

Football Contracts - Has COVID-19 crippled the legs of the beautiful sport?
written by Rajdev Singh | May 26, 2020



Impact of COVID 19 on Football in India and Across the World

"The tragedy in sports is seeing a team beaten not by a better team, but by themselves."

~Bud Grant

The core repercussion of tragedy is that it affects all, in one and the same manner. Football, the beautiful game has been caught prey to a financial hurdle, and like most other industries out there, gripped with economic and contractual hurdles as well. Football, one of the prominent sports in India and around the world is finding it difficult to manoeuvre through player contracts and other negotiations during these times.

All around the world, the onset of COVID-19 has forced institutions into a state of total isolation, with social distancing being the new norm. Stadiums are empty and the game has lost its most precious element-its fans. With economic conditions gripping the footballing industry, various teams have found it difficult to manage highly salaried footballers on their roll. Some clubs have been forced to prematurely terminate the player's contract, citing force majeure as the reason. However, it is difficult to establish the liability of players in this time of distress, where players have been forced into isolation, without a professional game being played in recent months. Major football leagues around the world such as the English Premier League, Serie A, Bundesliga, and La Liga have been suspended due to the lockdown and many others like League 1 have prematurely ended their campaign.

As leagues around the world take a hit, the Indian Super League has ended its 2019-2020 season, with the final being played behind closed doors.[1] All India Football Federation ("AIFF") has decided to suspend all football activities including the suspension of I-League, which has resulted in huge losses to the economy and industry. As industries around the world take into stride the concept of this deadly virus, they are faced with yet another legal conundrum in "force majeure".

Black's Law Dictionary defines Force Majeure as "[a]n event or effect that can be neither anticipated nor controlled [,is] unexpected [and which] prevents someone from doing or completing something that he or she had agreed or officially planned to do." [2] That the current situation emanating from lockdown due to COVID-19, can bring forth a foray of legal skirmishes, including disputes between broadcasters against leagues for failure to host matches. There are disputes between football aficionados and companies for refunds where matches are canceled or being held behind closed doors. [3]

World vs India: Can India keep up?

The AIFF in its rules and regulations more specifically to this effect has

laid down in XIV: Final Provision, Article 74 Unforeseen contingencies and force majeure- *"1. The Executive Committee shall have the final decision on any matters provided for in these statutes or in cases of force majeure."*^[4] Similarly, the world Footballing Federation ("FIFA") has similar regulations. Taking note of the same, FIFA has laid down a regulatory framework being the "FIFA Covid-19 Guidelines" for establishing regulation regarding player's agreements, or non-performance of agreement or transfer of players.^[5] In the case of Federation Royale Marocaine de Football v. Confederation Africaine de Football,^[6] the Court of Arbitration for Sport (CAS) had made the Royal Moroccan Federation of Football (FRMF) liable for postponing the African Cup of Nation's tournament during the Ebola Crisis in 2015, going on to opine that the virus made the organization difficult and impossible to hold the event, while the ratio was decided based on the fact that with the perusal of evidence on record, the transmission of the virus could only be through contact and not by any other means.

Hearing the plight of FIFA, many leagues have agreed to unilaterally extend player contracts that are due for expiry during the ongoing distress period. The Premier League has allowed all its clubs to unilaterally extend contracts for a short period, those of which end by June 30.^[7] The Argentine Football Association has also agreed to allow the clubs to extend their contracts for a short amount of time.^[8] However the same cannot be said for the Indian scenario.

One of the premier footballing clubs in India, East Bengal F.C, through its CEO of Quess East Bengal, issued an advisory to all its players for the 2019-2020 season, announcing that majority stakeholder and title sponsors, Quess Corp Limited, has cited "force majeure" as a ground for cessation of the professional contracts with the Club.^[9] This unprecedented move has led its players to question this diabolical move on part of the club with many players on long term contracts terming the decision as lopsided and premature.

The question, therefore, remains whether Clubs can prematurely cite Covid-19 as a "force majeure" event and modify player contracts and whether such acts will lead to unprecedented legal battles with clubs? It is a fact that a player enters into contracts with the Club for a stipulated season and hence, the investor being the third party has no role in the present dispute with the players. The clubs will still be responsible for clearing the dues of the players.

The Football Players Association of India(FPAI) is planning to approach the AIFF for a resolution on the dispute with the club East Bengal F.C and its players. ^[10] While we discuss the issue of Force Majeure, the Ministry of Finance, vide Office Memorandum^[11] dated 19.02.2020, has considered COVID-19 to be a pandemic and any disruption arising out of the same to be a force majeure event.

However, since this concept is not universally applied, it remains in the domain of individual organizations to invoke certain provisions in absence of such guidelines. In the absence of similar guidelines like the FIFA, free reign has been given to clubs and the question remains that if clubs like East Bengal Club can invoke such clauses to terminate contracts, then it may be that sooner smaller clubs will follow suit. Cases where there are no Force Majeure Clauses, may be shown as taking benefit under Section 32 and Section 56 in frustration of Contract with the following:-

a. Television channels- As absence in broadcasting, leads to decrease in broadcasting revenue, leading to modification in contractual obligations.

b. Kit sponsors- Kit sponsors have a requisite amount of viewership targets per game, which will not be able to be met in such cases, leading to mass exodus in modification of sponsorship contracts.

c. Disputes with fans, regarding ticket sales- Due to matches being played indoors everywhere, there is an impending question as to refund and return of ticket price value to fans and customers. It is imperative that guidelines be established for the effective resolution of such dispute as multiple litigation can further damage the financial stability of leagues and clubs. Presumably uncertainty lingers with effect to suspension of Leagues and not cancellation, further impacting non-performance of player contracts. Suspension should only be due to an uncontrollable incident beyond the control of either of the parties to the contract.

That, in the present case the same is to be seen whether Courts draw inference from the Judgment of CAS in *Federation Royale Marocaine de Football case (supra)*, wherein closure of league due to Ebola was not considered a force majeure event. It is to be seen whether the classification of Covid-19 as a pandemic will have an impact on classification as a "force majeure" event. However, the underlying principle we state is the concept of negotiations in a contract. It is pertinent that players in Football contract should have the right to negotiate their contract, especially in such cases.

Conclusion - Impact of COVID 19 on Football

Coming to the situation at hand, it is imperative to ask if such a situation in India can keep up with the world in its combat against Covid-19? To answer this we must ensure that the AIFF which is the premier football authority bring forth rules and regulations relating to player contracts and regulations regarding the performance of contracts.

Further, the AIFF will have to carefully negotiate and transfer other contractual deals keeping in mind the players interest, or else the same will lead to opening of a Pandora's box on the legal front. Law of contracts always depends on the terms and condition of the contract. The same has to be considered in light of the supervening nature of impossibility for specific performance of contract and force majeure. Being an upcoming crucial area, it is imperative that companies seek legal advice to navigate through this complex space.

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- [1] Aashin Prasad, *ISL final: Football in the time of coronavirus*, Sportstar (March 14th, 2020, 12:07 IST), <https://sportstar.thehindu.com/football/isl/isl-final-coronavirus-atk-vs-chennaiyin-go-a-owen-coyle-antonio-habas-roy-krishna-lucian-goian-indian-football/article31067541.ece>
 - [2] Black's Law Dictionary (10th ed. 2014).
 - [3] Covid-19 Pandemic And Indian Football: by Vidushpat Singhania & Gautam Karhadkar, <https://www.indialawjournal.org/covid-19-pandemic-and-indian-football.php>
 - [4] <https://www.the-aiff.com/media/uploads/2019/12/AIFF-Constitution.pdf>
 - [5] *ibid* note 3
 - [6] CAS 2015/A/3920, award of 15th November 2015
 - [7] <https://www.news18.com/news/football/premier-league-clubs-agree-to-short-term>

- extensions-for-out-of-contract-players-2621483.html
- [8] COVID-19: Argentinian Football Association agrees to extend ..
<https://timesofindia.indiatimes.com/sports/football/top-stories/covid-19-argentine-football-association-agrees-to-extend-player-contracts/articleshow/75754269.cms>
 - [9] Quess parts ways with East Bengal citing COVID-19 pandemic,
<https://sportstar.thehindu.com/football/east-bengal-terminates-contracts-i-league-jamie-santos-indian-football-news-isl-mohun-bagan/article31438672.ece>
 - [10] Indian football: Clubs can't end players' contracts prematurely without their consent, says FPAI,
<https://www.firstpost.com/sports/fpai-planning-approach-aiff-quess-corp-nullifying-contracts-east-bengal-players-wake-covid-19-8353891.html>
 - [11]
<https://doe.gov.in/sites/default/files/Force%20Majeure%20Clause%20-FMC.pdf>
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