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TRANSACTIONS AND CONTRACTS IN THE AFTERMATH OF COVID-19

Introduction

- 1 The social, cultural and political scenarios strongly shape the way contracts are formed between parties or the nature of contracts that are entered into.
- 2 Ever since the emergence of the novel corona virus, contractual relationships have undergone indefinite changes in view of the uncertainty that now wanders around the world.
- 3 Covid-19 has impacted various industries including (not exclusively) banking and finance sector, food and beverage industry, travel and tourism industry, and also micro, medium and small enterprises.
- 4 On the other hand, it has also been a profitable phase for many sectors such as medicine and pharmacy industry, e-commerce industry, electronics and technology industry, etc.
- 5 Thus, the huge impact is evident of the fact that the functioning of businesses has been substantially transformed and consequentially, contractual relationships have also advanced to a great extent.
- 6 The pandemic has posed major setbacks in both national as well as international trade and contracts. In view of the same it is urgent for business to evaluate their business cycle and thoughtfully consider their contractual structures.

Forces shaping the transactional landscape

- 1 The contracts that were entered into before the lockdown in India, i.e, before March, 2020 went through series of disputes especially in relation to interpretation of the clauses of the contract.
- a **Misuse of the exemptions given under the Pandemic by Parties to avoid performance of the contract**
- 2 The terms of the contract mostly became unfavourable for either or both the parties by reason of impossibility to perform during the subsisting lockdown.
- 3 Contracts which included obligations in relation to specific performance, travelling, construction, supply of non-essential commodities, use of labour and staff almost came to a halt.

4. Courts came down heavily upon parties that showed reluctance under the garb and excuse of the pandemic. In the case of *Standard Retail Pvt. Ltd. vs. G.S. Global Corp, 2020 SCC OnLine Bom 704*, the Court compelled performance of the contractual terms on the ground that the goods in question came under the definition of essential commodities and transport of essential goods and services was not restricted during the lockdown. Thus, the interpretation of contractual disputes has primarily been based on the facts and circumstances of each case.

b. Smart-contracts

5. In the aftermath of the pandemic, digital and artificial intelligence have been shaping contracts to a wide extent. In this context, the advent of “smart contracts” may be understood. Smart contracts are ideally contracts that are digitized through automated conditions by use of blockchain technologies which are followed by self-execution of contracts on the happening of such predefined conditions. In order to access the use of smart contracts, businesses must accept and implement automation solutions and contract analysis tools.
6. The origin of smart contracts dates back to 1990s when Nick Szabo first introduced the idea of digitization of contracts. It gained popularity much later and has come to the fore again since the advent of bitcoins and also for disrupting specific markets including vote management, supply chains, etc.
7. For instance, smart contracts could be used to automate insurance-claim pay-outs, student registrations at universities, labour law or employer-employee disputes, real estate contracts, etc.
8. Since the pandemic, business have self-analysed the recent variation in performance and since industries at large have suffered through the crisis, industries have taken steps specific to the nature of the contract to mitigate the losses and avoid impossibility of performance that may arise by reason of unforeseeable circumstances.



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Contractual disputes during the pandemic

1. During the pandemic and lockdown primarily, contracts were breached under the lens of force majeure. The other concerns that arose were frustration of contracts and contractual gaps.
2. Economic privation was an important reason for disputes in relation to frustration of contracts. In *Naihati Jute Mills Ltd. vs. Khyaliram Jagannath*, AIR 1968 SC 552 the Court held that a contract becoming economically burdensome does not absolve a party of its obligations. While dealing with arguments of force majeure events vis-a-vis the pandemic, the courts have held that mere inconvenience, rise in prices, commercial hardships or economic inability would not render a contract viable to be terminated.
3. In *Pravasi Legal Cell vs. Union of India* 2020 SCC OnLine SC 799, the airlines were directed to refund the amount for flights booked for the period of the lockdown. The defence of the airlines that by reason of covid, the credit shell for such tickets was being increased for one year instead of refunds was not accepted by the Supreme Court as it was found to be contrary to the contract between the passengers and airlines which is governed by the Civil Aviation Requirements (CAR).
4. Courts have also taken a concerned approach to the grievances of the employees who were denied payment during the period of lockdown. In *Rashtriya Shramik Aghadi vs. State of Maharashtra*, 2020 SCC OnLine Bom 634, the court directed payment to workers who were “willing” to work at the temple although the temple was closed and the contract was based on the no-work-no-wage principle.
5. Insurance contracts also came before courts for interpretation. In *Sushilaben Indravadan Gandhi vs. The New India Assurance Company* (2021) 7 SCC 151, the court held mere loss of business by reason of the shops being closed could not be brought within the purview of the insurance contract if the contract does not contemplate such loss.
6. Covid-19 also disrupted supply chains that led to an unexpected increase in the prices which also made contracts impossible.

7. The contractual disputes amongst businesses and breach thereupon also add to conclusions about economic cost of the pandemic.
8. Specific contracts such as insurance contracts, healthcare contracts, educational contracts, have seen a huge shift in their execution and implementation. Contracts of such nature must be tested through practise to understand the conditions that may go wrong and hence may need to be worked upon.

Conclusion

1. Considering the huge set-back, it can be assumed that contracts entered into after the pandemic will explicitly deal with force majeure clauses and make rational negotiations examining the factor of foreseeability that pass the muster of ambiguity posed by the pandemic. the
2. Businesses must be sure of the specific obligations before entering into contracts in order to be able to make informed decisions in case of losses incurred by reason of failure of contracts.
3. Contract management procedures may be followed for valid and executable exit mechanisms such that businesses do not have to bear losses in the event the other party fails to abide by the terms.
4. Government must take steps to address the issues that arose including in relation to specific performance, insurance contracts, employment losses, etc.
5. For instance, other countries including USA and Singapore proposed specific legislations that offer temporary and targeted protection in relation to disputes arising by reason of the pandemic and also provides for modes of compensation against the same.
6. In the UK, despite the pandemic, corporates have been able to manage contractual relationships and take a conciliatory approach by heeding to government advice to avoid litigation.
7. Such measures essentially reduce contractual discrepancies in interpretation of transactions and contracts and also address the issues that have arisen.