Litigation Bytes

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Madras High Court Rules Lock Down a Force Majeure Event - Major Corporates Triumph!

- Shushaanth. S, Associate

The Hon'ble Madras High Court in the case of R. Narayanan Vs. The Government of Tamil Nadu & Ors[1] has articulately enunciated that the lockdown is a "Force Majeure" event and has accordingly directed a complete waiver of license fee during the total lockdown period.

In the present case, the petitioner had occupied a shop constructed by the Nagercoil Municipal Corporation for a license fee of Rs.1,15,000/- monthly. After the outbreak of Covid-19 pandemic, all the shops were closed and the petitioner was prevented from having access to his shop from 24.03.2020 to 06.09.2020. The petitioner after suffering colossal financial loss refused to renew the license. Subsequently, the petitioner had demanded the local body for a total waiver of the license fee for the period of total lockdown. However, the government as well as the local body had denied the waiver of license fee for the lockdown period. Thus, the aggrieved petitioner filed a writ petition before the Hon'ble Madras High Court.

The respondents had contended that the contractual obligation to pay the monthly license fee is absolute and that it could not be excused by any supervening event. The Government on the other hand considering the hardship experienced by the licensees had issued a Government Order dated 02.09.2020 ordering to waive payment of lease/rental amount for the period from 01.04.2020 to 31.05.2020.

The Hon'ble Court, considering the facts and circumstances of the case observed that the relationship between the parties was contractual and their rights could be determined only by post contractual events and the same could only be resolved either by invoking the doctrine of frustration or the principle of force majeure. The Hon'ble Court, for the question, whether the "lockdown" could be treated as a force majeure event, relied on Section 51 & 54 of the Indian Contracts Act 1872 and viewed that a promisor need not perform his promise unless the promisee performs his reciprocal promise. Similarly, it opined that performance could not be claimed unless the other has been performed. Further, the Court taking recourse to judicial precedents viewed that terms of the license should be interpreted under the ambit of Article 14 of the Constitution of India.

Hence the Hon'ble Court by allowing the writ petition ruled that the petitioner was entitled to seek complete waiver for the period when there was total lockdown, that is from 24.03.2020 to 06.09.2020 and as a concluding remark directed that it would expect the authorities to take note of the ground realities and respond appropriately.

Parties Settling The Dispute Privately Entitled To Refund Of Court Fee?

- Anshu Singh, Associate

[1] W.P.(MD)No.19596 of 2020 and W.M.P.(MD)Nos.16318 & 16320 of 2020.

A division bench of the Supreme Court comprising of Justice M.M. Shantanagoudar and Justice Vineet Saran recently in a case[2] held that litigants who settle their disputes privately outside courts without the court's intervention under Section 89 of the Civil Procedure Code (**CPC**) are eligible to claim the refund of their court fees.

The Madras High Court (administrative side) challenged the decision of the High Court which interpreted Section 89 of CPC and Section 69-A of Tamil Nadu Court Fees and Suit Valuation Act, 1955 liberally to hold that all methods of out of court dispute settlement between parties would be entitled to refund of Court fees as long as they are legally arrived at.

Section 69A of the 1955 Act provides for the refund of the court fees if the dispute is settled as per the provision of Section 89 of CPC which stipulates four modes of settlement – arbitration, conciliation, judicial settlement including settlement through Lok Adalat and mediation. Thus, the registry contended that since a private settlement is outside the scope of Section 89, the same is not eligible for a refund of court fees.

The Supreme Court rejected the contention of the petitioners as such a narrow interpretation would lead to absurdness and unjust outcome wherein one class who is referred to by the Court to one of the dispute resolution processes mentioned in Section 89 of CPC would get the benefit of refund of court fees while the other class which privately resolves the dispute would not get such benefit. The Court noted that the two classes of parties are equally facilitating the object and purpose of the aforesaid provisions and there is no justifiable reason to treat these classes differentially.

The Court based its reasoning on the rationale that the purpose of Section 69A of the 1955 Act is to reward those people who save the time and resources of the Court by resorting to other means of dispute resolutions. Thus, in the present case where the dispute was privately settled, it becomes all the more necessary to grant refund of the Court fees since the parties have saved the State of the logistical hassle of arranging a third-party institution to settle the dispute.

The Court held,

"*Though arbitration and mediation are certainly salutary dispute resolution mechanisms, we also find that the importance of private amicable negotiation between the parties cannot be understated. In our view, there is no justifiable reason why Section 69-A should only incentivize the methods of out-of-court settlement stated in Section 89, CPC and afford step brotherly treatment to other methods availed of by the parties.*"

However, in cases of a long-drawn trial or multiple frivolous litigations by the parties, the Court held that the registry may, under the relevant rules pertaining to court fees, refuse to refund the court fees based on the previous conduct of the parties and the principles of equity.

Jurisdiction Of Consumer Fora To Entertain A Written Statement Beyond The 45-Day Statutory Period

-Ayushi Saraswat, Associate

In the recent case of M/s Daddy's Builders Pvt. Ltd. & Another v. Manisha Bhargava and Another, LL 2021 SC 78, the Supreme Court bench comprising of Justice D.Y. Chandrachud and Justice M.R. Shah, reiterated that the Consumer Fora has no jurisdiction or power to entertain a written statement beyond the 45-day statutory period as provided under the Consumer Protection Act, 1986 (**"Act"**).

The National Consumer Disputes Redressal Commission had re-affirmed the order passed by the Karnataka Consumer Disputes Redressal Commission which rejected the application seeking condonation of delay in filing the written statement/version against the consumer complaint. Being aggrieved the present Special Leave Petition was filed.

In the appeal, reliance was placed on the judgment passed by the Constitution Bench in New India Assurance Company Ltd. v. Hill Multipurpose Cold Storage Pvt. Ltd. (2005) 5 SCC 757. It was contended that the said judgment shall be applied prospectively and therefore the said

[2] High Court of Judicature at Madras vs. M.C. Subramaniam [SLP (Civil)Nos. 3063 &3064 of 2021].

decision shall not be applicable to the complaint which was filed prior to the said judgment and/or the said decision shall not be applicable to the application for condonation of delay filed before the said decision.

The above contention was rejected, and the Court noted the decision in the case of J.J. Merchant v. Shrinath Chaturvedi, reported in (2002) 6 SCC 635. A three judge bench observed that the consumer fora have no power to extend the time for filing a reply/written statement beyond the period prescribed under the Act. This decision was overturned by a two-judge bench and a contrary view was taken. However, the decision of the three judge bench was again reiterated when the matter was referred to a five judge bench thereby confirming the same. *"However, it was found that in view of the order passed by this Court in Reliance General Insurance Co. Ltd v. M/s Mampee Timbers & Hardwares Pvt. Ltd. (Diary No. 2365 of 2017 decided on 10.02.2017, pending the decision of the larger 5 Bench, in some of the cases, the State Commission might have condoned the delay in filing the written statement filed beyond the stipulated time of 45 days and all those orders condoning the delay and accepting the written statements shall not be affected, this Court observed in paragraph 63 that the decision of the Constitution Bench shall be applicable prospectively. We say so because one of us was a party to the said decision of the Constitution Bench."*

With regard to the reliance on Reliance General Insurance Co. Ltd. (supra), that directed the consumer fora to accept the written statement beyond the stipulated time of 45 days in an appropriate case, on suitable terms, including the payment of costs and to proceed with the matter, the Supreme Court agreed with the view of the National Commission who had considered the condonation aspect based on merit. It was observed by the National Commission that there was no directive of delaying the condonation whenever the written statement is submitted beyond the 45-day limitation period. It was the discretion of the consumer fora to accept or reject a written statement beyond the said limitation period despite sufficient time being granted.

The Bench in the present case dismissed the appeal holding that there was no ground to interfere with the decision of the National Commission and observed that:

"*in view of the earlier decision of this Court in the case of J.J. Merchant (supra) and the subsequent authoritative decision of the Constitution Bench of this Court in the case of New India Assurance Company Limited v. Hilli Multipurpose Cold Storage Pvt. Ltd. (2020) 5 SCC 757, consumer fora has no jurisdiction and/or power to accept the written statement beyond the period of 45 days*"

Supreme Court: Knowledge Of The Manufacturer Must Be Proved To Assign Liability For Dealer's Fault

- ***Yash Raj, Associate***

A three-judge bench of the Supreme Court comprising of Justice UU Lalit, Justice Hemant Gupta and Justice Ravindra Bhat, in Tata Motors Ltd v Anonio Paulo Vaz and Another[3], observed that in cases of a "Principal-to-Principle" relationship unless proved that a manufacturer had knowledge of the default of the dealer, the former cannot be held liable for the fault of the former.

In the present case, the dealer, Vistar Goa sold a 2009 model car to a customer named, Antonio Paulo Vaz, under the pretext of it being a new car of the 2011 model. Aggrieved by the same, the customer filed a consumer complaint before the District Forum seeking either a replacement of the car given to him with a 2011 model or a full refund of the money paid. In this complaint, the Appellant i.e., Tata Motors, was also made an Opposite Party.

The District Forum passed an ex parte order, as there was no representative on behalf of the dealer observing deficiency in the services and held the dealer as well as the manufacturer (Appellant) jointly and severally liable. The Appellant i.e Tata Motors preferred an appeal before the State Commission under Section 15 of the Consumer Protection Act, 1986 and it was argued that the relation with the dealer was on a "Principal-To-Principal" basis unlike that of a "Principal-Agent" hence they could not be held liable for the deficiency in service offered by the dealer. The State Commission rejected such argument and the appeal was dismissed with cost. On appeal before the

[3] LL 2021 SC 105

National Consumer Disputes Redressal Commission, the Appellant's grounds were rejected, and the findings of the District Forum and the State Commission were upheld.

Aggrieved by the decision of the National Consumer Disputes Redressal Commission, Tata Motors filed an appeal before the Hon'ble Apex Court. The dealership agreement between the Appellant and the dealer was analyzed and it was concluded that there exists a relation based on "Principal-To-Principal" basis between the two concerned. Furthermore, the observations made by the Supreme Court in the case of Indian Oil Corporation v. Consumer Protection Council, Kerala[4], with regard to the "Principal-To-Principal" relationship was referred to. The Court also relied on General Motors (I) (P) Ltd. v. Ashok Ramnik Lal Tolat[5] to clarify that a claim of punitive damages has to be specifically pleaded against the party and the same can be awarded only against a conscious wrong-doing unrelated to the actual loss suffered.

It was noted that there were no specific allegations leveled against the Appellant's role in the fraud and deficient service provided by the dealer. It was observed that

"*26. No doubt, the absence of the dealer or any explanation on its part, resulted in a finding of deficiency on its part, because the car was in its possession, was a 2009 model and sold in 2011. The findings against the dealer were, in that sense, justified on demurrer. However, the findings against the appellant, the manufacturer, which had not sold the car to Vaz, and was not shown to have made the representations in question, were not justified*."

"*… Special knowledge of the allegations made by the dealer, and involvement, in an overt or tacit manner, by the appellant, had to be proved to lay the charge of deficiency of service at its door. In these circumstances, having regard to the nature of the dealer's relationship with the appellant, the latter's omissions and acts could not have resulted in the appellant's liability*"

The Supreme Court emphasized the fact that in cases of a "Principal-To-Principal" relationship, like the present matter, knowledge of the manufacturer must be proved before fastening liability upon them for faults of the dealer.

Based on the above reasons, the findings of the National Commission, State Commission and District Forum against the Appellant were set aside. Furthermore, the deposit made by the Appellants had been directed to be refunded to the Appellant with the accrued interest.

Moratorium Under Section 14 Of The Insolvency And Bankruptcy Code,2016 Also Applies To Proceedings Going On Under Section 138 Of Negotiable Instrument Act,1881

- *Gaurav Purohit, Associate*

The Hon'ble Supreme Court, vide its judgment dated 01.03.2021 in the matter of P. Mohanraj & Ors. vs. M/s. Shah Brothers Ispat Pvt. Ltd.[6] has held that the declaration of moratorium under Section 14 of the Insolvency and Bankruptcy Code, 2016 (**IBC**) covers criminal proceedings for dishonour of cheque under Sec. 138 of the Negotiable Instrument Act (**"NI Act"**)against the Corporate Debtor.

The respondent, in May and June 2017 had filed two complaints under Section 138 read with Section 141 of the NI Act for dishonor of two cheques issued by the appellants. The NCLT admitted the application and a moratorium under Section 14 of the IBC was ordered. Vide the aforesaid order, the proceedings under Section 138 of the NI Act stayed. In an appeal filed before the NCLAT, the aforesaid order was set aside holding that Section 138 is a criminal in nature, therefore, does not fall under the purview of the term "proceedings" under Section 14 of the IBC. In an appeal filed before the Hon'ble Supreme Court, the NCLAT order was challenged and order of a stay on further proceedings in the two complaints has been passed.

The Hon'ble Supreme Court while allowing the appeal observed that Section 138 of NI Act is a quasi-criminal provision which is meant to enforce a civil remedy thus it comes under the purview of "proceedings" as defined under Section 14(1)(a) of IBC, therefore, it attracts moratorium. While examining the provisions of the NI Act, the bench observed that Section 138 of NI Act is hybrid in nature and enforce the payment of bounced cheque if it is otherwise enforceable in civil law. Hon'ble Supreme Court termed the proceedings under Section 138 as a "civil

[4] (1994) 1 SCC 397.
[5] (2015) 1 SCC 429.
[6] CIVIL APPEAL NO.10355 OF 2018

sheep" in a "criminal wolf's" clothing as under this provision the interest of the victim that is sought to be protected and the larger interest of the State is subsumed in victim's interest. While concluding the judgment the Hon'ble Supreme Court overruled the Bombay High Court and the Calcutta High Court Judgments and held that a Section 138/141 proceeding against a corporate debtor is covered by Section 14(1)(a) of the IBC.

Banks Liability In Cases Of Deficiency In Locker Services!!

- *Simran Tandon, Associate*

A division bench of the Supreme Court comprising of Justice Mohan M. Shantanagoudar and Justice Vineet Saran recently in the case of Amitabha Dasgupta vs. United Bank of India[7] held that banks ought to exercise due diligence in maintaining and operating their locker or safety deposit systems. The Hon'ble Court held that for banks as a service provider under the Consumer Protection Act, there exists a duty of care on part of the banks and the same cannot be breached by breaking open lockers without adhering to the relevant rules and regulations.

The Hon'ble Court observed, "*The banks are service providers and therefore there lies a separate duty of care to exercise due diligence in maintaining and operating their locker under the earlier Consumer Protection Act, 1986 as well as the recently enacted Consumer Protection Act, 2019…….the banks cannot wash off their hands and claim that they bear no liability towards their customers for the operation of the locker. The very purpose for which the customer avails of the locker hiring facility is so that they may rest assured that their assets are being properly taken care of. Such actions of the banks would not only violate the relevant provisions of the Consumer Protection Act, but also damage investor confidence and harm our reputation as an emerging economy*."

The Hon'ble Court laid down the following guidelines to be followed by the banks in the meanwhile irrespective of the value of the articles placed inside the locker:

a) Maintenance of a locker register and locker key register.

b) Locker key register to be consistently updated in case of any change in allotment.

c) Bank to notify the original locker holder prior to any changes in the allotment of the locker and give him an opportunity to withdraw the articles deposited by them.

d) Banks to consider utilizing appropriate technologies such as blockchain meant for creating digital ledger for this purpose.

e) Custodian of the bank to additionally maintain a record of access to the lockers, containing details of all the parties who have accessed the lockers and date/time on which they opened and closed.

f) Bank employees are also obligated to ensure rightful access, including open/close, from time to time.

g) Concerned staff to check if keys to the locker are in proper condition.

h) In case it is operated through electronic means, the bank should ensure that the system is protected against hacking and breach of other security practices.

i) Personal Sensitive Data, including Biometrics cannot be shared with third parties.

j) Bank has the authority to break open the locker only in accordance with relevant RBI regulations.

k) Due notice in writing shall be given to the locker holder at a reasonable time prior to the breaking open of the locker. Moreover, the locker shall be broken open in the presence of the authorized officials and independent witnesses after giving due notice. An inventory of articles found must be made.

l) Bank must undertake proper verification procedures to ensure that no unauthorized party gains access to the locker.

m) Banks shall also take necessary steps to ensure that the space in which the locker facility is located is adequately guarded at all times.

n) Copy of locker hiring agreement, containing relevant terms and conditions to be given to the customer at the time of allotment.

o) Banks cannot contract out the minimum standard of care with respect to maintain the safety of the lockers.

Lastly, the Hon'ble Court directed the RBI to issue within 6 months a set of rules or regulations laying down comprehensive directions mandating the steps to be taken by banks with respect to locker facility/safe deposit facility

[7] Civil Appeal No. 3966 of 2010.

management. Until then, the guidelines given by the Hon'ble Court will be binding.