-19.



CA.Devika.S. ACA.ACS
Chartered Accountant.

Force majeure clause won't apply to coronavirus death claims in life insurance policies

“The Economic Times”

Force Majeure takes centre stage during Covid-19

“The India Legal”

With lockdowns and restricted movements within and across countries, COVID-19, continues to unleash its impact on business and commerce in the country and worldwide. Today, with production units remaining vacant, considerable workforce connecting remotely, sales figures taking a plunge, the business goes through one of the toughest times since 2008. These disrupted operations demand the need to revisit contracts, their performance and obligations. This calls for the discussion, the term 'Force Majeure', its dimensions in the background of COVID-19.

Typically, mining contracts, contracts like supply agreements, contain a Force majeure clause to control the consequences in case of default in performance owing to certain circumstances or events. Because of the different interpretations of force majeure across legal systems, it is common for contracts to include specific definitions of force majeure, particularly at the international level.



An impact of Force majeure event may take the form of a notice from a customer that he does not require the goods or services, the corporate tenant refusing to pay rents, suppliers forcing delivery of goods or services though no/decrease in demand for the business's goods or services, delay and increased cost of delivery of goods or services to customers etc. So what is a Force Majeure clause?

Force Majeure is a French phrase meaning “a superior force”. A Force Majeure clause is a contract provision that allows a party to suspend or terminate the performance of its obligations when certain circumstances beyond their control arise. Such circumstances may render performance inadvisable, commercially impracticable, illegal, or impossible. The provision may state that the contract is temporarily suspended, or that it is terminated if the event of force majeure continues for a prescribed period of time.

The list of events to be covered under Force Majeure is a matter of negotiation between the parties.

A typical Force Majeure clause may be read as follows:

“Neither party shall be held liable or responsible to the other party nor be deemed to have defaulted under or breached this Agreement for failure or delay in fulfilling or performing any obligation under this Agreement when such failure or delay is caused by or results from causes beyond the reasonable control of the affected party, including but not limited to **fire, floods, embargoes, war, acts of war (whether war is declared or not), insurrections, riots, civil commotions, strikes, lockouts or other labor disturbances, acts of God or acts, omissions or delays in acting by any governmental authority**; provided, however, that the party so affected shall use reasonable commercial efforts to avoid or remove such causes of nonperformance, and shall continue performance hereunder with reasonable dispatch whenever such causes are removed. Either party shall provide the other party with prompt written notice of any delay or failure to perform that occurs by reason of force majeure. The parties shall mutually seek a resolution of the delay or the failure to perform as noted



So, for example, a flood occurred that shut down a port, the seller planning to ship its goods through that port would not be liable for late delivery of the goods.

As such, the following elements should be addressed in a force majeure clause:

- * Definition of force majeure events
- * What happens when an event occurs
- * Who can suspend performance; and
- * What happens if the force majeure event continues for more than a specified period of time

In countries like China, France, the concept of Force Majeure is codified under law. Whereas in countries like India, UK, the concept of Force Majeure is not codified but introduced in the contracts by way of an agreement between parties.

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.

Section 32 provides for 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.

Where an agreement does not provide for Force Majeure or one does not fall within the Force Majeure clause, the parties may have to look beyond the clause. For example:

“In the event either party is unable to perform its obligations under the terms of this Agreement because of acts of God or damage reasonably beyond its control, or other causes reasonably beyond its control, such party shall not be liable for damages to the other for any damages resulting from such failure to perform or otherwise from such causes”



The above clause does not provide a list of Force Majeure events instead uses a generic language throughout. In such a situation one may consider invoking Section 56. 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.

Section 56 of Indian Contract Act 1872, otherwise termed as the “Doctrine of Frustration” reads as follows: Agreement to do impossible act - An agreement to do an act impossible in itself is void.

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

i.e. At the time of entering into contract, the performance of an act was possible and lawful but afterwards such performance becomes impossible or unlawful due to some event which the promisor could not prevent. Then in such cases, the contract becomes void.

2. 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 promisee for any loss which such promisee sustains through the non-performance of the promise.”

i.e. Where a person promised to do something which he knew or with reasonable diligence, might have known that it was impossible or unlawful to do but which the promisee did not know, then such promisor must make compensation to such promisee for any loss which such promisee sustains through the non-performance of the promise.



Prior to the decision in *Taylor vs. Caldwell*, (1861-73) All ER Rep 24, the law in England was extremely rigid. A contract had to be performed, notwithstanding the fact that it had become impossible of performance, owing to some unforeseen event, after it was made, which was not the fault of either of the parties to the contract. This rigidity of the common law in which the absolute sanctity of contract was upheld was loosened somewhat by the decision in *Taylor vs. Caldwell* in which it was held that if some unforeseen event occurs during the performance of a contract which makes it impossible of performance, in the sense that the fundamental basis of the contract goes, it need not be further performed, as insisting upon such performance would be unjust.

The law in India has been laid down in the seminal decision of *Satyabrata Ghose v. Mugneeram Bangur & Co.*, 1954 SCR 310. The second paragraph of Section 56 has been adverted to, and it was stated that this is exhaustive of the law as it stands in India. It was held was 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.”

The word “impossible as mentioned in Section 56 doesn't mean literal impossibility to perform (like strikes, commercial hardships, etc.) but refers to those cases where a supervening event beyond the control of the parties (like the change of circumstances) destroys the very foundation upon which the contract rests. This would render the contract 'impracticable' to perform, and substantially 'useless' in view of object and purpose which the parties intended to achieve through the contract.



“In cases, therefore, where the court gathers as a matter of construction that the contract itself contained impliedly or expressly a term, according to which it would stand discharged on the happening of certain circumstances the dissolution on of the contract would take place under the terms of the contract itself and such cases would be outside the purview of section 56 altogether. Although in English law these cases are treated as cases of frustration, in India they would be dealt with under section 32 of the Indian Contract Act which deals with contingent contracts or similar other provisions contained in the Act.”

The law of frustration in England developed, as is well known, under the guise of reading implied terms into contracts. The court implies a term or exception and treats that as part of the contract. However, Indian Law treats the two subjects of study completely different u/s 32 and 56. Therefore, where a Court in India while interpreting the contract, is convinced about the existence of an implied (S.9) or express term in the contract, that the contract shall be discharged upon happening of certain event, the matter will be dealt u/s 32 and will be completely outside the purview of S.56.

“In the large majority of cases however the doctrine of frustration is applied not on the ground that the parties themselves agreed to an implied term which operated to release them from the performance of the contract. The relief is given by the court on the ground of subsequent impossibility when it finds that the whole purpose or basis of a contract was frustrated by the intrusion or occurrence of an unexpected event or change of circumstances which was beyond what was contemplated by the parties at the time when they entered into the agreement. Here there is no question of finding out an implied term agreed to by the parties embodying a provision for discharge, because the parties did not think about the matter at all nor could possibly have any intention regarding it. When such an event or change of (a) circumstance occurs which is so fundamental as to be regarded by law as striking at the root of the contract as a whole, it is the court which can pronounce the contract to be frustrated and at an end. The court undoubtedly has to examine the contract and the circumstances under which it was made”



The relief is given by the courts on the ground of supervening impossibility or illegality when it finds that the whole purpose of the contract was frustrated by the intrusion or occurrence of an unexpected event which was beyond what was contemplated by the parties at the time of entering into the contract. When such an event occurs, which is so fundamental as to be regarded by law as striking at the root of the contract as a whole, then it is the court which pronounce the contract to be frustrated at the end.

Thus the Court concluded that a contract is not frustrated merely because the circumstances in which it was made are altered but the occurrence of an event which strikes at the root of the contract causing impossibility/impracticability of performance. 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.

Force Majeure – what next?

While deciding on a contract, it is important to comprehend the nature of the clause, the type of events covered, whether the terms could be extended to cover impact of COVID-19, if not whether relief can be taken under Doctrine of Frustration. Force Majeure event generally includes Acts of God, hence if the clause contains the term 'Acts of God' it could be extended to cover epidemic or pandemic. States like Haryana, Bihar, Karnataka have already declared COVID 19 as epidemic. The Government of India has issued a clarification declaring COVID 19 as a “notified disaster”. Whether the ability to perform obligations under a contract on account of COVID 19 be covered as Force Majeure event would be subject to argument.

The following points are to be noted in the review/drafting of commercial contracts.

1. Re-examine the key contracts as to whether these contain a Force majeure clause, if so, the nature of events included i.e. determine if it is a general clause or a specific clause.
2. Assess the parties' rights and obligations, including with respect to termination and dispute resolution
3. Comply the procedure for notifying the other party
4. Understand the impact of COVID-19 on the performance obligations
5. Check for any alternative method of performance
6. In case of non-performance of the obligation, ensure proper evidences are in place to enforce the Force majeure event



In the case of *Dhanrajamal Gobindram vs. Shamji Kalidas & Co.* AIR 1961 SC 1285, the Supreme Court observed that force majeure as a term is not simply the French adaptation of vis major. The sum and substance of this term, in the opinion of the court, is of an extensive nature.

The onus of proving that the specifications of the contract would have been carried out was it not for the COVID-19 pandemic would lie on the party taking its plea (*Classic Maritime v. Limburgan Makmur SDN BHD and Another*, [2019] EWA Civ. 1102).

In the case of *Satyabrata Ghose v. Mugneeram Bangur & Co.*, 1954 SCR 310, the court pointed out that the cases where the contract would stand suspended on the “happening of certain circumstances”, expressly or impliedly mentioned in the contract, would be independent of the ambit of section 56 of the act.

The court further, in the case of *Energy Watchdog vs. CERC* (2017) 14 SCC 80 while referring to the above judgment clarified that cases of such nature will be dealt under the arrangements of Section 32. The force majeure events that have been left out of the contract deliberately cannot be relied upon at a later stage. It was also held in this case that a force majeure clause will lose its pertinence if there exists an alternative method of performance of conditions, as laid down in the contract.

In the case of *Tsakiroglou & Co. Ltd. v Noble Thorl, GmbH*, 1961 (2) All ER 179 it was noted that the fact that alternative route was longer than the original one, doesn't discharge the party from his obligations arising under the contract.

Going forward, while drafting contracts, due care has to be taken to ensure the Force Majeure clause is exhaustive and the language used does not call for a dispute concerning its scope. Counterparties may also attempt to invoke other contractual clauses like price adjustment clauses, material adverse change (MAC) clauses, limitation or exclusion clauses, to limit or exclude liability for non-performance. The ability to invoke such other grounds will depend on the wording of the relevant clause, and how the clause is construed by courts.



Conclusion

A force majeure clause cannot be implied under Indian law. It must be expressly provided for under the contract and protection afforded will depend on the language of the clause. In the event of a dispute as to the scope of the clause, the courts are likely to apply the usual principles of contractual interpretation.

In the absence of a force majeure clause, parties to a contract are left to the mercy of the narrow common contract law doctrines of "impracticability" and "frustration of purpose," which rarely result in excuse of performance.

What awaits would be, a time that demands clear understanding of language of the contract, a strong knowledge of principles of contractual interpretation, an ability to apprehend the scope of the clause, an informed decision making in the best interests and thereby conclude whether to frustrate or not.

CA. Devika S, ACA; ACS.
Chartered Accountant



COMPLIANCE RELAXATIONS AND RELIEFS ON ACCOUNT OF COVID-19



CA Shijoy KG, FCA, DISA
Chartered Accountant.

The nation is going through an unprecedented crisis on account of Covid-19 outbreak. As a result Government was forced to announce a country wide lockdown which has now extended till 3rd May, 2020. Owing to the pandemic and resultant lockdown, social life of people got distorted eventually affecting the businesses and economy as a whole.

In order to reduce the impact of crisis over businesses community, Government has announced various relaxations on compliances along with financial support packages. This article is intended to throw light on significant changes brought out in Income Tax and GST.

Income Tax

(a) Extension of Due Dates

- (i) Last date of filing of original as well as revised income tax returns for FY 2018-19 (AY 2019-20) has been extended from 31st March 2020 to 30th June, 2020.
- (ii) Last date for linking Aadhar and PAN has been extended to 30th June, 2020.
- (iii) Last date for making investments under Chapter VIA (LIC, PPF, mediclaim, donations etc) to claim as deductions in returns for FY 2019-20 has been extended till 30th June, 2020. Further, date for making investment/construction/purchase for claiming deduction against capital gains for FY 2019-20 has extended till 30th June, 2020.
- (iv) The date for issuing any notice or order by various authorities has been extended to 30th June, 2020.
- (v) Last date for making declaration and payment under Vivad se Vishwas Scheme has been extended to 30th June, 2020.

(b) Reliefs

- (i) Interest rate for non-payment of income tax (incl. advance tax, TDS, TCS) within due date has been reduced to 9%. Further no penalty/prosecution shall be initiated against the non-payments.
- (ii) Interest under sections 234A/B/C has not been waived in respect of income tax returns for FY 2018-19, instead rate has been reduced from 1% to 0.75% per month from 20th March, 2020.
- (iii) The validity of TDS/TCS Nil/Lower Rate Certificate has been extended till 30th June, 2020 for those assesses to who such certificates were issued in FY 2019-20.

(c) Other Announcements

- (I) “Prime Minister's Citizen Assistance and Relief in Emergency Situations Fund (PM CARES FUND)” has been set up to provide relief on account of Covid-19. The donations made to PM CARES FUND shall be eligible for 100% deduction under section 80G of the Income Tax Act and limit on deduction (presently 10% of Gross Total Income) will not be applicable to such donations.
- (ii) Govt. has decided to release income tax refunds up to Rs 5 Lakhs with immediate effect.

Goods and Service Tax

(a) Due dates for filing returns

- (i) The due dates for filing GSTR 3B has not been extended however relaxation has been granted for interest and late fees for late filings for the months of February, March and April 2020.
 - For tax payers having aggregate turnover up to Rs 5 Crores in preceding financial year, there will not be any interest, provided returns are filed on or before prescribed dates (various dates in last week of June, 2020).
 - For tax payers having aggregate turnover of Rs 5 Crores or more in preceding financial year, interest will be charged at NIL rate for first 15 days and thereafter at 9% instead of 18%, provided returns are filed on or before 24th June, 2020.

- (ii) In case of GSTR 1, there is no extension in due dates though returns for the months March, April, May 2020 and quarterly return for January – March 2020 can be filed without any late fees till 30th June 2020.
- (iii) In case of composition tax payers, due date for filing quarterly return (GST CMP 08) for January – March 2020 has been extended to 07th July, 2020 and yearly return (GSTR 4) for FY 2019-20 till 15th July, 2020.
- (iv) The due date for filing GST annual returns for FY 2018-19 has been extended up to 30th June, 2020.

(b) Relaxations

- (i) Tax payers can opt for composition scheme for FY 2020-21 on or before 30th June, 2020.
- (ii) The validity of e-way bills expiring between 20th March 2020 to 15th April 2020 is extended to 30th April, 2020.
- (iii) The restrictions on availment of input tax credit (ITC) not appearing in GSTR 2A has been waived off for the period February 2020 to August 2020. Hence, tax payer can claim input tax credit even if same is not appearing in GSTR 2A, provided all such ITC claimed shall be appearing in GSTR 2A by September 2020. Otherwise, excess ITC claimed shall be reversed and paid along with interest while making the return for September, 2020.

***Disclaimer** - The article is intended to provide a general guidance to the subject matter and shall not be relied as a basis for making business decisions. Professional advice shall be sought before arriving at decisions based on the information given in the article. E&OE*

About the author

CA Shijoy KG, FCA, DISA is a practicing chartered accountant with more than 10 years of expertise in audit and taxation. He can be reached at shijoy.ca@gmail.com



PHOTO GALLERY

INSTALLATION CEREMONY





INSTALLATION CEREMONY





PHOTO GALLERY

COVID RELIF ACTIVITIES



Vice Chairman CA. Rajaneesh R Handing Over Sanitizers To Alleppey North Police Officers



CA Rajaneesh R distributing vegetables kits to people near to institute as a support during corona days



PHOTO GALLERY

PRANAAM

Celebrating 40 years of leadership
with excellence

