**COVID-19: IS IT FORCE MAJEURE?**

COVID-19 that has posed a serious threat to human life across the globe has now been declared pandemic by World Health Organisation. The aggravating concern surrounding this epidemic has not only engulfed the human life but the commerce, economy, industry and many other sectors too have come within its fold. There have been massive losses to world GDP and the hardest hit amongst all this is the commercial contracts sector that has been plagued by raging concerns with respect to unpredictability in performance of contracts.

The scenario can be understood from various perspectives but the governing law too becomes handicapped at a time when execution itself becomes unpredictable coupled with the paralysis of enforcement machinery. This Article is an attempt to throw light on contracts governed by the Indian Law. Though ‘Force Majeure’ and ‘Act of God’ clauses are standard clauses that are present in most contracts but the terms of contract and legal formalities in order to invoke force majeure clause must be undertaken cautiously.

The Force Majeure clause is a provision in Indian Contract Act, 1872 that exempts a party from performing their contractual obligations which have become impossible or impracticable due to any event. This clause is usually invoked in order to cover losses and shield the parties in case of natural calamities, situations like war or change of government policies. This clause of force majeure and Section 32 and Section 56 of the Indian Contracts Act can be invoked depending on the construction and clauses of the contract.

 Section 32 deals with “contingent contracts”, in which the performance of the contractual obligations is contingent on whether the event happens or not and in case the event becomes impossible, the contract becomes void. Section 32 can be resorted to cases where the specific clauses have been carved out in the contract but in cases which are of general nature and nothing has been specified in the contract the Doctrine of Frustration enshrined under Section 56 of the Indian Contracts Act shall come into play.

The landmark decision that explains the ambit of Section 56 of the Indian Contracts Act is Satyabrata Ghose v. Mugneeram Bangur & Co., 1954 SCR 310. It was held that the contract shall be deemed to be frustrated if its performance is impracticable or useless from point of view of object and purpose of parties. In worst case scenario when any untoward event totally upsets the very foundation upon which parties entered their agreement too invokes Doctrine of Frustration.

The contract that demands Section 56 be invoked, requires that a notice must be sent in a time bound manner so proceedings can effectively materialise into concrete results. Reasonable efforts to avoid or mitigate the impossible event must be laid out in great detail by the affected party who is unable to perform their part of contract and wish to invoke the force majeure clause.

The situation that the world at large is facing today regarding the epidemic of Coronavirus is something that is beyond the control of ordinary mortals and has been unforeseen as well as unavoidable, hence fulfilling the criteria of falling within the ambit of force majeure. The main intention behind invoking this clause as per various legal decisions is to save performing party from consequences of something over which they have no control. In order to combat the threat of COVID-19, the Central and State Governments in India invoked The Epidemic Diseases Act 1897. As a part of special measures under this Act, the Government of India has issued strict orders dated 24 March 2020 prescribing lockdown for COVID-19 epidemic in the country according to which States have been directed to ensure there is a blanket lockdown except for essential services. This has resulted into severe restrictions in commercial activity in the country. This situation is extraordinary and can be termed as unforeseen and unprecedented circumstances. The impact on third parties in cases of delay and non completion too must be analysed in great detail for the sake of all stakeholders involved. There are peculiar cases where general terms of the contract do not clearly specify the course of contract in case of untoward event. In such cases, Doctrine of Frustration can be invoked and where time is of the essence of contract, complete economy lockdown will result into contract becoming voidable.

Thus, in lieu of the untoward circumstances in case you need any legal assistance for your contracts governed under Indian law, you can contact our expert team of lawyers at info@knowledgentia.com.