

## COVID 19 Impact on Automobile and Aviation Industry - Indian Approach written by Rajdev Singh | June 3, 2020



COVID Aviation and Automobile Industry - How COVID has Affected the Aviation and Automobile Industry?

In these unprecedented times, there is no escaping the slowdown and calamity that complete lockdown has brought about, but one should strive to mitigate losses and work with an approach that is beneficial in a broader sense. WHO assessed the international concern on public health emergency and COVID-19 was characterized as a pandemic[1].

This global crisis will not just impact the public health of people but shall also have a cataclysmic effect on the global economy. Presumably, supply chains and the financial segment of various businesses have taken a serious hit due to complete shutdown at places. It is estimated by various economists that the deficit in the chain of supply and demand is far beyond repair and would take a good amount of time to revive.

How has COVID Affected the Aviation and Automobile Industry?

What follows is a critical analysis of the situation with a 360-degree approach concerning worst-hit business sectors holding bulk trade contracts—both domestic and international and if they will be able to fall within the purview of *Force Majeure*.

Impact of Pandemic on Commercial Agreement

A pandemic is defined as *"an epidemic occurring worldwide, or over a very wide area, crossing international boundaries and usually affecting a large number of people"*[2] and COVID-19 is one of a kind as it is the first unknown virus to cross human threshold, bringing the entire world to a standstill. Amidst the fear of loss of health, there crawls a deeper fear of loss of business and downfall of world economies at large, among which, most affected are the following:

These difficult times demand a rather novel approach towards the re-negotiation of contracts where the parties are at freedom. In *Pomal Kanji Govindji v. Vrajlal Karsandas Purohit*, [3] the Apex Court observed that the law must transform to social awareness and it should not lead to taking advantage of those who are oppressed.

Therefore, it is pertinent that all commercial contracts are negotiated to keep in mind any contingency that may arise in the future. An integral part of the Indian Contract Act, 1872, which is given far less importance is "Negotiation", which is not exercised in the correct sense by most parties.

The Hon'ble Supreme Court has clarified about 'Negotiation' that *"a mere reference to a future formal contract will not prevent a binding bargain between the parties"*[4].

The common law countries are at liberty to negotiate during and post-contractual period. While negotiations that occur at a pre-contractual period are usually to draft the contract, the post-contractual period negotiations aim towards sufficing a contingency that may arise during the performance of a contract or on a potentially disputed area of the transaction during the performance of the commercial contract.[5]

Section 32 of the Indian Contract Act 1872 deals in supervening impossibility in the contractual provision while the Doctrine of Frustration (Section 56 of the Indian Contract Act 1872) deals with the rule of positive law[6]. In supervening impossibility, irrespective of the absence of contractual provisions.

The Ministry of Expenditure, Government of India vide Office Memorandum[7] has declared this pandemic as a Force Majeure event. At this juncture, it may be pertinent for the businesses to discuss, scrutinise, and exercise the viable options available for the non-performance of the contracting parties due to the COVID-19 situation. The basis underlining principle as suggested by Justice Kapur in *Pameshwari Das Mehra v Ram Chand Om Prakash*[8] explained that *"a contract will frustrate when certain situations arise which make the accomplishment of the contract impossible in the way contemplated"*.

In the case of *Satyabrata Ghose*[9], the Hon'ble Supreme Court suggested that *"impossibility under Section 56 does not mean in the physical or literal context. It refers to change in circumstances which completely upset the very foundation upon which the parties rested their bargain."*

Undoubtedly, unaffected parties will assert their contractual rights, whereas the affected parties would aim to avoid the performance, under the garb of *force majeure*, impossibility, frustration, and other legal defences, which increases chances of the legal battle. Different courts while deciding, would examine if the parties have taken all reasonable steps to mitigate the loss resulting from the infringement and debarks him from it.[10] Although the Hon'ble Supreme Court has clarified that the principle of mitigation of loss does not give any right to the party who is in breach of the contract, but it is a concept that has to be borne in mind by the Court while awarding damages.[11]

#### Mitigation Mechanism of various industries

The economy is expected to undergo a recession and various reports suggest that the same cannot be eluded. For situation to normalise, it is necessary to mitigate the potential losses arising due to legal and other transactions which are affected by closure of business. The Hon'ble Supreme Court through a plethora of cases has suggested mitigating the shortcomings by taking reasonable steps. The kickoff is to understand that this pandemic has created an asymmetry among all factors of production like materials, labour, and capital. As the situation stands, parties must have diligently looked for an alternative means of performance of contract.

#### Aviation Sector

The aviation sector has been one of the worst-hit as it was already dealing with insolvency of various companies and due to the COVID19 crisis, the situation aggravated, so much so that employment of many in the aviation sector is at stake with layoffs being common trend followed.

International Air Transport Association (IATA), being the world cartel on aviation has in its report summarized that aviation companies have allowed rescheduling and cancellation of tickets by writing off expenses during these unprecedented situations, which has collectively reduced the global airline passenger revenues to USD 314 in 2020.<sup>[12]</sup>

According to the World Bank Organization, about 4.2 billion passengers were carried around all across the globe. Considering the importance of this industry and ensuring that the whole aviation sector does not come down to its knees, the government should come up with financial aid, taxation benefit, and compliance relaxation along with assisting with restructuring of business and debts.

#### Automotive Industry

The month of April 2020 happened to be the first month in Indian history where this industry witnessed zero sales, the sale segments include commercial vehicles (CV), passenger vehicles (PV), luxury cars, and two-wheeler. The Indian Automobile industry seems to be seriously impacted by the closure of business as social distancing norms will prevent customers from visiting showrooms, which will bring down sales.

The government must provide taxation benefits and compliance relaxations along with providing assistance and time for the companies to restructure their business and debts. Also, various other factors such as fuel price and road tax are needed to be curtailed to encourage the sale of the automotive. Delay in meeting customer expectation or diversion of capital to maintain continuing operation rather than investing in new R&D, will have longterm impact on the industry and the evolving trends.<sup>[13]</sup> Impromptu decisions may be taken to exit low yielding markets, affecting outreach and changing in setup of manufacturing process.

#### Conclusion

In a nutshell, it is appropriate to say that public health may have been the first target of the pandemic but now it has slowly crawled into various industries such as aviation, automobile, hospitality, tourism, retail, and realty, etc. More so the overall impact on the economy would take a long time to recover from the stagnation brought about by the advent of closure of industries.

The stand taken so far, by the judicial system is that due to the invocation of the *Force Majeure* clauses, even where time is the essence of performance, the performance of the contract may stand suspended until the *Force Majeure* event cease to exist.<sup>[14]</sup> It must be noted that commercial contracts be negotiated beforehand to avoid potential tedious litigation. It is at this juncture that it is eminent for the government and judiciary to take a liberal approach so that mitigation is expedited.

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- [1] <https://www.who.int/news-room/detail/27-04-2020-who-timeline---covid-19>
  - [2] [https://www.who.int/csr/disease/swineflu/frequently\\_asked\\_questions/pandemic/en/](https://www.who.int/csr/disease/swineflu/frequently_asked_questions/pandemic/en/)
  - [3] AIR 1989 SC 436
  - [4] Kollipara Sriramulu v. T. Aswatha Narayana AIR 1968 SC 1028
  - [5] Mulla & Pollock on Indian Contract Act, 1872 & Specific Relief Act, 1967.
  - [6] Office Memorandum No. F.18/4/2020-PPD, issued by Department of Expenditure Procurement Policy Division, Ministry of Finance, Government of India.

- [\[7\]](#) AIR 1952 P H 34.
- [\[8\]](#) Satyabrata Ghose v Mugneeram Bangur and Company & Anr 1954 AIR 44, 1954 SCR 310.
- [\[9\]](#) M / s. Murlidhar Chiranjilal vs M / s. Harishchandra Dwarkadas & Anr 1962 AIR 366.
- [\[10\]](#) M. Lachia Setty & Sons Ltd. vs. Coffee Board, Bangalore (1980) 4 SCC 636
- [\[11\]](#) <https://www.iata.org/en/pressroom/pr/2020-04-14-01/>
- [\[12\]](#)  
<https://www2.deloitte.com/global/en/pages/about-deloitte/articles/covid-19/understanding-covid-19-s-impact-on-the-automotive-sector.html>
- [\[13\]](#) Smita Conductors Ltd v. Euro Alloys 2001 AIR SC W3517  
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