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The term 'force majeure' has been defined in Black's Law Dictionary, as 'an event or effect that can be neither anticipated nor controlled. It is a contractual provision allocating the risk of loss if performance becomes impossible or impracticable, especially as a result of an event that the parties could not have anticipated or controlled

COVID-19 has affected cross-border trade, real estate market, specifically the developers, the home-buyers and the commercial lease arrangements, EPC (engineering, procurement & construction), joint-venture agreements as well as M&A deals in India.

It has also impacted the parties ability to meet their contractual obligations due to restriction in movement, stoppage of production, increase in costs due to scarcity of raw materials components, labour shortages, shortage of funds, disruption in the supply chains

What it means by "force majeure"?

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examples (keeping in mind the current COVID-19 scenario)

The following is a hypothetical example to explain the concept of force majeure in a contract.

Company A had entered into a supply contract for a non-essential good with Company B and such supply contract makes specific reference to occurrence of a force majeure event and consequences of the same.

The force majeure provision in the supply contract includes within its ambit any acts/orders of government and upon occurrence of a force majeure event, notice of the happening of such event shall be given by either party to the other within 30 days from the date of occurrence of such event, and consequently obligations of Company B to supply the goods to Company A and obligation of Company A to make payments to Company B for such goods shall be deferred for a period of six weeks.

Since in present times, due to the Corona Virus, the lockdown imposed by the government can be construed as an act/order of the government, Company B will be required to issue a notice to Company A indicating that such an event has occurred and the lockdown is beyond the control of Company B and therefore provisions of force majeure clause will trigger and

all obligations of Company A and Company B shall be deferred for a period during which the order for lockdown continues to be in effect