



DELHI HIGH COURT GRANTS INTERIM PROTECTION AMIDST LOCKDOWN

I. Introduction

Through our news alert dated 14th April 2020, titled [The Bombay High Court Interprets Doctrine Of Frustration And Force Majeure Amidst COVID-19](#), we analysed the judgment in the case of *Standard Private Limited vs. M/s. G. S. Global Corp. & Ors.* wherein the Hon'ble Bombay High Court was seized of a matter involving the effect of a Force Majeure clause and the implications of the lockdowns imposed by the Central and State Government.

Thereafter, the Delhi High Court passed orders in two cases wherein the effect of the lockdown on commercial transactions was discussed. These two orders passed by the Hon'ble Delhi High Court dated 20th April 2020 and 17th April 2020 in the case of *M/s. Halliburton Offshore Services Inc. vs. Vedanta Limited & Ors.* and *Ashwini Mehra vs. Indian Oil Corporation & Ors. Respectively* have been analysed in this alert.

II. Order of the Hon'ble Delhi High Court dated 20th April 2020 in the case of *M/s. Halliburton Offshore Services Inc. vs. Vedanta Limited & Ors.*

A. Facts of the case:

There existed a contract between the Petitioner and Respondent No. 1 for integrated development of the Mangala, Bhagyam and Aishwarya fields, including the drilling of wells by the former for the latter in these fields. To this effect, the Petitioner had furnished various bank guarantees the potential invocation of eight of which was under question. Although a substantial part of the project was completed by the Petitioner, it was unable to complete the project by 31 March 2020, owing to the complete lockdown *inter alia* on industrial activities consequent to the national lockdown orders to curb the spread of COVID-2019. The Petitioner invoked the force majeure clause in the contract and sought benefit thereunder. The Respondent refused to accommodate the Petitioner and reserved its right to take appropriate measures including but not limited to termination of the contract. It is pertinent to note that on being served with a copy of the Section 9 Petition, the Respondent terminated the contract. The Petitioner filed the present petition under section 9 of the Arbitration and Conciliation Act, 1996, seeking a relief that Respondent No. 1 be restrained from invoking and encashing the bank guarantee until the

expiry of one week from the date on which the lockdown is lifted by the Rajasthan government.

B. Outcome:

The Hon'ble Delhi High Court noted the detailed submissions made by the Advocates for the Petitioner and Respondent. The precedents laying down the law pertaining to the invocation of bank guarantees with reference to fraud, special equities and irretrievable injustice were also analysed in detail. The same were also analysed in the context of the lockdown orders and the COVID-19 pandemic. After a careful consideration, the Delhi High Court proceeded to grant the ad-interim reliefs sought by the Petitioners. Certain key observations from the said order are mentioned hereinbelow:

- i) In respect of the lockdown orders and their effect on the Petitioner, the Hon'ble Court opined that the lockdown orders passed on 24th March 2020 was in the nature of Force Majeure. It was unprecedented and could not have been predicted by the Petitioner or the Respondent.
- ii) The Hon'ble Court observed that special equities did exist and a *prima facie* case for injuncting Respondent from encashing the bank guarantees was made out. If the Respondent proceeded to encash the bank guarantees whilst the lockdown was operative, the same would result in irretrievable injury and prejudice being caused to the Petitioner.
- iii) Interestingly, since the COVID-19 pandemic, the Hon'ble Delhi High Court Order is perhaps the first judicial obiter dicta in the country to opine that the lockdown imposed by the Central Government is *prima facie* in the nature of Force Majeure.

III. Order of the Hon'ble Delhi High Court dated 17th April 2020 in the case *Ashwini Mehra vs. Indian Oil Corporation & Ors.*

A. Facts of the case:

A writ petition under Article 226 of the Constitution of India was filed by Mr. Ashwini Mehra, the Resolution Professional of Punj Lloyd Limited (Petitioner). The Petitioner had sought to quash Indian Oil Corporation Limited (IOCL)'s communication to the Central Bank of India invoking certain bank guarantees which were submitted by the Petitioner, in accordance with the terms of the contract between Punj Lloyd Limited (PLL) and IOCL relating to the Haldia Refinery Project.

During the course of the hearing, a reference was also made to CA – 2823(PB)/2019, which was also incidentally between the same parties to this Writ Petition. In the said CA – 2823(PB)/2019, the Hon'ble National Company Law Tribunal (“NCLT”) vide order dated 13th December 2019, injuncted

encashment of the bank guarantees. This order was challenged by the Respondent herein by way of a Writ Petition bearing No. WP(C) 13774/2019 before the Hon'ble Delhi High Court. The Hon'ble High Court relegated the Respondent to its remedies against the NCLT Order before the Hon'ble National Company Law Appellate Tribunal. ("NCLAT"). Thereafter, Respondent No. 1 herein filed an application before the NCLAT to vacate the order dated 13th December 2019, however the same is yet to be heard.

The Counsel appearing on behalf of the Petitioner, at the outset, clarified that he was constrained to approach the High Court under Article 226 as opposed to the NCLAT since the functioning of the NCLAT was restricted in furtherance to the circular dated 15th April 2020 owing to the COVID-19 pandemic and the resultant lockdown. In these circumstances, the Petitioner sought a temporary injunction against the Respondent, restraining it from encashing the bank guarantees, till the expiry of one week from the lifting of the lockdown which is presently in force till 3rd May 2020.

The Counsel for Respondent submitted that even if the Court was inclined to grant limited relief, it ought to be clarified that such relief was being granted only in view of the stalemate, arising from the Petitioner's inability to move the NCLT presently and should not be construed as an expression of opinion/observation on the merits of the case.

B. Outcome

Upon hearing the parties, the Court granted limited relief to the Petitioner injunctioning the Respondent No. 1 from encashing/invoking the bank guarantees till the expiry of one week from the lifting of the lockdown imposed by the Central Government, consequent to the COVID-19 pandemic. The Court also clarified that it has not entered into the merits of the case.

C. Conclusion

- i) Given the facts of each case, the Courts have attempted to strike a balance between equity and commercial propriety. In the Halliburton Case, the Hon'ble Judge has opined that the lockdown is *prima facie* in the nature of a Force Majeure event. Although, the order was eventually passed on the principles of special equities and irretrievable injury and prejudice in relation to the law on invocation of bank guarantees, in the present scenario the opinion bears significance. In the Indian Oil Corporation case, the Court passed an order granting an injunctive relief not on the basis of merits but only by recognising the impossibility of the Petitioner in exercising its remedies. This impossibility was due to the present pandemic and lockdown orders.
- ii) A review of these two cases shows that the Court may, in the interest of justice, step-in in specific cases where the effect of the lockdown on the

rights and remedies of parties is direct and immediate. However, both orders only serve as temporary measures of protection for the applicants and must not be construed as being reflective of the merits of each case. Further, this is not a one size fits all formula. Much would depend on the nature of the contract, the obligations of the parties involved, the time period when the contract was entered into, the performance of their obligations prior to it being declared a pandemic and the steps taken to mitigate the loss.

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