



## LOCKDOWN PRIMA FACIE FORCE MAJEURE? DELHI HC ANSWERS AT AN AD-INTERIM STAGE

By observing that the lockdown was prima facie in the nature of a force majeure, the Delhi High Court in Halliburton Offshore Services Inc vs Vedanta & Anr. case has perhaps given the other courts a food for thought.

We share with you a short brief that helps analyse the order passed on April 20,2020 ("Order") by Delhi High Court.

### **Brief facts leading to the matter on hand:**

Vedanta (Respondent in the matter) had floated a tender for integrated development of three blocks (Mangala, Bhagyam and Aishwarya) in Rajasthan, for which Halliburton Offshore Services Inc (Petitioner in the matter) were successfully awarded the contract.

Under the contract, various Performance, Liquidated Damages and Advance bank guarantees were furnished by Halliburton. It was agreed between parties that the period to complete work by Halliburton was to be extended, until March 31,2020.

The significant part of the project stood completed by Halliburton prior to March 31,2020, however, due to a complete lockdown consequent to COVID-19, Halliburton was unable to perform the contract as it required travel of persons from overseas, as well as workmen from various parts of the country.

Halliburton invoked the force majeure clause in the contract. However, Vedanta refused to accommodate Halliburton and instead, reserved their right to take appropriate recourse under the contract which included termination of the contract and getting the balance activities completed through alternative resources at the risk and cost of Halliburton.

Consequently, Halliburton was constrained to move the Delhi High Court for appropriate reliefs, including obtaining a stay on invocation of bank guarantees which otherwise under law are normally stayed by courts on ground of egregious fraud.

The Court's Order restraining the invocation of bank guarantees given by Halliburton to Vedanta has been mainly given on premise of special equities as observed and held in Apex's Court decision in Standard Chartered Bank Ltd v Heavy Engineering Corporation Ltd, irretrievable harm and prima facie finding that lockdown is in the nature of a force majeure.

**Our View:**

Contrary to the Delhi High Court's ruling above, the Hon'ble Bombay High Court recently in the matter of Standard Retail Pvt. Ltd. V/s M/s. G. S. Global Corp & Ors had refused to grant force majeure exemption to a set of steel importers, who had sought to restrain the encashment of their Letter of Credits by Korea-based exporters.

The Order which is currently passed by Delhi High Court at an ad- interim stage is given on the facts of the case and appears to be the first order which seems to have a prima facie view on force majeure, since lockdown.

A word of caution though i.e. firstly the Halliburton matter is at an ad- interim stage where final adjudication is pending;

Secondly, every case will obviously depend on a fact to fact basis, the presence of special equities, irretrievable harm should be present and

Lastly in granting relief under force majeure, the same will also depend on the construction of clauses in such contracts and party's inability to perform the contract during Covid-19 is also of paramount importance which needs to be looked at.

On the other hand, can the Order be seen to have a widespread ramification, if other courts were to grant injunctions based on the Order which is presently at an ad- interim stage, or will this Order not be considered as an exemplar at all by other courts? We can only wait and see until the final hearing takes place before the Delhi HC.

***Authored by Devesh Juvekar, Partner and  
Dikshat Mehra, Principal Associate at Rajani Associates***

