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# Legal Implications of COVID-19 as a Force Majeure Event or Frustration of Contract

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## ABSTRACT

*The COVID-19 pandemic has disrupted countless contractual arrangements worldwide, raising questions about its legal implications. Two key legal doctrines that have been invoked in response to the pandemic are force majeure and frustration of contract. Force majeure refers to a clause in a contract that excuses performance in the event of unforeseen and uncontrollable circumstances, while frustration of contract is a common law doctrine that applies when unforeseen events make contractual performance impossible or radically different from what was originally contemplated. In this abstract, we will explore whether COVID-19 can be considered a force majeure event or a frustrating event, with a focus on the legal implications in contractual relationships.*

*The argument for COVID-19 being a force majeure event rests on the premise that the pandemic is an unforeseen and uncontrollable event that renders contractual performance impossible or impracticable. Many force majeure clauses specifically list epidemics, pandemics, or acts of God as triggering events, and parties may seek to rely on these clauses to excuse non-performance or delay of contractual obligations due to the impacts of the pandemic. However, whether COVID-19 constitutes a force majeure event depends on the specific language and interpretation of the force majeure clause in each contract, as well as the applicable law and jurisdiction. On the other hand, frustration of contract may also be invoked in situations where COVID-19 has made performance of a contract impossible or radically different from what was originally contemplated. Frustration of contract does not require a force majeure clause to be present in the contract, as it is a common law doctrine that may apply even in the absence of an express clause. However, frustration of contract is generally applied narrowly and is difficult to establish, as the bar for proving frustration is high.*

*In conclusion, whether COVID-19 constitutes a force majeure event or results in frustration of contract will depend on the specific facts and circumstances of each case, including the language of the contract, the applicable law and jurisdiction, and the impact of the pandemic on contractual performance. Legal advice should be sought to properly assess the implications of COVID-19 on contractual relationships and determine the available legal remedies.*

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*Keywords: Force Majeure, Frustration of Contract.*

## **I. INTRODUCTION**

The COVID-19 pandemic and associated lockdowns have had far-reaching effects on the global economy. Many small businesses, such as local restaurants and other retailers, have been forced to close due to loss of profits and income. This loss of income reduces the ability of tenants to use their leasehold effectively and profitably. As a result, several lawsuits seeking rent relief have been filed because of such hardships. However, the Indian courts have not granted any relief because of the limited application of the frustration and force majeure doctrines under the Transfer of Property Act 1882 (TPA).

A rigorous approach to the above teachings has hitherto been practiced under common law and the results have been satisfactory. However, the COVID-19 pandemic and lockdowns have undoubtedly made rental agreements between landlords and tenants unpredictably complex, exposing deficiencies in applicable laws. The main question is whether frustration and force majeure under Section 108(B)(e) of the TPA apply to breach of lease. This provision, which includes rights and obligations of the lessee, provides for "substantial" and "permanent" destruction of the property to make it unusable for the lessee to make a claim. This left tenants paying the same rent as under normal circumstances, in the midst of a global recession. This blog post argues for a better rental model to handle emergencies and pandemic situations like this in the future. COVID-19 has been declared a pandemic by the World Health Organization and the Ministry of Health and Family Welfare has announced social distancing for large gatherings and travel restrictions to prevent the spread of COVID-19. Issued recommendations. See office memo O.M., February 19, 2020. No. 18/4/2020-PPD Government of India states that supply chain disruptions due to the spread of coronavirus in China or other countries should be considered as cases of natural disasters and "force majeure"<sup>2</sup>. Clarified Clause" may apply in appropriate cases in accordance with due process.

In view of the current situation where COVID-19 has a global impact, and is resulting in a continuous sharp decline in the market, it is important to understand the relevance of force majeure clauses, and the effect thereof.

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<sup>2</sup> *Covid-19 pandemic: Whether a force majeure event? A legal analysis* (2020) SCC Blog. Available at: <https://www.sconline.com/blog/post/2020/05/23/covid-19-pandemic-whether-a-force-majeure-event-a-legal-analysis/> (Accessed: May 7, 2023).

## II. MEANING OF FORCE MAJEURE

The term is of French origin and means "greater power". The Collins Dictionary defines "force majeure" as "an irresistible force or coercion that prevents a party from performing part of a contract".

The term is defined in the Cambridge Dictionary as follows: In the Merriam Webster Dictionary, the term was defined as "superior or irresistible force" and "an event or effect that cannot be reasonably foreseen or controlled".

In light of COVID-19, the question here might be whether a COVID-19 shutdown would be considered a force majeure event for all contracts that give parties the leeway to assert impossibility of performance<sup>3</sup>. Not. Wouldn't such failure to meet the terms of the contract be considered a "failure by either party" or a "breach of contract"? As a general rule, an event is considered a force majeure event if the following conditions are met:

- **An unexpected intervening event occurred:** The event should be one which is beyond the control of either of the parties to the agreement, similar to an Act of God;
- **The parties to the agreement assumed such an event would not occur:** A party's non-performance will not be excused where the event preventing performance was expected or was a foreseeable risk at the time of the execution of the agreement; and
- **The unexpected event made contractual performance impossible or impracticable:** For instance, can the issuer of debentures say that there is no default if the issuer is unable to redeem the debentures? Whether an event has made contractual performance impossible or impracticable has to be determined on a case-to-case basis. It is to be analyzed whether the problem is so severe so as to deeply affect the party, and thereby creating an impossibility of performance. This has to be, however, relative to the counterparty so as to create an impossibility of performance.
- **The parties have taken all such measures to perform the obligations under the agreement or at least to mitigate the damage:** It is required that a party seeking to invoke the force majeure clause should follow the requirements set forth in the agreement, i.e. to provide notice to the other party as soon as it became aware of the

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<sup>3</sup> A covid-19 quandary: Does a force majeure clause displace the frustration doctrine? (2021) CLS Blue Sky Blog. Available at: <https://clsbluesky.law.columbia.edu/2021/04/05/a-covid-19-quandary-does-a-force-majeure-clause-displace-the-frustration-doctrine/> (Accessed: May 7, 2023).

force majeure event, and should concretely demonstrate how the said situation has directly impacted the performance of obligations under the agreement.

### **III. APPLICABILITY OF FORCE MAJEURE IN TENANCY CONTRACTS IN INDIA**

Applying the force majeure and frustration principles to rental disputes is very different from other contracts. In the first case, the general concept of frustration and force majeure under section 56 of the Indian Contracts Act, 1872 (“ICA”) does not apply<sup>4</sup>. Article 56 VVG provides that a contract shall be declared void if it is impossible or illegal to perform the contract after it has been concluded. The non-applicability of this general concept is a permanent law noted in various cases such as: B. Saha Ratansi opposed the proposed Kumbhar Sons Hotel by Khimji and Sons. This is because such leases are subject to special legislation. H. HMG takes precedence over the general law, VVG, and therefore takes precedence. More importantly, as noted in Dhruv Dev Chand v. Harmohinder Singh, “(hereinafter “Dhruv Dev”) Section 56 of the ICA does not apply where the assignment is consummated. . A completed transfer is a situation in which a transfer has already taken place. Dhruv Dev's court therefore ruled that the ICA's frustration principle does not apply as rent payments are normally made after the transfer of ownership and only monthly payments are required.

Accordingly, as noted above, certain provisions under Section 108(B)(e) of the TPA apply to frustration and force majeure events under the Rental Agreement. This requires the property to be "substantially" and "permanently" damaged in order to cause a tenant complaint. However, the parties may of course choose to specifically include force majeure clauses in their contracts. This may include other events such as lockdowns

### **IV. GOVERNMENT NOTIFICATION FOR CATEGORIZING FORCE MAJEURE EVENTS**

It is pertinent to note that the Department of Expenditure, Department of Public Procurement Policy, The Ministry of Finance issued an office memorandum dated February 19, 2020 ("Office Memorandum") where clarification was provided regarding the breach supply chains due to the spread of the coronavirus in China is understood as a force majeure event as defined in paragraph 9.7.7. "Guidelines for the purchase of goods, 2017". He has the same they were issued in connection with public procurement contracts for goods that he concluded Government owned/funded organizations and does not apply to contracts between them private parties. The office's memorandum clarified that the spread of the coronavirus is expected to

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<sup>4</sup> Consultants, V.K. (2020) *Vinod Kothari Consultants*. Vinod Kothari Consultants [https://vinodkothari.com/wp-content/uploads/2017/06/VK\\_logo-4-copy.png](https://vinodkothari.com/wp-content/uploads/2017/06/VK_logo-4-copy.png). Available at: <https://vinodkothari.com/2020/03/covid-19-and-the-shut-down-the-impact-of-force-majeure/> (Accessed: May 7, 2023).

occur

Considered a natural disaster. Hence the force majeure clause contained in the Public Purchase contracts may be exercised whenever deemed appropriate in accordance with the procedure set out in paragraph 9.7.7 of the "Goods Procurement Manual, 2017"

## **V. CONCLUSION**

Above all, it is undeniable that the colossal COVID-19 has effectively halted economic activity and disrupted production, supply and distribution chains. However, it is very difficult, if not impossible. Disruption due to the unprecedented outbreak of the COVID-19 pandemic could fundamentally and irrevocably disrupt the transactions envisioned in the contract, especially given the temporary period of such disruption, or even the full possibility of reopening. Prove beyond reasonable doubt that it has been disabled as much as possible in the "pre-corona" era. The mere inconvenience, difficulty, interruption or delay in performance of obligations under the contract due to the COVID-19 pandemic and its consequent restrictions shall not be grounds for considering them force majeure dealing with such parameters. Criteria for application of force majeure. However, since courts assess the application of the concept of force majeure in the light of the facts and circumstances of each case, either by resorting to the principle of impartiality or by adopting a more technical approach, the parties: We will carefully comply with the terms and conditions contained in our agreements and our contractual rights and obligations arising therefrom.

As prima facie evidence, it can be argued that COVID 19 easily passes the test of unpredictability and fundamental changes affecting the basis of contracts, but from the above it is possible to invoke force majeure clauses with respect to COVID can be concluded. -19, should not be uniformly allowed per contract. Much depends on the nature of the contract, the obligations of the parties involved, when the contract was entered into, how their obligations were fulfilled before the pandemic was declared, and the steps taken to mitigate the damage. It must be shown that the cause and purpose have been frustrated by the party's inability to perform and, in view of this, the party is released from performing its obligations under the contract. The Court will also consider whether time was related to contractual compliance in light of Supreme Court of India Decision in the Satyabrata Ghose case (above).

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