



SUPREME COURT OF INDIA ON CONTINGENT CONTRACTS (SECTION 32) AND THE DOCTRINE OF FRUSTRATION (SECTION 56) UNDER THE INDIAN CONTRACT ACT, 1872.

I. Introduction

On 22nd April 2020, the Hon'ble Supreme Court of India ("Apex Court") examined the question of contingent contracts under Section 32 and the Doctrine of Frustration under Section 56 of the Indian Contract Act, 1872 ("Contract Act") in the case of *National Agricultural Co-operative Marketing Federation of India v. Alimenta S.A.* In our news alert dated 24th March 2020, titled [COVID 19 - Force Majeure and Doctrine of Frustration](#), we had analysed the aforesaid sections and their applicability as interpreted by the Apex Court.

II. Facts of the Case

- i. National Agricultural Co-operative Marketing Federation of India ('NAFED') and Alimenta S.A. ("Alimenta") had entered into a contract dated 12th January 1980 for export of 5,000 metric tonnes of Indian HPS groundnuts ("commodity").
- ii. NAFED is a canalizing agency for the Government of India for export of the commodity. For any export which was to be carried forward to next year from the previous year, NAFED required the express permission and consent of the Government of India, being a canalizing agency.
- iii. The transaction was governed by covenants such as 'Force Majeure and Prohibition' contained in Clause 14 of the contract whereby, in case of prohibition of export by executive order or by law, the contract would be treated as cancelled.
- iv. The commodity could not be exported due to intervening circumstances and NAFED and Alimenta had entered into addendums extending the date of shipment. It is pertinent to note that NAFED had the permission of the Government of India to enter into exports for three years between 1977-80 but had no permission under the Export Control Order to carry forward the exports

for the season 1979-80 to the year 1980-81. It was submitted that NAFED was unaware about this whilst entering into the contract.

- v. The Ministry of Agriculture, Government of India, vide letter dated 1st December 1980 directed NAFED not to ship any leftover quantities from previous years. NAFED was informed that it couldn't carry forward the previous years' commitment to the subsequent year and the export of commodities was restricted under a quota system. NAFED had addressed several correspondences seeking permission for export. However, no permission was granted.
- vi. NAFED informed Alimenta that the export of the contracted quantity was not possible because of the Government of India's executive action banning such exports.
- vii. This led to Alimenta initiating arbitration proceedings before the Federation of Oil Seeds and Fats Associations Ltd., London. An award came to be passed in favour of Alimenta. NAFED filed an appeal before the Board of Appeals against this order. This appeal also came to be dismissed and in fact the monetary amount payable by NAFED was enhanced by the Board of Appeals. Thereafter, Alimenta sought to enforce the award passed. NAFED objected to the enforcement on the ground that it was opposed to public policy. NAFED did not succeed before the single bench and division bench of the Delhi High Court. In view thereof, an appeal came to be filed before the Supreme Court of India.

The primary question involved was whether the award was unenforceable under the Foreign Awards Act since the same was opposed to public policy. It was also *inter alia* argued that the award did not factor in the restrictions imposed by the Government of India with reference to the export of the commodity. Whilst considering the arguments on this count, the Supreme Court examined sections 32 and 56 of the Contract Act. This article is limited to the observations made in the instant case with respect to contingent contracts and force majeure.

III. Outcome

The Hon'ble Supreme Court held that the contract was rendered void in terms of section 32 of the Act on the following grounds:

- i. The Court noted the terms of clause 14 of the contract and stated that the contract contemplated that during the contract if there is any prohibition of the export or any other executive or legislative act, by or on behalf of the Government of the country of origin, the unfulfilled part of the contract would stand cancelled. In the instant case, due to the refusal of permission, NAFED couldn't have exported the commodity, as the same would have amounted to NAFED violating the Export Control Order. The Court observed that the contract had come to an end in terms of the said clause 14.

- ii. In light of clause 14, the Court in this case placed reliance on the provisions of Section 32 of the Contract Act since the same applies to cases where the contract itself provides for contingencies upon happening of which the contract cannot be carried out and provides for the consequences.
- iii. Section 56 of the Contract Act deals contracts to do impossible acts or to do acts which become impossible or unlawful after the contract is entered into. Where the act is rendered impossible at a future date, the contract becomes void. However, Section 56 also states that if the promisor knew or had reasonable knowledge that the act could be rendered impossible, but the promisee had no knowledge, then upon the act being rendered impossible the promisor would be liable to pay damages to the promisee.
- iv. In the present case, the contract was to do an act which would be impossible without government permission. In the present case both parties were aware that the Government's executive, or legislative actions might come in the way as provided in Clause 14 of the contract. As seen in Clause 14, this contingency was provided for and was within the contemplation of both parties. The Court held that in this case section 32 of the Act would be attracted and section 56 would not be applicable. The contract became void on the happening of the contingency, as provided in section 32 of the Contract Act.
- v. The Court placed reliance on the landmark decisions of *Satyabrata Ghose v. Mugneeram Bangur & Co. (AIR 1954 SC 44)* and *Naihati Jute Mills Ltd. v. Khyaliram Jagannath (AIR 1968 SC 522)* wherein if the contract contains impliedly or expressly a term according to which the contract stands discharged on the happening of certain contingencies, dissolution of the contract would take place as per the terms of the contract itself and such cases would be outside the purview of section 56 of the Contract Act.
- vi. The Court also observed that the Delhi High Court erred in holding that this was a case of self-induced frustration. The Court also relied upon the case of *Boothalinga Agencies v. V.T.C. Poriaswami Nadar (AIR 1969 SC 110)* to arrive at this conclusion. The Supreme Court observed that the present case wasn't one of frustration under section 56 of the Contract Act and the express stipulation under clause 14 could not be overlooked.

IV. Analysis

The judgment of the Supreme Court in this case is based on a careful consideration of the past landmark decisions of the Apex Court in respect of contingent contracts and the doctrine of frustration. The Court has laid down and elaborated the principles distinguishing contingent contracts from those which are rendered frustrated as contemplated by the Contract Act.

Where the parties have provided for the occurrence and consequences of an act/event, they will be governed by Section 32 of the Contract Act. However, where the act/event

which renders performance of the contract impossible on its occurrence is not provided for in the contract, the parties to such a contract will be governed by the principles of Section 56 of the Contract Act.

V. Conclusion

In our opinion, this ruling will have a significant impact on commercial contracts particularly in light of the COVID-19 pandemic and the lockdown orders being issued from time to time. A perusal of the landmark decisions of the Apex Court would evidence that the Courts have given a careful consideration to the prevalent provisions of the law concerning contingent contracts and the doctrine of frustration. Although much would depend on the facts and circumstances of each case and terms of the contract, the present judgment serves as a guiding light for both litigants and lawyers to ascertain whether contractual commitments can be claimed to have been disrupted under Section 32 or Section 56 of the Contract Act.

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