CONTRACTS UNDER CRISIS: A STUDY OF FORCE MAJEURE AND FRUSTRATION IN INDIAN JURISPRUDENCE

Palak Agrawal, BA LLB, Marathwada Mitramandal Shankarrao Chavan College, Pune.

ABSTRACT

This article explores the legal doctrine of Force Majeure within the framework of Indian Contract law, especially in the wake of the COVID-19 pandemic. It evaluates statutory provisions, distinguishes force majeure from frustration of contract, and critically analyses significant judicial pronouncements including Airport Authority of India case. This piece concludes by suggesting best practices for drafting effective force majeure clauses to ensure contractual resilience.

1. Introduction

In the realm of commercial contracts, parties often prepare for foreseeable risks, but what happens when an unforeseen event disrupts the very performance of a contract? This is where the doctrine of *force majeure* steps in. Recognized across legal systems and now gaining prominence in India, particularly post COVID-19. Force Majeure clauses have been essential tools in contract drafting. Their invocation however, depends on judicial interpretation and statutory frameworks, making it critical for legal professionals to understand their nuances, limitations and real-world applications.

2. What is *Force majeure*?

The term *force majeure* is derived from French, meaning "superior force". It refers to a contractual clause that exempts parties from fulfilling their contractual obligations when extraordinary events and circumstances beyond their control prevent performance.

Common examples include natural calamities, wars, terrorism, government actions or pandemic. However, to invoke the clause, the affected party must demonstrate efforts to mitigate the impact of the event. The primary purpose of the *force majeure* clause in contracts is to provide a safety net, relieving parties from liability for non-performance due to such uncontrollable events.

3. Key characteristics

A valid *force majeure* event must satisfy the following conditions to be invoked.

- Unforeseeable and unavoidable: The event must be something that the parties could not reasonably anticipate or prevent, even with the exercise of reasonable care.
- External to the parties: The event must be beyond the control of the parties involved in the contract and not caused by their actions or negligence.
- Impossibility of performance: The event must render it impossible for the parties to fulfill their obligations, not just make performance difficult or inconvenient.
- Notification and Mitigation: Most clauses require the affected party to promptly notify the other party and to take reasonable efforts to mitigate the impact of the event.
- Enumerated events: The contract should specifically list the types of events that will qualify as *force majeure.*

4. Statutory provisions under Indian Law

Force majeure is not expressly defined in the Indian Contract Act, 1872. However, its principles are reflected in two key provisions: Section 32 and Section 56.

- Section 32 deals with contingent contracts and provides that a contract dependent on the occurrence of an uncertain future event cannot be enforced unless and until the event occurs. If the event becomes impossible the contract becomes void.
- Section 56 embodies the doctrine of frustration. It provides that the contract becomes void if, after it is made, an act becomes impossible or unlawful by the

reason of some event which the promisor could not prevent. If the promisor knew or with reasonable diligence, could have known about the impossibility, he must compensate to promisee for any loss sustained due to non-performance. The maxim *"Lex non-cogit ad impossibilia*" may be used in this case, which indicates that the law cannot compel a man to do something that he cannot possibly do.

Where the contract includes a specific force majeure clause, Section 32 is applicable. In contrast, when such a clause is absent, parties may rely on Section 56 under frustration.

5. *Force majeure* vs frustration of contract:

The concept of *force majeure* and the doctrine of frustration (or impossibility of performance) are sometimes overlapping. Frustration of contract leads to automatic termination, whereas invoking a *force majeure* clause may either postpone the performance of obligation or in some cases, terminate the contract. Delay in fulfilling the obligation may lead to frustration if it affects the fundamental basis of the contract.

In the event of *force majeure*, the parties expressly agree prior to contract signing and create the list of unforeseeable events that would trigger the *force majeure* clause. On the other hand, the doctrine of frustration applies when an unforeseen event occurs after the formation of the contract, rendering the performance impossible or radically different from what was agreed.

In *Energy Watchdog v. CERC*[1] the parties sought to invoke the *force majeure* clause under the Power Purchase Agreements (PPAs) due to sharp and unforeseen rise in the price in Indonesian coal, which they argued made the performance commercially unviable. They contended that the *force majeure* clause in PPAs was inclusive and allowed compensatory tariff if performance was hindered. The Supreme Court, however, rejected this argument and held that the *force majeure* clauses must be strictly and narrowly construed. Clause 12.4 of the PPA explicitly excludes events such as changes in cost of plant, fuel, machinery, equipment from being treated as *force majeure* events. The court clarified that rise in cost does not amount to a *force majeure* event

[1] *Energy Watchdog v. CERC*, (2017) 14 SCC 80

under such contracts. It emphasized that since alternative modes of performance were available and the fundamental basis of the contract had not been disturbed, there was no frustration of the contract. The court also relied on *Satyabrata Ghosh* case reiterating that when a contract contains specific *force majeure* clause, recourse cannot be taken to section 56 of the Indian Contract Act, 1872.

This case effectively highlights the distinction between *force majeure* and the doctrine of frustration. It reinforces that when a *force majeure* clause is present in a contract, the parties are bound by its specific language and exclusions, and cannot fall back on section 56 to claim frustration.

When a *force majeure* clause is invoked, the parties may be temporarily relieved from performing their obligations until the event concludes. However, it does not automatically terminate the contract or completely exempt parties from performance. In contrast, the doctrine of frustration applies where the event was neither anticipated nor provided in the contract, resulting in discharge of both parties from further obligations.

7. Judicial Approach: Case Laws

The Indian Judiciary has provided significant guidance on the application of *force majeure* clause and frustration in contractual disputes. Several landmark cases illustrate how courts evaluate the nature of the event, the presence of an express clause and impossibility of performance.

The Supreme Court in *Satyabrata Ghosh v Mugneeram Bangur & Co*.[2] clarified the scope of frustration under Section 56 of the Indian Contract Act. The court held that frustration occurs when a supervening event renders the performance of the contract practically impossible or fundamentally alters the nature of obligations undertaken. Mere delay, impediment or difficulty in performance does not amount to frustration. The impossibility contemplated under section 56 must be practical and not merely literal.

[2] *Mugneeram Bangore and Co. v. Satyabrata Ghosh*, 1950 SCC Cal 208

In *Las Ground Force & Anr. V. Airport Authority of India & Ors*[3], the petitioners challenged the cancellation of Letter of Intent to Award (LOIA) issued by the Airport Authority of India (AAI) for providing ground handling services at Goa Airport. The petitioners argued that delays in fulfilling contractual obligations, such as forming a Special Purpose Vehicle (SPV) and submitting performance Bank Guarantees, were due to practical challenges caused by the COVID-19 pandemic. They contended that the pandemic qualified as a *force majeure* event, and referred to government notifications recognizing COVID-19 as such.

However, the court rejected this plea. It held that no *force majeure* clause existed in the LOIA, and thus, the petitioners could not claim exemption under it. The court further observed that the delays occurred during a period when no lockdowns were in effect in the relevant cities, and the petitioners had been given multiple extensions and sufficient opportunities to comply. The petitioners also failed to show how restrictions in Greece, where one Joint Venture partner was based, substantially prevented performance, especially since banking and other essential services remained operational.

The court concluded that the failure to meet obligations was due to petitioners' noncompliance and not due to an unforeseeable, uncontrollable event. It held that *force majeure* principle was inapplicable in the absence of an express clause, and that the pandemic, in this instance, did not fundamentally alter the performance under the contract. Accordingly, the writ petition was dismissed.

In another case, *Standard Retail Pvt. Ltd. v. G.S. Global Corp.*[4], the parties had entered into a contract for the supply of steel products, which included the *force majeure* clause. The petitioner sought to terminate the contract citing frustration under Section 56 of the Indian Contract Act, arguing that the COVID-19 lockdown had rendered performance impossible. The Bombay High Court, however, rejected this argument. It held that the nationwide lockdown, though restrictive, did not restrict the import or shipment of steel as it was categorized as an essential service. The court emphasized that the lockdown was temporary in nature and did not fundamentally prevent the petitioners from fulfilling its contractual obligations. Therefore, neither the *force majeure* clause nor the

[3] *Las Ground Force Pvt. Ltd. and Anr. v. Airports Authority of India and Ors*., 2021 SCC OnLine Del 2378
[4] *Standard Retail Pvt. Ltd. v. G. S. Global Corp. and Ors*., 2020 SCC OnLine Bom 704

doctrine of frustration could be invoked. The court reaffirmed that mere commercial difficulty does not amount to frustration.

Bangalore Electricity Supply Company Ltd. v. Hirehalli Solar Power Project[5], this case revolves around the applicability of the *force majeure* clause within Power Purchase Agreements (PPA) and the subsequent reduction in tariff rates due to delays in project commissioning. The respondents claimed protection under the *force majeure* clause, arguing that the delay was caused by actions of governmental and regulatory bodies not by respondents' negligence. The APTEL held this view, recognizing that the delays stemmed from external regulatory issues beyond the control of respondents. The supreme court while dismissing BESCOM's appeal, upheld APTEL's findings and emphasized that no substantial question of law has been raised. It ruled that the *force majeure* clause has been rightly invoked and that the tariff reductions and penalties cannot be imposed. This decision affirmed the judicial recognition of non-performance due to regulatory delays as a valid ground for invoking *force majeure*, particularly in the context of large infrastructure and energy contracts.

Indian jurisprudence, through a series of evolving decisions, has carefully drawn the line between genuine impossibility of performance and mere commercial hardships. Together, these cases emphasize the importance of precise drafting, foreseeability of events, and adherence to the agreed contractual framework.

8. Conclusion:

The doctrine of *force majeure* has emerged as a critical legal tool during unforeseen crisis such as COVID- 19 pandemic, regulatory delays, or global economic shifts. However, its application must be firmly rooted in the terms of the contract. In navigating future commercial uncertainties, parties must not only include clear and exhaustive *force majeure* provisions but also remain conscious of their statutory obligations and judicial thresholds. As Indian Courts continue to balance the sanctity of contracts with fairness in unforeseeable circumstances, the *force majeure* clause stands as a testament to the dynamic intersection of commercial realism and legal accountability.

[5] Bangalore Electricity Supply Company Ltd. v. hirehalli Solar Power Project LLP and Ors., (2025) 1 SCC 435