

## 'FORCE MAJEURE' CLAUSE AND ITS IMPACT ON INDUSTRY

The pandemic COVID-19 and the 21-day lockdown announced by the PM to contain spread of the disease has led to disruption in economic activity. Several businesses, therefore, are seeking to invoke the 'Force Majeure' clause in order to mitigate losses arising out of non-fulfillment of their contractual obligations.

### What is a 'Force Majeure' clause?

A force majeure clause is a contractual provision that protects a party from liability for its failure to perform a contractual obligation owing to force majeure events such as natural disasters, war or war-like situations, labour unrest or strikes, epidemics, pandemics, etc. which are beyond the control of the performing party.

### Industry fallout

The Ministry of Finance had in February 2020 declared COVID-19 a force majeure event in India. Industry players ranging from shipping ports and LNG importers to real estate enterprises and new and renewable energy manufacturers are, therefore, endeavoring to take shelter in the provisions of the force majeure clause.

The shipping ministry has allowed ports to use COVID-19 to declare force majeure clause. Many private ports have invoked the clause as the lockdown will prevent them from dispatching the cargo and fulfilling related arrangements in time. A few gas importers have issued force majeure notices to their suppliers seeking delayed delivery of cargoes.

The Ministry of New and Renewable Energy has allowed delay in scheduled commissioning of renewable energy projects as the disruption of supply chains will be treated as a force majeure event. Other sectors such as real estate also are demanding COVID-19 be considered a force majeure event as home loan buyers and developers may not be able to pay their loan installments in time and need extension.

However, since a force majeure clause is a part of a contractual agreement, it has to be explicitly mentioned in the same. If the contract does not include a force majeure clause, the performing party can claim relief under the doctrine of frustration of contract by establishing that the performance of the contract was impossible due to the 'Act of God' and was beyond his control.

### Solutions

As a solution, the contract may be put on hold through mutual consultation to avoid litigation until the force majeure event (COVID-19 in our case) is resolved and may be terminated if the COVID-19 outbreak is prolonged.

As such, the industry is eagerly anticipating some relief measures from the government on the lines of those announced in the recent past in terms of prolonging the income tax and GST return filing dates, and reduction in interest rates for late filing of TDS, in order to meet their contractual agreements and recouping the losses arising out of this force majeure event.

## NOTIFICATIONS

### RBI

- [Priority Sector Lending](#)
- [Large Exposures Framework](#)
- [Settlement system under Asian Clearing Union \(ACU\) Mechanism](#)

- [Finance Minister announces relief package under Pradhan Mantri Garib Kalyan Yojana](#)
- [Helpdesk operationalized by DGFT for COVID-19 related Export or Import issue](#)
- [DPIIT sets up a Control Room](#)

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