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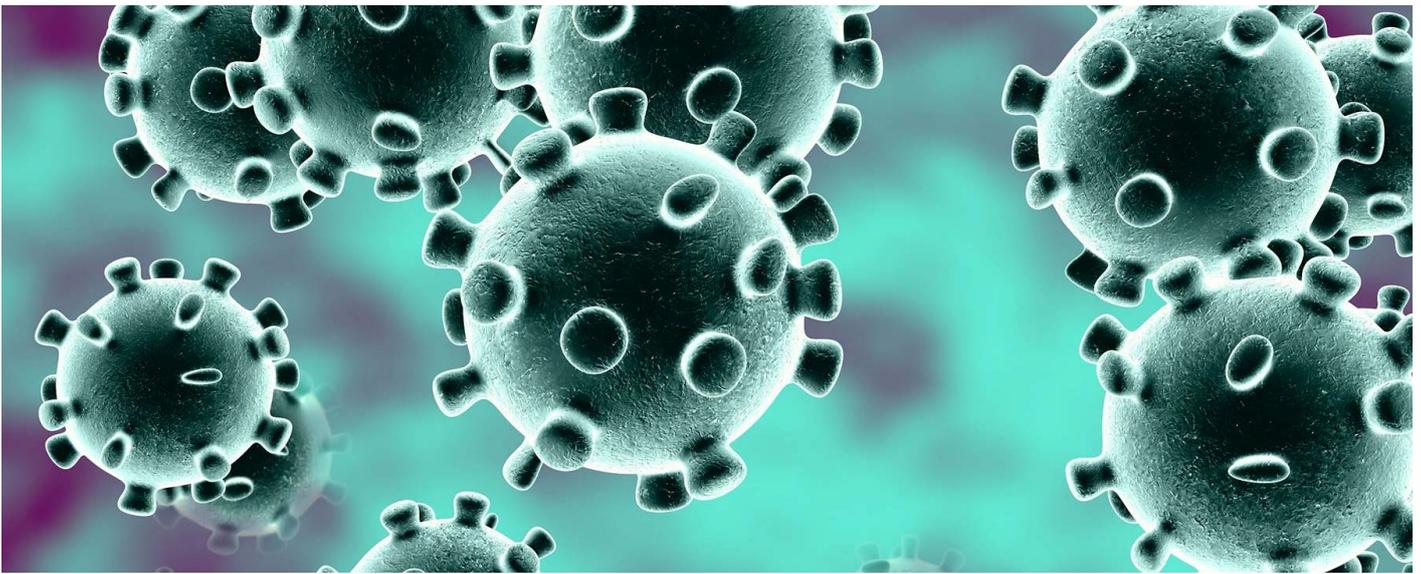
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CORONO VIRUS: INVOCATION OF FORCE MAJEURE CLAUSE TO AVOID LIABILITY FOR NON PERFORMANCE OF OBLIGATIONS UNDER THE CONTRACT

The outbreak of Corono Virus in China, for the last few months, have affected the life of numerous people which also resulted in loss of their life, that the World Health Organisation (WHO), on January 2020, declared that the outbreak of this Corono Virus constituted a "Public Health Emergency of International Concern". The term "Public Health Emergency of International Concern" (otherwise termed as PHEIC) is defined under the International Health Regulations, 2005 as an "extraordinary event which is determined, as provided in these regulations – (1) to constitute a public health risk to other States through the International spread of disease; (2) to potentially require a co-ordinated international response.

As the said virus continues to spread across China and pursuant to the PHEIC declaration by WHO, many International Companies including the Governments as well, have started to impose business / travel restrictions to their citizens to travel to China until the current situation stabilises. Many Governments have also announced the suspension of new visas to those who hold PRC Passports and have also banned the entry to those citizens who have visited China in last couple of weeks. These restrictions have put all the business entities both in China as well as other Countries in a problematic state since China is the second largest economic power and this unexpected outbreak of



Focus more on
your desire than on
your doubt, and the
dream will take care
of itself.

- MARK TWAIN



Corono Virus and its consequences have largely restricted the Individuals to stay at home to avoid spreading of the Virus that has directly / indirectly affected the performance of obligations by the Companies who are bound by various contracts with National / International entities. As the outbreak of the Corono Virus continues, it is likely that the trading business to and from China will continue to be affected, not only because the unavailability of the International / Domestic transport facilities but also because the factory workers have been asked to stay at home to avoid the widespread of the virus. Many companies who had been engaged in business with the Chinese Companies are forced to halt production because it is struggling to obtain required raw materials from China.

In fear of failure to perform contractual obligations that might make them accountable towards the other Party to the Contract, many Companies in and outside China have already commenced to look into the possibility to invoke the Force Majeure Clause in their Contracts / Agreements.

Most of the business contracts include the Force Majeure Clause, so that the Parties can either suspend, limit or even terminate their performance of obligations imposed on them under the Contract if any Force Majeure events like any natural Disaster, War, Strike, Act of God occurs unexpectedly, which lawfully excuses their non-performance and/or delay in performance of their obligation under the Contract. However, this Clause is often included with insufficient thought being given as to whether they are appropriate for the Contract or not.

Usually in order to invoke the Force Majeure Clause, the Party to the contract must consider:

- a. The performance obligation of the Party invoking the Force Majeure Clause under the Contract;
- b. The impact of the Force Majeure Event on their ability to perform the obligations;
- c. Whether there are any steps

the Parties can take to mitigate or minimise the impact of the Force Majeure event on their obligations, including considering alternative methods performing their obligations under the Contract;

- d. Whether the Force Majeure event falls within the scope of the Force Majeure clause of the Contract and whether it can and should be invoked and;
- e. If so, what are the requirements, in particular the notice requirement that must be complied with.

In short, the Force Majeure Clause should hold all the Parties safe from any liability for Non-performance, following the Force Majeure Event. Further, the Party invoking the Force Majeure Clause in its contract must be able to convince that there are not alternative means for performing its obligations, or that the Party has taken all reasonable steps to avoid the operation of the clause. As such whether the Force Majeure Clause in the contract includes the outbreak of Corono virus and the hindrances due to its outbreak shall depend on the wording of the clause, steps taken by the Party who wish to invoke the force majeure clause to avoid the maximum hindrances, and whether the outbreak constitutes a foreseeable incident.

Many criticsers have suggested that if the parties have entered into a contract with a Force Majeure Clause after the SARS outbreak, it may have been foreseeable that a similar virus could occur again and then the parties may not be entitled to any relief.

Also, problem arises when a Contract do not mention a Force Majeure Clause. It is also to be noted that the English Common Law do not imply the Principle of Force Majeure, unless it is specifically mentioned in the Contract itself. However, even where there is no Force Majeure Clause in the Contract, does not mean that there are no grounds to excuse the performance. The parties whose Contracts do not explicitly contain a Force Majeure Clause, but is governed by the English

Law, may opt to invoke the Doctrine of Frustration which mean that if a contract becomes impossible to perform through no fault of either Party, the Contract may be automatically terminated. However, the conditions to prove the existence of Doctrine of Frustration is severe than that included in the Principle of Force Majeure and these conditions shall include –

- a. The terms and Condition of the Contract;
- b. The factual background to the Contract;
- c. The Parties' knowledge and expectation about the risk when entering into the Contract;
- d. The Parties' calculations as to the ability to perform the Contract in the circumstances which are said to have frustrated the Contract.

In addition to the above mentioned points of differentiation, the Principle of Force Majeure allows the Parties to suspend the performance of the obligation instead the complete termination; the Doctrine of Frustration permanently put an end to the obligations between the Parties except for those obligations that had been earned prior to such termination.

In any case whether the Party's obligation under a Contract is hindered due to the widespread of Corono Virus or for any other unforeseen reason, the Party invoking the Force Majeure Clause shall rely on such facts which would help them to prove that they have been prevented or hindered from performing the Contract as a result of such unforeseen Force Majeure Event. In other words, there must be a causal connection between the Force Majeure event and the inability to perform the obligation under the Contract. Further, the companies may, in future, also opt to include the term "Epidemic" which mean "a temporary but widespread outbreak of a particular disease" to include any unforeseen circumstances like the outbreak of any diseases/viruses, which a prudent man cannot predict

its outburst unless there is a warning issued by any Authority predicting such wide spreading of diseases/viruses.

Furthermore since the World Health Organisation has also declared this outbreak of Corona Virus as the “Public Health Emergency”, the Courts shall also take into consideration WHO’s declaration

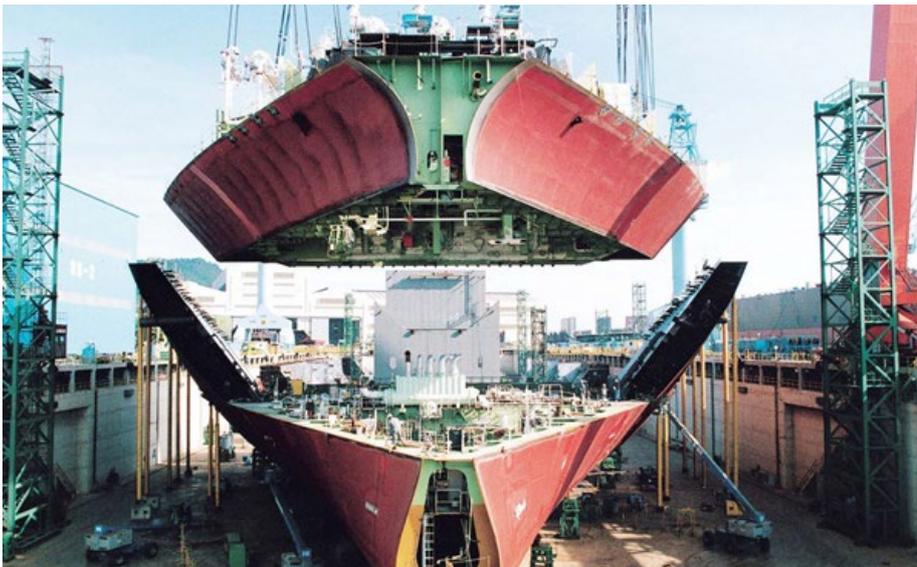
while deciding on any case against any Company who has invoked the Force Majeure Clause in this scenario.

In order to provide assistance to the Chinese Companies, the China Council for the Promotion of International Trade has also informed that it would offer Force Majeure Certificates to help companies deal with the disputes with

the foreign trading partners arising from this epidemic control measures and it is presumed that this recognition by the

Chinese Authorities that the current outbreak of Virus and its implications constitute a Force Majeure Event is likely to assist the Company seeking to rely on the Force Majeure Clause.

THE RECYCLING OF SHIPS ACT, 2019: TOWARDS AN ENVIRONMENT FRIENDLY AND SAFE SHIP RECYCLING IN INDIA



Ship breaking or ship recycling is defined as one of the most hazardous jobs in the world by the International Labour Organisation (ILO). It is the process by which old ships and vessels are taken apart, dismantled and its components are recycled. As observed by the International Maritime Organisation, ship recycling process is mostly productive as nothing from a dismantled ship goes into waste. The equipment and components of a recycled ship can be reused in its entirety in other industries. If done efficiently and economic friendly it can be turned into a green business by using the recycled components for even building new ships. The darker side of ship breaking is that it creates

variety of pollutions including air, land, water and noise due to the generation of hazardous and non-hazardous wastes. As most of the works are done manually, it also leads to many occupational hazards to the manual workers if the working conditions are substandard and not in compliance with the international safety standards.

India is in the frontline among the countries who are largely engaged in the business of ship breaking. Apart from India, South Asian countries like Bangladesh, China and Pakistan also gives huge competition in the ship breaking industry. These countries are mostly chosen by the ship owners due to the relaxed environment regulations

and labour standards followed by the Countries in this industry.

In India the condition was no different, since the Central government announced the ship breaking industry as a small scale industry, the business started to flourish under minimal regulations with respect to environmental protection and labour standards.

The Supreme Court decision in *Research Foundation for Science, Technology and Natural Resource Policy v. Union of India (2007) 15 SCC 193*, provided an impetus to the legal framework governing ship recycling in India. Pursuant to the directions put forth by the Supreme Court in this case, the Central Government formulated the Shipbreaking Code in 2013 providing a comprehensive scheme for regulating ship breaking in India. But the Code failed to address many provisions contained in the Hong Kong International Convention for the Safe and Environmentally Sound Recycling of Ships, 2009, adopted by the International Maritime Organisation. This Convention ensures that ships, when being recycled after the end of their operational lives, do not pose any unnecessary risk to the environment and to human health and safety. The Convention details out the procedure to be followed for survey and certification of ships as well as for the

authorisation of ship-recycling facilities.

Realising the need for an inclusive legislation on ship recycling, the Indian legislature enacted the 'The Recycling of Ships Act, 2019' and on December 13, 2019, the Act came into force after receiving the assent of the President. This Act is an attempt to bring about an environment friendly ship breaking in India. The object of the Act is to provide for the regulation of recycling of ships by setting certain standards and laying down the statutory mechanism for enforcement of such standards.

The Recycling of Ships Act, 2019 is in tune with the Hong Kong Convention in many aspects and the Act restricts and prohibits the use or installation of hazardous materials, which is

uniformly applicable to all Ships in India, irrespective of whether a ship is meant for recycling or not. For new ships, such restriction or prohibition on use of hazardous materials will be immediate, that is, from the date the legislation came into force, while the existing ships shall have a period of five years for compliance. However such a restriction or prohibition on use of hazardous materials is not applicable to warships and non-commercial ships operated by Government.

Under this Act, ship recycling facilities are required to be authorized and ships shall be recycled only in such authorized ship recycling facilities. This Act also provides that ships shall be recycled in accordance with a ship-specific recycling plan.

Ships to be recycled in India shall be required to obtain a 'Ready for Recycling Certificate' in accordance with the Hong Kong Convention.

The Act also imposes a statutory duty on ship recyclers to ensure safe and environmentally sound removal and management of hazardous wastes from ships. Appropriate penal provisions have been introduced in the Act to deter any violation of statutory provisions.

India, being the global leader in ship breaking, aims at boosting its economy as well as ship recycling industry through the enactment of this legislation by bringing about an environment and labour friendly regulatory mechanism in the ship breaking process.



HOT NEWS

TIPS TO WORK FROM HOME EFFICIENTLY AND EFFECTIVELY



1. Get ready as usual and dress like you are at work.
2. Discover Your High Productivity Periods.
3. Identify what needs to get done every day and make sure to do it.
4. Create an at-home office with all the required things.
5. Don't let friends or guests stop by.
6. Make a stoplight for family members by setting boundaries for pets, kids, roommates etc.
7. Be clear about your working hours.
8. Don't go to non-work appointments in the middle of the day.
9. Pretend you're not home.
10. Get in-person time with co-workers and Stay in the loop always.
11. Enjoy your flexibility.
12. Stay out of the kitchen.
13. Enjoy disruptions.
14. Make use of free or inexpensive communications technology.
15. Stay Off Social Media.
16. Take Short Breaks.
17. Exercise & Stretch Regularly.
18. Stick to One Project Management Application
19. Set Multiple Alarms to not miss a timely submission.
20. Stay Vigilant Against Security Risks

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