

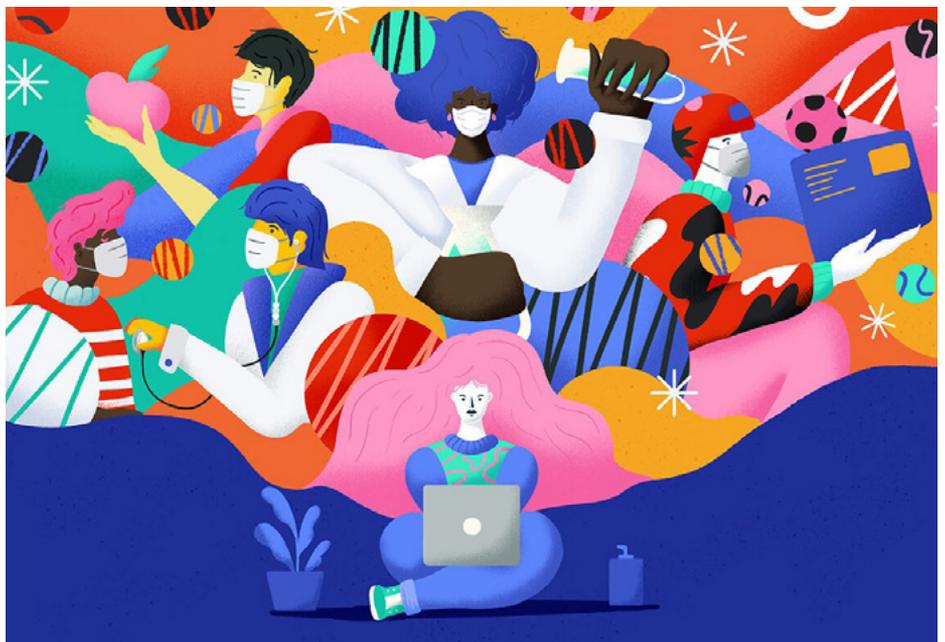
COVID-19 and Contractual Issues

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India's economic activity has come at a halt since last few months due to unprecedented occurrence of Covid-19 pandemic. It has become difficult on the part of various parties to honour their existing contracts, oral or written, relating to sale and purchase of goods or availing and rendering of the services during these hard times. The Disaster Management Act, 2015 ("DMA") and The Epidemic Diseases Act, 1897, as

applicable to the present situation, do not contain any specific provisions for suspension of obligations or waiver of any liability under the existing contract between the parties. However, DMA deals with the rehabilitation and reconstruction assistance to the victims of any disaster.

The situations with respect to contractual breaches caused due to Covid-19 pandemic or similar pandemic has never been dealt by the Indian



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judiciary prior to occurrence of Covid-19. However, there are several legal precedents on ‘force majeure’ conditions as delivered by the Indian judiciary. Force majeure is purely contractual and refers to the circumstance(s) that are beyond the reasonable control of the parties, which restrains either party to fulfill its respective obligation(s) under the written contract. At the time of drafting of the contracts, parties generally negotiate and specify the force majeure conditions. Any non-performance on the part of either party, during force majeure period, shall remain suspended.

The Indian Contract Act, 1872 (“ICA”), does not specifically deal with force majeure except to the extent as mentioned in section 32 (enforcement of contracts contingent on an event happening) and section 56 (agreement to do an impossible act) of ICA. Also, there is no concept of suspension of obligations of the parties in relation to the contract under ICA.

In the event, the present pandemic / lockdown is not covered under the

force majeure conditions of a written contract or there is no written contract between the parties, the applicability of the aforesaid section(s) of ICA may be analyzed. The aforesaid sections apply to such circumstance(s) when the performance of any contract has become impossible. In such case, the contract shall be deemed to be void as per ICA. However, the same does not restrict the aggrieved party to claim indemnification from the non-performing party for the loss suffered by it.

The Hon’ble Supreme Court’s judgments in *Satyabrata Ghose Vs. Mugneeram Bangur & Co.* [AIR 1954 SC 44] and *The Naihati Jute Mills Ltd. Vs. Khyaliram Jagannath* [AIR 1968 SC 522] and *Energy Watchdog and Ors. Vs. Central Electricity Regulatory Commission and Ors.* [2017(6) SCJ 398] are most referred judgments in relation to ‘impossibility to perform the contract’ or ‘force majeure’. The applicability of such legal precedents in relation to contractual breach(es) on the part of non-performing party due to lockdown under Covid-19 pandemic shall be tested on a case to case basis and is a subjective issue. 



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