
SPORTS SPONSORSHIP CONTRACTS AND THE PANDEMIC: ADDRESSING THE UNCERTAINTIES*

Mustafa Rajkotwala¹

Dhanishta Mittal²

¹NALSAR University of Law

mustafa.rajkotwala@nalsar.ac.in

²NALSAR University of Law

dmittal828@gmail.com

ABSTRACT

Sports sponsorships are commercial transactions between sporting organizations, teams etc. and sponsoring entities which result in a partnership by virtue of exchange of certain rights and obligations between the parties thus involved. It is a voluntary association between the two or more concerned bodies aiming to reap commercial benefits out of such an agreement, through the medium of a sporting event. The 21st-century sporting industry has been revolutionized with the advent of such contractual relations, in terms of brand awareness and customer loyalty. However, due to the sudden impact of COVID-19 resulting in indefinite cancellations and suspension of sporting events on a global scale, the immediate scapegoats are these sponsors – with their billions of dollars at stake in lieu of their contractual arrangements. In respect of this, the author(s) of this paper aims at engaging with the various contractual possibilities in terms of the cancellations, invoking force majeure in this situation, and resorting to various other reliefs to safeguard their interests in the longer run.

KEYWORDS

Sports, COVID-19, Sponsorships, Force Majeure, Impossibility of Performance.

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1. INTRODUCTION

As the Coronavirus (COVID-19) pandemic has brought activities on a global platform to a standstill, its negative implications have spread across various sectors, with the sporting industry being one of them. As a precautionary measure, major sporting events across the globe have reached a deadlock, with organizers cancelling the tournament in its entirety, or rescheduling it to future potential dates in the upcoming years, or organizing them with a plethora of strict health restrictions.¹ In its 124-year legacy, the International Olympic Committee (IOC) has retracted the Olympics only once before (during the World War II era), and at present, when they declared a postponement of the *2020 Tokyo Olympics*.² The 133rd edition of the *Wimbledon Championships*, organized by the *All England Lawn Tennis & Croquet Club Limited* (AELTC) has been cancelled,³ and will subsequently take place in 2021.⁴ The *2020 Association of Tennis Professionals World Tour* (ATP) and the *2020 Women Tennis Association World Tour* (WTA) had suspended their events indefinitely until July⁵ but returned to schedule with newer health protocols and a limited number of organizers and sportspersons.⁶ The Union of European Football Associations (UEFA) has postponed its *UEFA European Football Championship 2020* to the forthcoming calendar year.⁷ All *Union Cycliste Internationale* (UCI) events are re-scheduled to commence from August 2020 with strict COVID-19 protocols in place.⁸ Additionally, players in the then on-going National Basketball Association (NBA) *2020 Playoffs* were tested positive for Coronavirus, which resulted in the

¹ *Coronavirus: What Sporting Events are Affected by the Pandemic?*, AL JAZEERA (Sep. 20, 2020), <https://www.aljazeera.com/sports/2020/9/20/coronavirus-what-sporting-events-are-affected-by-the-pandemic>.

² Press Release, *Joint Statement from the International Olympic Committee and the Tokyo 2020 Organising Committee*, OLYMPIC (Mar. 24, 2020), <https://www.olympic.org/news/joint-statement-from-the-international-olympic-committee-and-the-tokyo-2020-organising-committee>.

³ Simon Cambers, *Wimbledon Cancelled for the First Time since World War II*, Sony ESPN (Apr. 01, 2020), https://www.espn.in/tennis/story/_/id/28981311/wimbledon-cancelled-due-coronavirus-pandemic.

⁴ Stuart Fraser, *Wimbledon Set to Take Place Next Year—Even if No Fans Can Attend*, THE TIMES (Sept. 29, 2020), <https://www.thetimes.co.uk/article/wimbledon-set-to-take-place-next-year-even-if-no-fans-can-attend-klrj9pqhd>.

⁵ Press Release, *ATP & WTA Announce Further Suspension of Tours*, ATP TOUR (Apr. 01, 2020), <https://www.atptour.com/en/news/atp-wta-tours-announce-further-suspension-wimbledon>.

⁶ Martyn Herman, *French Open Pushed Back a Week, ATP and WTA Announce August Resumption* (Jun. 18, 2020), <https://in.reuters.com/article/tennis-atp-wta-idINKBN23O2HK>.

⁷ Press Release, *UEFA Postpones EURO 2020 by 12 Months*, UEFA (Mar. 17, 2020), <https://www.uefa.com/insideuefa/mediaservices/mediareleases/newsid=2641071.html>.

⁸ Press Release, *The UCI Unveils the Revised 2020 Calendars for The UCI World Tour & UCI Women's World Tour* (May 05, 2020), <https://www.uci.org/road/news/2020/the-uci-unveils-the-revised-2020-calendars-for-the-uci-worldtour-and-uci-women-s-worldtour>.

cancellation of all matches for that tournament.⁹ In light of the sporting world being targeted by such adversity, the author(s) of this paper aim at analysing the various repercussions the sporting industry might have to face both in the near future and the long run, particularly in the context of sponsorship contract deals. They attempt at presenting potential measures to alleviate the losses that would occur in the course of such a predicament, by relying upon *force majeure* precedents from courts of law, deriving authority from various common law jurisdictions around the globe.

2. ASSESSING THE PERNICIOUS EFFECTS OF THE PANDEMIC ON SPORTS SPONSORSHIPS

Organizations such as the IOC have opted for deferring their games until 2021, in the hope that the pandemic would be largely under control by then. However, the same cannot act as a panacea for all sporting events, especially for those that run on an annual basis. The IOC's decision to postpone the 2020 *Tokyo Olympics* to 2021, while retaining their brand name as 'Tokyo 2020' is a welcome decision since the sponsoring entities who had already bid for the media rights, broadcasting rights and/or on-site contracts *et al* have been protected from untimely termination of their contracts on account of non-performance. This action acts as an antidote for sponsors from the punctilious process of conducting a 're-auction', especially as competing entities would introduce greater prices to the foray to close deals for upcoming editions of the event. Furthermore, there is an expected increase in public viewership and participation in upcoming editions of these sporting events, and the termination of existing sponsorship contracts could then act as a possible peril for the prevailing sponsors in terms of conflict from competitors in the course of impending sporting seasons.¹⁰ Additionally, there is dubiety over whether the formerly admissible arrangements of branding and advertisements would continue to be acceptable in the market-space, which further introduces additional predicaments over the sponsoring entities to be adjustable towards the dynamic modifications, post the pandemic.

However, not every sponsor would be in a situation to thrust their prevailing contractual arrangement to the forthcoming calendar year, particularly if they find themselves in a severe

⁹ Steve Aschburner, *Coronavirus Pandemic Causes NBA to Suspend Season after Player Tests Positive*, NBA (Mar. 12, 2020), <https://www.nba.com/article/2020/03/11/coronavirus-pandemic-causes-nba-suspend-season>.

¹⁰ Hitesh Mangtani, *Counter-Punching Corona – How Sports Can Bounce Back from COVID-19*, THE BRIDGE (Apr. 04, 2020), <https://thebridge.in/latest/counterpunching-corona-sports-can-bounce-back-covid-19/>.

monetary crisis. Such sponsors would be pressured into terminating their contractual arrangements and solicit ‘*compensation*’ (if any) or ‘*reimbursement*’ of up-front money on the grounds of the incompetence of various stakeholders in performing their part of the contractual arrangement. For certain sponsoring entities, the stakes might be excessively high, especially if they were determined to utilize a platform as the likes of the *Olympics* to salvage their dying company or channelize the sporting platform to advertise and promote their new product/service.¹¹

Additionally, there is scepticism raised concerning the fear of pandemics, compelling an audience to avoid crowded areas including filled stadiums or compact viewing locations. Even for the plethora of stakeholders who might have vehemently opposed their organizer’s decision to call off an event or postpone it beforehand; it would only be advisable that the organizers should take a call early instead of keeping the event on hold. This could thereby prevent confusion and resentment amongst fans, and underperformance by players due to limited practice. Even when the global governments attempt to restore normalcy, a probability of ban on mass gatherings to avoid the resurgence of the disease in their respective countries would continue to linger. In terms of a recent example, this was evidenced through the Board of Control for Cricket in India’s (BCCI)’s decision to host the notable *Dream 11 Indian Premier League 2020* (IPL) in the United Arab Emirates (UAE) due to the continuance of India’s ban on public gatherings.¹²

Prominent organizations such as the *Federation Internationale de Football Association* (FIFA) have already set up contingency endowments for football clubs, national and local football federations and governmental entities in order to sustain the impact of the pandemic on the football industry, primarily because of the humongous stakes encompassed in such events.¹³ Olli Rehn, head of the FIFA committee, has gone on record to state that the various stakeholders of the football business are set to lose \$14 Billion, due to the impact of the

¹¹ Ch. Tsordia, D. Papadimitriou and P. Parganas, *The Influence of Sport Sponsorship on Brand Equity and Purchase Behaviour*, 26 JOURNAL OF STRATEGIC MARKETING, 85, 85-105 (2018).

¹² Mendra Dorjey Sahni, *Explained: Why IPL Moved to The UAE & How It’s Being Planned*, THE QUINT (Jul. 24, 2020), <https://www.thequint.com/indian-premier-league-ipl/explained-why-ipl-2020-being-played-in-uae>.

¹³ Murad Ahmed, Mark Di Stefano and Anna Nicolaou, *Can the Sports Industry Survive the Coronavirus Shutdown*, THE FINANCIAL TIMES (Apr. 05, 2020), <https://www.ft.com/content/fd7e58ec-7438-11ea-95fed274e920ca>.

COVID-19 pandemic.¹⁴ The international governing body of the Rugby Union, World Rugby, has stated its plan of action of borrowing against its capital reserves to safeguard its cash-crunched members in hopes of preventing them from declaring bankruptcy.¹⁵ Players across various sports, with examples such as Lionel Messi and Cristiano Ronaldo, are taking salary cuts to cope with the losses borne by the industry because of the pandemic.¹⁶ Media rights auctions have been called off in countries like Germany, and sponsors have stated their apathy towards receiving remittances for those sporting events which have been scrapped. Furthermore, sports broadcasters, particularly in the United Kingdom (UK) have permitted viewers to delay their instalments for cumbersome subscriptions, up until live sports do not restore to normality. With the probability of various sporting events getting rescheduled with curtailed tournaments later in the year, this compression will lead to decreased time, mitigated money and detracted audience-base.¹⁷

The global women's sporting community is also doomed to receive a large blow in terms of garnering sponsorship contracts and event organizations. Since decades, the female sporting business has been considered to be at a lower pedestal than that of men's sports of the identical categorization.¹⁸ Due to the current pandemic, their vulnerability is only going to be further accentuated, mainly because most of the female participants in individual sports who are independent contractees and receive funds for their travel, registration fees *et al* are likely to lose out on their sources of income from event participation.¹⁹

3. DOES FORCE MAJEURE CLAUSES ACT AS A PANACEA FOR SPORTS SPONSORS?

While there cannot be an actual ascertainment of the terms of the sponsorship contract, the sponsoring entities, if the contractual terms comprise, may also be compensated for their

¹⁴ Reuters Staff, *COVID-19 Pandemic to Cost Football \$14 Billion This Year, says FIFA*, REUTERS (Sep. 16, 2020), <https://in.reuters.com/article/uk-soccer-fifa/covid-19-pandemic-to-cost-football-14-billion-this-year-says-fifa-idUKKBN2671TC>.

¹⁵ *Id.*

¹⁶ Anonymous, *Cristiano Ronaldo and Leo Messi Take Solidarity Pay Cuts Amid Virus Crisis*, HOLA! USA (Mar. 30, 2020), <https://us.hola.com/celebrities/20200330fm1pvhpc7s/cristiano-ronaldo-lionel-messi-salary-pay-cut-coronavirus>.

¹⁷ John Branch, *Does Coronavirus Mean the End of Sports as We Know Them?*, THE NEW YORK TIMES (Mar. 14, 2020), <https://www.nytimes.com/2020/03/14/sports/sports-coronavirus-canceled-events.html>.

¹⁸ Juliet Macur, *Coronavirus Compounds Financial Concerns in Women's Sports*, THE NEW YORK TIMES (Mar. 21, 2020), <https://www.nytimes.com/2020/03/21/sports/coronavirus-womens-sports.html>.

¹⁹ *Id.*

business losses during this pandemic, on grounds of *force majeure*.²⁰ To invoke this clause, it needs to be determined that the contractual agreement specifically includes the reference to an ‘epidemic’ or ‘pandemic’ as part of the clauses within the contents of the provision. However, innumerable contracts would not have foreseen the probability of the occurrence of such a hardship. In light of this, various insurance corporations have released announcements whereby COVID-19 cannot be utilised as a ‘relief’ apparatus *per se*, for indemnifying against non-compliance of the contractual obligations.²¹ If insurance companies would not cover for losses sustained on grounds of the COVID-19 pandemic, sponsoring entities that are engaged in annual contracts would turn out to be the worst losers, as the ‘non-performance’ of their contractual obligations would become inevitable, either in light of a governmental call on shutdowns or due to a sporting organization’s call to postpone, terminate or defer their event.

However, in this regard, the news of *Wimbledon* recovering about €114 Million through ‘pandemic insurance’ upon cancellation of their event, demonstrates that all hopes are not lost for the organizers and associated sponsors.²² The caveat, however, is that AELTC has been making insurance payments since the 2003 Severe Acute Respiratory Syndrome (SARS) outbreak to insure their event, as a safeguarding measure against any similar catastrophes.²³ Thus, such an insurance receipt acts as a return on investment, which was made by sporting organizers keeping such contingencies in mind. Likewise, the IOC has paid insurance premiums in the past for both, the *2016 Rio Summer Olympic Games*²⁴ and *2018 PyeongChang Olympic Winter Games*²⁵ against cancellation of their events under any unforeseen circumstances. These insurance returns served to compensate the IOC if they would have decided to postpone the event to a subsequent year. However, the magnitude of COVID-19 pandemic is unprecedented in comparison to previous global epidemics. Recent shutdowns by entities and organizations have already begun to cause tremors in the sporting world. Sporting

²⁰ Dhanrajamal Gobindram vs Shamji Kalidas and Co., AIR 1961 SC 1285.

²¹ John Sadler, *Sports Organizations and Coronavirus (COVID-19): Cancel or Mitigate the Risks?*, SADLER (2020), <https://www.sadlersports.com/coronavirus-risk-management-in-sports/>

²² Mike Dickson, *Wimbledon’s Ironclad Insurance Policy Will Help Cover £250m Loss of Revenue as Axe Set to Fall on this Year’s Championships Due to Coronavirus*, THE DAILY MAIL (Mar. 31, 2020), <https://www.dailymail.co.uk/sport/sportsnews/article-8173457/Wimbledons-ironclad-insurance-policy-help-cover-250m-loss-revenue-axe-set-fall.html>

²³ *Id.*

²⁴ Claire, *Insurers Ready for the Summer Olympics*, THE TRIPLE-I BLOG (Aug. 01, 2016), <https://www.iii.org/insuranceindustryblog/insurers-ready-for-the-summer-olympics/>.

²⁵ Noor Zainab Hussain, Carolyn Cohn and Suzanne Barlyn, *Insurers Bet, a Little Nervously, on Smooth Games in South Korea*, REUTERS (Feb. 08, 2018), <https://www.atlas-mag.net/en/article/winter-olympics-in-south-korea-the-cost-of-insurance-compounded-by-the-war-risk>.

entities such as *MSK Zilina* (Slovak football club),²⁶ *USA Rugby* (USA's national rugby governing body)²⁷ and *Alpha Entertainment* (owner of the Xtreme Football League [XFL]),²⁸ among others are already filing for bankruptcy before Courts. This has led industry experts to envision that if shutdowns are extended for a longer duration, and if normalcy in sporting events is not restored, bigger franchises might also have to resort to such extreme measures.²⁹

In terms of Indian jurisprudence, as we examine the purview of Section 56 of the Indian Contract Act (ICA), we can find that the *Force Majeure* clauses are intertwined with the *Doctrine of Frustration* of Contract, which essentially states that the impossibility of performance, without a fault from either party, can lead a contract to get 'frustrated' *i.e.* render it incapable of execution.³⁰ The Indian Courts have granted the scope of this provision an extensive ambit, primarily to safeguard the interests of a party that is incompetent to perform its contractual obligations *in lieu* of unforeseeable circumstances.³¹ Additionally, it has been elucidated that although the performance of the contractual obligation might not be rendered 'impossible' in its entirety, if its conduct turns 'impracticable' in nature, it would nonetheless be assessed under the scope of this clause.³² The occurrence of such *black swan* event puts sporting organizers in an enormous *imbroglio*. In the earlier part of 2020, organizing a mass event would have been impracticable, especially in light of governmental shutdowns being issued in major countries leading to the absence of any live viewers/audiences. Furthermore, it would have been perilous to organize such event(s) due to the potential hazards to public health and safety, if large audiences would gather in consolidated spaces. Although sporting events around the globe are partially resuming in operation, they are far away from returning to 'normality', in terms of its organizational capacities, sponsorship and partnership engagements, and subsequent return on investments. Due to this, event organizers and sponsors are still facing the long-drawn repercussions of the pandemic. Given that this phenomenon is 'novel', we can

²⁶ AFP, *Top Slovak Club in Liquidation after Virus Halts Season*, THE TIMES OF MALTA (Mar. 31, 2020), <https://timesofmalta.com/articles/view/top-slovak-club-in-liquidation-after-virus-halts-season.782168>.

²⁷ Chris Bengel, *USA Bankruptcy Files for Bankruptcy in the Wake of Coronavirus*, CBS SPORTS (Mar. 31, 2020), <https://www.cbssports.com/general/news/usa-rugby-files-for-bankruptcy-in-the-wake-of-coronavirus-outbreak/>.

²⁸ Danielle Allentuck, *The XFL Files for Bankruptcy after Canceling Season*, THE NEW YORK TIMES (Apr. 13, 2020), <https://www.nytimes.com/2020/04/13/sports/football/xfl-bankruptcy-vince-mcmahon.html?auth=login-google>.

²⁹ ANONYMOUS, *supra* note 17.

³⁰ The Indian Contract Act, § 56 (1872).

³¹ *Energy Watchdog vs. Central Electricity Regulatory Commission and Ors.*, (2017) 14 SCC 80.

³² *Satyabrata Ghose v. Mugneeram Bangur and Co. and Anr.*, AIR 1954 SC 44.

only present conjectures about the probable alternatives, as a certain trend of reactions cannot be ascertained at this phase.

The Indian Ministry of Finance (MoF) keeping in line with its view that contractual agreements must be honoured, issued an Office Memorandum on *Force Majeure* Clause (FMC), wherein it was stated that COVID-19 ought to be construed as a natural calamity and allows events to be suspended until the pandemic persists to remain as an on-going threat.³³ Although the Memorandum is not a binding document, it can be raised in a Tribunal as an aegis, especially when the contracts are moreover protected by the existence of an FMC. This clause is traditionally entered into contracts to safeguard the parties from non-compliance of their contractual obligations *in lieu* of an ‘Act of God’ which is ‘unforeseeable’, and renders the performance of the contractual obligations ‘impossible’, if not ‘impracticable’.³⁴ In essence, three cumulative pre-requisites are imperative for the utilisation of the concept of *force majeure*: (i) performance of a party under the contract must be rendered ‘impossible’; (ii) the event giving rise to the ‘impossibility’ of performance must be ‘unforeseeable’ in nature; and (iii) the situation must not be attributable to the party seeking to invoke the principle.³⁵ However, the mere fact that honouring the obligations of a contract has become arduous financially or otherwise does not suffice as valid grounds for invoking this clause – nevertheless, it may be sufficient if it is determined that the factual circumstances caused by the epidemic/pandemic are beyond the ‘reasonable’ control of the contracting parties.³⁶ In April 2020, the Delhi High Court in the matter of *Halliburton Offshore v. Vedanta Ltd.*³⁷ held that in the case of COVID-19, an FMC cannot act as a panacea for all delayed contracts. For a Court to allow for the operation of this clause, there shall be a circumstantial and case-to-case analysis in that regard. If the situation necessitates the completion of contractual obligations before the pandemic, then the application of the FMC would fail. This judgment would apply to all industries, in general.

It is peremptory to analyse the precedents as laid down through occurrence of previous epidemics like the *Spanish Flu*, SARS or the Ebola Virus Disease (Ebola) in the course of performance of contractual obligations. In 2015, the *Confederation of African Football (CAF)*

³³ Government of India, No.F.18/4/2020, MINISTRY OF FINANCE (Feb. 19, 2020), <https://doe.gov.in/sites/default/files/Force%20Majeure%20Clause%20-FMC.pdf>.

³⁴ *Tamplin Steamship Co. Ltd. v. Anglo-Mexican Petroleum Products Co. Ltd.* [1916] 2 A.C. 397, 403.

³⁵ *Satyabrata Ghose v. Mugneeram Bangur and Co. and Anr.*, AIR 1954 SC 44.

³⁶ *Clifford Gardner v. Clydesdale Bank Limited* [2013] EWHC 4356 (Ch).

³⁷ *M/s Halliburton Offshore Services Inc. v. Vedanta Limited & Anr.* [2020] O.M.P. (I) (COMM) 88/2020.

had proposed to postpone the Morocco Edition of the Africa Cup of Nations for six months, in light of the Ebola epidemic, triumphing health over monetary losses. However, eventually, they relegated the event to Equatorial Guinea, the same year.³⁸ In light of this, there arose a dispute between the Royal Moroccan Football Federation (FRMF) and CAF which was taken to the Court of Arbitration for Sport (CAS).³⁹ The case dealt with the issue of FRMF's unilateral withdrawal from organizing and hosting the event in Morocco due to the epidemic, and CAF imposing sanctions on them in that regard. However, the Tribunal held that there was no presence of *force majeure*, as organizing the event was not 'impossible', but rather, 'difficult'. Furthermore, the fact that Equatorial Guinea was successful in organizing the event, and adhere to maintaining adequate sanitary precautions showed that organizing the event was 'possible' in nature. Therefore, the Tribunal allowed sanctions to be imposed on FRMF but reduced the overall amount due to the extraordinary circumstances of the case.

In a China International Economic & Trade Arbitration Commission (CIETAC) (People's Republic of China) Arbitration Award,⁴⁰ the Tribunal held that since the contractual arrangement between the disputing parties had concluded two months prior to the SARS epidemic, it was 'foreseeable' that the activities of the parties in place of the contract had to be tailored in a way that the contract was honoured. Therefore, it was not 'impossible' to perform the contract, and damages had to be paid by the non-performing party.

The notorious *Spanish Flu* of 1918 had led to the 1919 *Stanley Cup* getting abrogated in the midst of a game when one of the players collapsed during gameplay, leading to a "*Series Not Completed*" title being published by the sporting organizers.⁴¹ Despite multiple organizers declaring the cancellation of their events, most of these decisions were flouted and people continued to gather during these events. This was disturbing, primarily because the Flu was operating at its peak and harrowingly taking away the lives of thousands of people, including

³⁸ James Skinner and Aaron CT Smith, *Coronavirus is Not the First Health Crisis to Hit Global Sport, But it's on Much Bigger Scale*, SCROLL (Mar. 19, 2020), <https://scroll.in/field/956638/coronavirus-not-the-first-health-crisis-to-hit-sport-but-will-have-a-big-impact-in-an-olympic-year>.

³⁹ Fédération Royale Marocaine de Football (FRMF) v. Confédération Africaine de Football [2015] CAS 2015/A/3920.

⁴⁰ CIETAC Arbitration Proceeding (L-Lysine case) [2005], <http://cisgw3.law.pace.edu/cases/050305c1.html>.

⁴¹ Jonathan White, *Coronavirus in Sport Echoes Spanish Flu Pandemic that Ended NHL Stanley Cup*, SOUTH CHINA MORNING POST (Apr. 06, 2020), <https://www.scmp.com/sport/football/article/3078560/coronavirus-sport-echoes-spanish-flu-pandemic-ended-nhl-stanley-cup>.

numerous sports players.⁴² Although in the current COVID-19 pandemic time, sporting organizations are ensuring the health and social distancing precautions in the partial conducting of their events,⁴³ the same cannot be practised in other populous and heavily affected regions particularly Europe, India and the United States especially when there are strict complete or partial shutdowns and travel restrictions to contain the spread of the virus.⁴⁴ In such an impediment, cancellation of a mega-sporting event is but a minuscule mandatory precautionary step compelled either by the governmental regulations in that particular country or by the sheer havoc that the virus has the potential to create.

4. ALTERNATIVES FOR SPONSORS TO COPE WITH THE CRISIS

Every connected stakeholder - whether a sporting organizer, a sponsoring entity, a player and/or an off-ground employee, shall bear substantial pecuniary losses, in the case of an event termination. Furthermore, various sponsoring entities utilise sporting events as a launch-pad for the latest goods or services into the market-space.⁴⁵ Therefore, in such a circumstance, it seems advisable in the greater interest of all contracting parties, that either they conciliate with the sporting organizers for 'compensation' or 'reimbursement' of their cumulative losses, or write down these ancillary, antedated costs as 'bad debts' if their contracts are unsuccessful to extract the FMC or 'impossibility of performance' clause as part of their contractual agreements. In the course of preserving the prevailing contractual arrangements, a *pro-rata* reduction mechanism could be correlatively decided upon by the parties, concerning the expenses to be borne *in lieu* of the contractual obligations.⁴⁶ This negotiation would allow for a continuation of the amicable relationship between the organizing committee and the sponsor since both are to benefit from such an understanding.

⁴² Joan Niesen, *The Forgotten Story of... How Spanish Flu Tore Apart the 1919 Stanley Cup Final*, THE GUARDIAN (Mar. 19, 2020), <https://www.theguardian.com/sport/2020/mar/19/spanish-flu-stanley-cup-2019-nhl-montreal-canadiens>.

⁴³ Matias Grez, *Football is Shut Down Across Europe Due to the Coronavirus, But in Belarus it's Business as Usual*, CNN (Mar. 30, 2020), <https://edition.cnn.com/2020/03/29/football/football-continues-belarus-coronavirus-lockdown-spt-intl/index.html>.

⁴⁴ Sunni Upal, *Which Countries are on Coronavirus Lockdown? What's happening in India, Italy and Spain*, THE SUN (Mar. 24, 2020), <https://www.thesun.co.uk/news/11233604/which-countries-are-on-coronavirus-lockdown-spain-italy/>.

⁴⁵ Neil Weilheimer, *A New Era for Endorsement Deals? How the Coronavirus is Changing the Playbook for Sports Brands and Athletes*, FOOTWEAR NEWS (Apr. 09, 2020), <https://footwearnews.com/2020/business/athletic-outdoor/athlete-endorsements-sponsorships-cornavirus-sports-1202964088/>.

⁴⁶ *Supra* note 14.

Accordingly, for sponsors that have an annual contracted arrangement, there ought to be deliberations in the direction that one party does not end up suffering an ‘*undue loss*’ in such a circumstance. The sponsoring entity and the sporting organization could mutually ascertain the essence of ‘reimbursement’ for the probable losses to be borne by the former, in case of termination or deferment of a sporting event. The hitherto loss-bearing sporting organizations could be forced to pay the sponsoring entity for their incompetency to fulfil their obligations under the contractual terms.

Alternatively, there could be no-audience games like those suggested by the United States of America (USA) before the declaration of a complete lockdown.⁴⁷ Additionally, even the 2020 IPL, which after consecutive postponing and a change in the title sponsor, is currently taking place in the UAE, with a no-audience and a fixed ‘*bio-bubble*’ policy.⁴⁸ Similarly, *Formula 1* (F1) has revised its yearly racing schedule to incorporate new locations and latest safety standards to ensure participants and organizers can run the event smoothly, without a live stadium audience.⁴⁹

Nevertheless, this panacea is deleterious, essentially to the interests of ‘on-site’ sponsoring entities, whose business is primarily contingent on the presence of enormous live viewers, as well as the sport-players who are actuated to play for these viewers. However, such kinds of ‘no-viewer’ sporting events can both amplify and undermine the rates of sports broadcasting and media entertainment rights, in the case that viewers, which would have otherwise attended a sporting event, are watching it online instead.⁵⁰ Although, on the contrary, the presence of a live viewership, which builds the spirit of sporting events, will always minimize the appeal that is presented by an online audio-video viewership format.

Additionally, sponsors, as well as the organizers, could use the pandemic period to enhance their Corporate Social Responsibility (CSR) image by engaging in *bona fide* activities directed towards combating the virus, to appeal to consumers and garner popularity. Such sponsors

⁴⁷ Jonathan Harding, *Coronavirus Stops Real Sport, Opens Door to Virtual World*, DEUTSCHE WELLE (Mar. 22, 2020), <https://www.dw.com/en/coronavirus-stops-real-sport-opens-door-to-virtual-world/a-52878429>.

⁴⁸ Amol Karhadkar, *Indian Government Gives BCCI Approval to Host IPL 2020 in UAE*, SPORT STAR (Aug. 10, 2020), <https://sportstar.thehindu.com/cricket/ipl/ipl-news/ipl-2020-moved-to-uae-indian-government-gives-bcci-approval-chennai-super-kings-csk/article32317372.ece>.

⁴⁹ Ian Parkes, *A Formula 1 Season like No Other*, THE NEW YORK TIMES (Aug. 07, 2020), <https://www.nytimes.com/2020/08/07/sports/autoracing/formula-1-season-coronavirus.html>.

⁵⁰ AFP, *Coronavirus: Virtual Sports Proving to be a Game Changer for Boxing, Baseball, Motor-Racing and More*, SCROLL (Mar. 30, 2020), <https://scroll.in/field/957406/coronavirus-virtual-sports-proving-to-be-a-game-changer-for-boxing-baseball-motor-racing-and-more>.

stand a high chance of customer retention, particularly those who strongly believe in using goods and services of only those companies contributing towards the welfare of the society.

Finally, the esports market-space, especially the video gaming industry, is booming over the past decade and now, the *Fantasy Premier League* (FPL), can act as an alternative for user-engagement due to the cancellation of various sporting events.⁵¹ Nonetheless, the actual performances of the sportspersons in the games are primarily dependent for their selection in the virtual sporting arena as well. On top of that, the teams are to be formed *in tandem* with the scheduling of an actual sporting event, thereby resulting in the dearth of pecuniary businesses on this platform. In light of this, a profitable alternative towards assuaging losses suffered during this pandemic season would involve switching onto digital media platforms. Fundamentally, this is because most of the sponsorship arrangements are a long-term commitment to the entirety of a sporting tournament and to jeopardize their interests *in lieu* of an unforeseen crisis would not be a viable option for most of the involved entities.⁵²

However, as determined through various independent studies and surveys, the interest towards the domain of esports is particularly vested in the lower age category of users that lie among the bracket of eighteen (18) to thirty (30) years. Therefore, they are unsuccessful in garnering a market-space that is concentrated on the individuals/entities who otherwise invest heavy amounts of money onto sporting engagements.⁵³ It was opined that a major section of live sports audiences are individuals who lie above the age category of forty (40) years, and comparatively possess a larger potential of investing in the market-space that attracts sponsorship entities and media entertainment brands, and thereby, they show less enthusiasm towards the esports industry.⁵⁴ Thus, the contribution from the esports market-space targeting the lower-age groups does not transform into a profitable investment, in comparison to investing in the live sporting events industry. Although the possibility for the esports market-

⁵¹ MURAD AHMED, *supra* note 13.

⁵² Ashley Rodriguez, *How the Sports-Betting Industry is Responding to the Coronavirus Pandemic that has Halted Most Major Sporting Events*, THE BUSINESS INSIDER (Mar. 22, 2020), <https://www.businessinsider.in/tech/news/how-the-sports-betting-industry-is-responding-to-the-coronavirus-pandemic-that-has-halted-most-major-sporting-events/articleshow/74761866.cms>.

⁵³ Mariel Soto Reyes, *Esports Ecosystem Report 2020: The Key Industry Players and Trends Growing the Esports Market which is on Track to Surpass \$1.5bn by 2023*, THE BUSINESS INSIDER (Dec. 18, 2019), <https://www.businessinsider.com/esports-ecosystem-market-report?IR=T>

⁵⁴ *Id.*

space to grow in the post-pandemic era is encompassing, the likelihood of it substituting the live sporting industry is unfavourable.

5. CONCLUDING REMARKS

“We don’t know what things look like on the other side of coronavirus. But sport can bring people together and show them what is possible in ways that are incredibly inspiring!”

-Jerill Rechter, Basketball Australia

The FMC can be utilised as the fundamental remedy for sponsorship contracts worldwide, but still, its categorical application stands unforeseeable. This is in the light of the fact, that various jurisdictions address this issue based on the scope of their domestic laws and particular contractual arrangements. However, the austerity of this pandemic fulfils the requisites of an event that makes it impossible and impracticable for the parties involved to perform their obligations in the course of the contractual agreement, which could invoke the doctrine of ‘Act of God’ as a defence. Nonetheless, given that the sporting industry has been affected substantially due to the outbreak of the COVID-19, an alteration in the approach towards the subject of ‘sponsorship contracts’ is unavoidable in terms of the responses from the various stakeholders that are involved in the process. Although this pandemic will be a knock-back in terms of substantial pecuniary losses faced by the industry in its entirety, the post-pandemic prospects in terms of engagement and technological advancements present a myriad of opportunities and potential in store for sports sponsoring and partnering entities.