AJC NEWSLETTER

June 23, 2020
Edition – II, Volume – I

Introduction

We here at Agarwal Jetley & Co. (AJC) are happy to bring you the second edition of our weekly newsletter capturing the important updates that have taken place in the legal world. We would be happy to hear from you about the 'AJC Newsletter', the hits and misses, inputs and any clarifications that you all require and deem necessary. We thank you in advance and are happy to continue this trend of keeping everyone "Legally Up to Date".

Aspects covered in this issue

In this issue we cover various relevant topics. Our associates have looked into the focus provided viz. the COVID-19 packages to the IT and defence sector. Then we look at the pressing issue of payment of salary and wages and how the Supreme Court is tackling the issue. We also cover IPR trademarks perspective wherein the Madras High Court provides an interesting take on some of the most commonly used words and how far van they actually be "*trademarked*". Finally, we look at another important aspect of the 'Force Majeure' which has been an important aspect a topic for various legal discussions, wherein the Delhi High Court discussed its feasibility.

Defence Testing Infrastructure Scheme[i]

Introduction

The Defence Minister Rajnath Singh on May 15, 2020 approved the launch of Defence Testing Infrastructure Scheme (**DTIS**) with an outlay of four hundred crore rupees (INR 400 crore) for the creation of state of the art testing infrastructure for domestic defence and aerospace manufacturing sector. It aims at setting up of 'Greenfield Defence Testing Infrastructure' as a common facility under the private sector with Government assistance, mainly in 'Defence Industrial Corridors' (**DIC**).

Objectives of the Scheme

The scheme is launched in the country to achieve the following objectives:

(i) To encourage ethnic defence production with a special focus on the involvement of micro, small and medium enterprises (**MSME**) and budding entrepreneurs by concreting the differences in the India's defence testing infrastructure.
(ii) To provide easy access and thus meet the testing needs of the domestic defence

Duration of DTIS

DTIS is scheduled to run for the duration of five (5) years and envisages setting up six (6) to eight (8) new test facilities in partnership with private industries. This will facilitate indigenous defence production, consequently reducing the import of military equipment and help make the country self-reliant.

Financing of DTIS

The projects under the scheme would be provided with up to seventy five per cent (75%) Government funding in the form of *Grant-in-Aid* and the remaining twenty five per cent (25%) of the cost would be borne by the special purpose vehicles (**SPV**), whose constituents would be Indian private entities and State Governments.

Eligible implementation agencies

(i) The seven (7) private bodies that are enrolled in India comprise of the qualified units for establishing the 'Implementation Agency'.
(ii) The SPV shall be responsible for obtaining statutory clearances required for testing of weapons and ammunition.

The SPVs under DTIS would be registered under the Companies Act, 2013 and shall operate and maintain all assets under the scheme in a self-sustainable manner by collecting user charges. The Ministry of Defence, Government of India stated that the equipment and systems tested would be certified as per appropriate accreditation. Majority of the test facilities are expected to come up in two (2) DIC, namely Uttar Pradesh Defence Corridor and Tamil Nadu Defence Corridor.

Scope of the Scheme

DTIS targets to bring the private sector into the aspects of testing and endorsing as the manufacturers of the defence tools, equipment and systems. DTIS proposes defence testing for:

(i) Testing facilities for drones including the Unmanned Aerial Vehicles (**UAV**) with the Remotely Piloted Aircrafts (**RPA**);
(ii) Electromagnetic Interference (**EMI**), Electromagnetic Compatibility (**EMC**) testing for radars, UAVs/RPAs and electronic or telecom equipment;
(iii) Rubber testing for defence and aerospace sectors;
(iv) Radiated noise, shock testing and electronic warfare;
(v) Software testing and specialised test driving tracks;
(vi) Ship motion testing and test facilities for the aerospace industry;
(vii) Ballistic and blast testing facilities and environmental test facilities.

Ineligibility of implementing agencies

The implementation agency or any of its constituents shall be debarred on the following rules and regulations:

(i) When the implementing agencies are proved to be offensive under the Prevention of Corruption Act, 1988;

(ii) The Department of Defence Production directs and clarifies all the issues raised regularly so that DTIS is implemented in a proper manner and direction;

(iii) When the Implementing Agencies are proved to be offensive under the Indian Penal Code, 1860 or any other law for the time being in force in case an individual is responsible for any loss of life or property or initiating a threat to public health;

(iv) Proceedings against any its constituents are running under Insolvency and Bankruptcy Code, 2016.

(v) When the subordinate constituents of SPV (implementation agency) are blacklisted by the Government of India.

Benefits of DTIS

Over the decades, the Defence Research and Development Organisation, the forty one (41) ordnance factories and the eight (8) defence public sector undertakings have created sophisticated and costly testing facilities for firearms, ammunition, electronics and radar at government expense. DTIS will provide the private sector to avail the access to such facilities. The DTIS was approved in order to promote indigenous defence capability, specifically amongst MSME and start-ups. Under this scheme, the private sector will have access to facilities such as sophisticated and costly testing facilities for firearms, ammunition, electronics and radars at Government expense.

DRDO grants free patent access to boost indigenous production[ii]

Introduction

Defence Research and Development Organisation (**DRDO**) is mandated to develop defence technologies, systems and products that are required for Indian armed forces. In a recent guideline the DRDO has decided to grants free patent access to boost indigenous defence production. DRDO develops defence technologies through projects executed by a network of laboratories. These laboratories are also engaged with academia and industries for research and development and production through 'development contracts, research boards, technology development fund ("**TDF**") scheme, extramural research and grant-in-aid schemes. DRDO has been generating Intellectual Properties (**IP**), trade secrets, patents and copyrights from its research and development and design and development activities. Matured technologies that are ready for production are transferred to Indian Industries. DRDO provides the relevant 'know-how' in the form of technology transfer documents ("**TTD**") and handholding support. It also provides the freedom to industries to carry out value addition to the base technology in consultation with DRDO to improve performance or economic viability.

The process of development

The *DRDO Policy for use of Patents by Indian Industry* ("**Policy**") was introduced in September, 2019 and it got a fresh lease due to recent Defence Procurement Plan, 2020 (**DPP 2020**) and the initiatives by the Government of India to indigenise defence manufacturing.

This is qualitatively different from acquiring technology from foreign Original Equipment Manufacturer (**OEM**) wherein such value addition is often prohibited. Therefore, DRDO makes a significant contribution to the capability enhancement of the Indian defence industry through transfer of technologies. Some of the defence technologies developed by DRDO also have utility in the civilian

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market. Such technologies are transferred to the industries with dual licensing rights for defence sector/departments of Government of India and commercial market. Thus, Transfer of Technology (**ToT**) of DRDO developed technologies to Indian industries contributes to self-reliance in technology, industrial growth and overall national development.

Types of technology

DRDO Guidelines for ToT were issued vide Government letter No. DRDO/ CCR&D (SI)/DI2 TM/07/ToT/2108/D (R&D) dated 30 June 2015. As per this, there are two (2) categories of technology:

(i) Category 'A' technology: These technologies are military technologies for which Indian Armed Forces, MHA, other Government agencies (central and state) are only end users. Export of Category A technologies to friendly countries is subject to permission of DRDO/ Ministry of Defence (**MoD**) and Ministry of External Affairs (**MEA**).

(ii) Category 'B' technology: This is the *dual use technology* (including spin-off technologies) that is not security sensitive technology and has large commercial potential beyond just usage in the defence sector. The ToT is given to the manufacturing industries for utilising the technology to manufacture the products in India/abroad and sell products in India and/or abroad.

Eligibility to avail the benefits

The companies that can benefit from the Policy include any state-owned or privately owned defence equipment/ material manufacturer including Micro, Small and Medium Enterprises (**MSMEs**) and start-ups. This benefit can be utilised under two (2) conditions:

(i) The company must submit annual commercial reports to DRDO
(ii) The company must be equipped to absorb the technology in question, along with infrastructure to manage quality of the production as well as production capability based on the technology.

These conditions ensure that the DRDO can keep a tab on the distribution and usage of such technology as well as make sure that the quality of the manufactured goods is in line with prescribed technological integrity and standards.

New initiative by DRDO

For transfer of these technologies the requisite ToT fee and royalty (as applicable) are charged by the respective labs/departments of DRDO from the licensee as they have the patent rights. Now, DRDO has put its over four hundred and fifty (450) patents for free access to industries for commercial exploitation. The unprecedented move is intended to provide a boost to domestic industries, especially in the strategic sector through free access to patents held by the DRDO, which has a network of over fifty (50) national laboratories, involved in Research and Development (**R&D**).

As per the new Policy, the DRDO, the MoD will offer complete access to its patents filed in India without any licensing or royalty fees. This shift in policy is a welcome change as the former licensing and royalty fee would go as high as a several lakhs to over a few crore Rupees based on the kind of technology licensed, the expenditure on such technical projects along with the baseline price and post production sales to non- defence sectors. Under the new Policy, only a processing fee of one thousand Rupees (Rs. 1,000) is to be charged.

DRDO has displayed both the procedure and the complete list of technologies on its website. The technologies, relating to missiles, life sciences, electronics and communications, naval and aeronautics systems, combat engineering, electronics, armaments, among others, have military applications and some have spin offs that can be transferred to commercial market.

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Conclusion

This is seen as a welcome step from the start-ups and MSMEs since it is an initiative to encourage domestic manufacturing and help uplift the domestic industries and create a global standing as far as defence manufacturing is concerned. It is better to offer the patents free of cost to these industries rather than keep them in the shelf and pay hefty protection fee for their lifetime as this move would be seen as a major boost to the indigenous production and would also be in consonance with the DPP 2020.

Domestic software products ecosystem in light of CVOID19 package[iii]

Introduction

The Ministry of Information Technology ("**MeitY**") has been fast-tracking its ambitious five thousand crore rupees (Rs. 5,000 crore) fund-of-funds targeted at deploying domestic capital into India's software products ecosystem, as the Government is reopening the economy in a phased manner after a national lockdown spanning almost three (3) months.

The finance ministry is considering tapping the country's bellwether information technology services companies, including TATA Consultancy Services (**TCS**), Infosys and Wipro, to serve as limited partners or investors in the fund.

There is a preference towards raising domestic or Rupee capital instead of foreign aided fund for the proposed five thousand crore rupees (Rs. 5,000 crore) fund-of-funds. The domestic companies such as TCS and Infosys which carry good valuation are being encouraged to show interest in software product development and help invest in the fund-of-funds in order to fast-track domestic development of the software industry in India.

India' position in the global software product market

India's share in the global software product market is miniscule and the country is a net importer of software products as of the total software business of eight point two billion dollars (USD 8.2 billion) in the country, India's exports amount to just two billion dollars (USD 2 billion). India does well in software services and the country's next big opportunity is in software products.

National Policy on Software Products, 2019

The National Policy on Software Products, 2019 ("**Policy**") had been approved by the Union Cabinet in 2019. The Policy is aimed at developing India as a software product nation. An outlay of one thousand five hundred crore rupees (Rs. 1500 crore), divided into *Software Product Development Fund* and *Research and Innovation Fund* is envisaged to implement the programmes/schemes envisaged under this Policy over a period of seven (7) years. The Policy is aimed at giving a direction for the formulation of several schemes, initiatives, projects and measures for the development of software products sector in the country as per the roadmap envisaged therein.

The Policy is inclusive of five (5) missions:

(i) To promote the creation of a sustainable Indian software product industry, driven by Intellectual Property (**IP**), leading to a ten (10) fold increase in India's share of the global software product market by 2025. The software product ecosystem is characterized by IP creation and large value addition increase in productivity, which has the potential to significantly boost revenues and exports in the sector, create substantive employment and entrepreneurial opportunities in emerging technologies and leverage opportunities available under the Digital India Programme,

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thus, leading to a boost in inclusive and sustainable growth.

(ii) To nurture ten thousand (10,000) technology start-ups in the software product industry, including one thousand (1,000) such technology start-ups in Tier-II and Tier-III towns and cities and generating direct and indirect employment for three point five (3.5) million people by 2025. In order to create an ecosystem, a programme of incubation will be initiated to nurture at least ten thousand (10,000) software product start-ups, thereby generating direct and indirect employment for one million persons. The programme will provide - (a) technical and infrastructural assistance; (b) mentoring support; (c) seed fund; (d) research and development and testing facilities; and
(e) marketing and branding support.

(iii) To create a talent pool for software product industry through (a) up-skilling of ten lakh (10,00,000) IT professionals, (b) motivating one lakh (1,00,000) school and college students and (c) generating ten thousand (10,000) specialized professionals that can provide leadership. For catering to large scale requirement of trained manpower in futuristic technologies, a FutureSkills programme has been initiated for upskilling/re-skilling of three million IT Professionals in emerging technologies. For creating a talent pool of one million IT professionals with competencies required for IP driven software products, a special emphasis on modules related to software products will be added into the programme. This will be implemented through - (a) modification in existing course curriculum; (b) short term training programme; and (c) national competency tests in consultation with the industry.

The programme will be implemented in partnership with educational institutes, both public and private, identified industry bodies and the National Skill Development Mission.

(iv) To build a cluster-based innovation-driven ecosystem by developing twenty (20) sectoral and strategically located software product development clusters having integrated infrastructure, marketing, incubation, research and development/test-beds and mentoring support. The registry of Indian software products will be integrated with Government e-market (**GeM**) and will also provide necessary handholding for marketing support. Additionally, Micro, Small and Medium Enterprises (**MSMEs**) will be encouraged to develop solutions for 'Smart Cities', healthcare, agriculture, e-learning, transport, fin-tech and addressing social challenges, such as, bridging digital divide, gender inequality, empowering the less privileged citizens. A series of hackathons will be organised to identify such startups / MSMEs, who will be suitably rewarded on successful development.

(v) In order to evolve and monitor the schemes and programmes for the implementation of the Policy, the National Software Products Mission will be set up with participation from Government, Academia and the Information Technology (**IT**) Industry. The same aims to achieve the following objectives:

(a) Design appropriate strategy for development of the software product industry to ensure optimum utilization of its potential and to establish India as a global Software Product Hub;

(b) Recommend specific policy measures to ensure an enabling ecosystem for design, development, innovation, value addition etc;

(c) Recommend specific initiatives to be undertaken to tap the full potential of the domestic and the international markets for the Software product industry;

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(d) Monitor and collate various initiatives taken under this policy with an aim to create three point five million employment opportunities and boost software products revenue tenfold by 2025;

(e) Facilitate various Government agencies and other bodies in promotion of Software Products, specific to the various programmes envisaged under this policy;

(f) Encourage States to participate in programmes and promote Indian Software Products in line with this policy.

Conclusion

The Indian IT Industry is predominantly a service Industry. It is necessary to move up the value chain through technology-oriented products and services to ensure sustainability. Hence to create a robust software product ecosystem the Government approved the National Policy on Software Products, 2019 to develop India as the global software product hub, driven by innovation, improved commercialization, sustainable Intellectual Property which is now being fast-tracked towards raising domestic capital for the proposed five thousand crore rupees (Rs. 5,000 crore) fund-of-funds.

Dispute over use of "Magic Masala" and "Magical Masala" has come to an end[iv]

Introduction

The Madras High Court **("MHC")** has recently elucidated a seven (7) year long legal battle over use of "Magic Masala" and "Magical Masala" and has made it clear that no person can claim any monopoly right over laudatory expressions like "Magic" or "Magical" or their derivative as they are well common to the trade and use of similar expressions would not amount to passing off under the Trademarks Act, 1999 ("**TMA**").

Background

The suit for permanent injunction and passing off has been filed by the ITC Limited ("**Plaintiff**") in the year 2013 against the Nestle India Limited **("Defendant")** restraining the Defendant to use the word mark "Magical Masala" or any mark similar to Plaintiff's mark. Plaintiff has been using the expression "Magic Masala" for its noodle products from the year 2010 onwards and alleged that the Defendant adopted similar expression "Magical Masala" for its instant noodles brand "Maggi" in the year 2013 with an intention to dilute the Plaintiff's proprietary rights and goodwill associated with it which amounts to passing off under the TMA.

The MHC passed an interim order in the year 2015 which restrained the Defendant from using the mark "Magical Masala" or any deceptively similar mark till the disposal of the suit.

MHC's observation

The MHC observed that the word "Magic Masala" has been used by the Plaintiff to describe the characteristics and flavour of the masala and is not a registered trademark. Hence, use thereof is incapable of conferring any proprietary right in law and hence no statutory right can be claimed by the Plaintiff. The MHC further held that the onus is on the Plaintiff to establish that it has a proprietary right and the following three factors are ad hoc to be present in the claim of passing off mainly - (i) mark has been used prior in point of time by Plaintiff ; (ii) mark has been used to distinguish the product from similar words and not used to describe the quality of the product; and (iii) upon extensive and exclusive use of trademark, it has

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acquired such level of distinctiveness and goodwill that come to identify the source and origin of instant noodles of the Plaintiff .

The MHC held that the word "Magic" is not a coined or invented word and used widely in the food and cosmetic Industry. It is inherently not a distinctive word and cannot be said to be adopted by Plaintiff to distinguish its product sold by them.

The MHC opined that the expression "Masala" signifies a mixture of ground spices used in Indian cooking and is a generic term to call a mix of different spices and used across the country irrespective of the culture, zone and geographical region. Being a generic name for describing mixture of spices in Indian language, it could never be appropriated.

The MHC also analysed the judgment passed by the Supreme Court in Godfrey Philips India Ltd vs Girnar Food & Beverages (P) Ltd (*(2004) 5 SCC 257*) and found that the "descriptive term" which clearly conveys information about the ingredients, qualities and characteristics of the product or service are not subject to registration/protection but the same qualifies for protection if it connotes secondary meaning, contrarily "suggestive marks" which indirectly suggest the quality and ingredients of the product are subject to registration and protection under the TMA.

The MHC further held that the expression "Magic Masala" has been firstly adopted by "Lays" for their potato chips which were used to name the flavour along with some of its other flavours.

Conclusion

The MHC while dismissing the suit clarified that the expression "Magic Masala" has been used in a laudatory manner to commend the "Masala" and hence the laudatory epithet word are not subject to monopoly or protection under the TMA.

The MHC also opined that if the plaintiff would have filed a trademark application to register the expression "Magic Masala" as a word mark, the same would have been rejected being generic term by the 'Trademark Registry' under section 9 of the TMA.

Delhi HC - Lockdown not an excuse for breach of deadlines[v]

Introduction

The on-going Covid-19 pandemic is significantly impacting industries across all sectors around the world. The nation-wide lockdown and restricted travel movements has sent shockwaves across the economy and consequently, the companies are under enormous financial burden coupled with a portending uncertainty, over the performance of their existing contractual obligations. A vital legal issue that has arisen during this unprecedented time is whether the outbreak of COVID-19 and the ensuing lockdown ordered by the Government of India ("**Government**") would constitute a "Force-Majeure" event and whether the occurrence of said event can be used as a defence against the non-fulfillment or delay in performing contractual obligation(s).

The Delhi High Court **("DHC")** had recently in Halliburton Offshore Services Inc vs Vedanta Limited & Anr (*OMP. (I) COMM & I.A. 3697/2020*) held that not every breach or non-performance of the contract can be justified or excused merely on the invocation of "Force-Majeure" clause in view of lockdown imposed by the Government.

Facts of the case

In this case, the Halliburton Offshore Services Inc **("Petitioner")** and Vedanta Limited & Anr

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("Respondent") entered into a contract on April 25, 2018 **("Contract")** for integrated development of three blocks of oil and gas fields namely Mangala, Bhagyam and Aishwarya (together denoted by the Acronym "**MBA**"). For entering into the Contract the Petitioner had furnished various bank guarantees in favour of the Respondent. The deadline to complete the contracted project was January 31, 2020 to which parties later agreed to extend the deadline by March 31, 2020 for conclusion of the entire work. Meanwhile, on March 18, 2020 Petitioner invoked the "Force-Majeure" clause and sought further time to complete the project, which was refused by the Respondent vide its email dated 31st March, 2020. Thereafter, on April 7, 2020 Respondent proposed to invoke the termination clause and invocation of bank guarantees.

On April 13, 2020 Petitioner filed a petition under Section 9 of the Arbitration and Conciliation Act, 1996 seeking Injunction against bank guarantees in view of the lockdown imposed by the Government. However, on the same day Respondent terminated the Contract and invoked the bank guarantees.

An *ad-interim* order was passed by the DHC on April 20, 2020 restraining the Respondent from invocation and encashment of the bank guarantees during the period lockdown remain in force. The DHC vide its order held that lockdown being unpredictable in nature qualify as a "Force-Majeure" event and classified as a distinct ground for seeking Injunction against encashment of bank guarantees. Post the ad-interim order, pleadings were completed and matter was heard by DHC for disposal of the petition.

Issues involved

The issues that arose before DHC were:

- "*Whether COVID-19 can provide succor to a party as in breach of contractual obligations*" and;
- *"Whether the invocation of Bank Guarantees is liable to be injuncted on the ground of occurrence of a "Force-Majeure" event, i.e., Covid-19, if the breach occurred prior to the said outbreak"*?

DHC's analysis

The DHC vacated its earlier stay order on encashment of bank guarantees and held that the order was interim in nature and was to remain effective only till completion of proceedings.

The DHC clarified that no doubt COVID-19 is a "Force-Majeure" event, but whether it would justify for non-performance or breach of contractual obligation(s) must be examined on the facts and circumstances of the case. The DHC held that every non-performance or breach of obligation(s) cannot be excused merely on the invocation of "Force-majeure" clause, in view of COVID-19 and court would have to access various aspects *inter-alia* the conduct of the parties prior to pandemic, the deadlines that were mentioned in the contract, the steps that were to be taken by the parties and various compliances that were required to be made. It is only then that the court can access whether, genuinely a party is prevented or is able to justify its non-performance due to the outbreak of COVID-19.

The DHC analysed the Supreme Court's Judgment, Energy Watchdog vs Central Electricity Regulatory (*Civil Appeal No. 5399-5400 of 2016*) and found that it is a settled law that "Force-Majeure" clause is to be interpreted narrowly and not broadly. Parties ought to be compelled to perform their contractual obligation(s) and hence any excuse from its performance would be allowed to parties only in exceptional condition(s). The DHC further held that it is not merely the duty of the court to provide a shelter for justifying non-performance and it is not in the domain of court(s) to absolve parties from performing their contract. Hence, there must be a "real reason" and a "real justification" in order to invoke the "Force-Majeure" clause.

The DHC after considering the pleadings and documents that have been placed on record, held that there have been hardly any work done by the Petitioner since September 2019, long before the outbreak of COVID-19 and hence, there has been non-performance and lack of alacrity in completing the work. Therefore,

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the past non-performance of the Petitioner cannot be condoned due to lockdown imposed by the Government in India in March, 2020. The Petitioner has defaulted in timely performance despite repeated opportunities given by the Respondent.

The DHC further held that the bank guarantees are valid, and the language of the financial and performance bank guarantees makes it clear that merely on demand, the bank would have to make payment of it.

Conclusion

The DHC court directed that the amount recoverable by the Respondent has to be ascertained and the amount of the advance bank guarantees, upon being encashed, shall be kept in a separate "Joint Account" which shall be held jointly by the Petitioner and the Respondent. Upon reconciliation of the accounts, the unrecovered portion shall be recovered from Petitioner. The DHC also held that the parties are free to reach the arbitral tribunal under Section 17 of the Arbitration and Conciliation Act, 1996 if they are unable to reconcile the account, i.e. arbitral tribunal to take interim measures.

It goes without saying that whilst the lockdown imposed by Government considered as an "unforeseeable" event and in some cases classifies as a "Force-Majeure" event. However, this will not be the case for every contract. The same depends upon the number of factors not limited to the phrasing of the clause, conduct of the parties before the outbreak, deadlines of performing obligation(s) etc. Therefore parties cannot take a relief by merely invoking a doctrine of "Force-Majeure in every breach or non-performance of contracts.

Supreme Court extends order for withholding payment of wages during lockdown[vi]

Introduction

The Supreme Court (**SC**) recently extended its order of no coercive action to be taken against any companies for failing to comply with the Ministry of Home Affairs (**MHA**) circular dated March 20, 2020 asking for payment of wages to workers to not be suspended or delayed during COVID-19 lockdown ("**Circular**"). In the case of *'FicusPax Private Ltd. and ors. v. Union of India and ors.'* In a related petition, the SC ordered that no coercive action will be taken against an association of fifty two (52) companies in Punjab for failing to comply with the MHA notification.

The SC asked factory owners and other private industrial establishments to negotiate terms and enter into settlements with the workers on the payment of wages during the lockdown period. They observed that the industry could not survive without the labourers and workers and that both labourers and the industry need each other and should make efforts to solve the dispute mutually. The SC urged employers and employees to sort out their differences and resume work in a congenial atmosphere.

Petition by the industries

As soon as the Circular was passed, various associations sole proprietorship firms, partnership firms, private limited companies etc. engaged started knocking on the doors of the Courts for relief challenging the constitutional validity of the Circular, which in a way compelled payment of full wages to workers and employees during the period of lockdown.

The aggrieved parties submitted that the circular and all such related notifications compelling any form of payment was arbitrary, illegal, irrational, unreasonable and contrary to the provisions of law including Article 14 and Article 19(1)(g) of the Constitution of India,

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1950 ("**Constitution**"). Their plea further stated that the existence of the power under Section 10(2)(l) of the Disaster Management Act, 2005 to treat all private establishments at par by passing a blanket direction to pay full salaries against no work is manifestly arbitrary and in violation of Article 14 of the Constitution.

On April 27, 2020 the SC, while hearing another similar plea had granted the MHA two (2) weeks to put its policy on record regarding the notifications directing payment of full salaries to employees during the COVID-19 lockdown. On 4 June, 2020 the SC had granted interim protection to private companies and said no coercive action will be taken against them.

SC's order

The SC in an order dated June 12, 2020, has given a slew of directions to the states' labour departments to facilitate the negotiations between the employers and the employees. State Governments were asked to facilitate, initiate the process of settlement and submit a detailed report to the labour commissioners regarding the same. The MHA has been given four (4) weeks by the SC to file its reply on the question of legality and validity of the notifications that all employers, including all public as well as private establishments have to pay full wages to their employees during the lockdown period. The SC further directed that no coercive action would be taken against employers due to non-payment of one hundred per cent (100%) salaries of their employees. The state government labour departments were asked to facilitate negotiation between employees and employers.

Conclusion

The Circular and related notifications can be seen as a temporary measure, since people were migrating in large numbers. Its effect was to mitigate their suffering and stop them from leaving. However, the aggrieved businesses in this case have been hit because of the lockdown and being forced to pay workers in full has caused extreme financial and mental stress on them. The aggrieved parties in their cases have argued that they cannot be compelled to pay one hundred per cent (100%) of the salaries of their workers and that they should be allowed to pay the employees seventy per cent (70%) less salary and argued that the Government should take care of the rest by utilizing the funds collected by the Employees' State Insurance Corporation or the PM Cares Fund.

It is essential to work out a solution after negotiations with industries and the Government and the SC should play the role of facilitator.

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