

The Legal Environment in Which Management Decisions are Made

Prof. Masuma Cyclewala,

Assistant Professor, N L Dalmia Institute of Management Studies, Mumbai, India.

masuma.cyclewala@nldalmia.edu.in

Abstract: The legal environment and facets in which management decisions are made, predominantly targets the productivity and application of the rules and regulations stated in various Laws applicable to management. Most companies manage and interpret the relevant laws to its maximum utility and further comparisons are made in the performances of various companies facing the same legal situation for the purposes of making the best use of law to its advantage in every possible way and especially through its interpretation, in spite of the legal jargons and complexities in the language and in its implementation. Emphasis is also laid on the investigation and documents processing techniques as in management the understanding as to how law can be utilized and molded to achieve the objectives of the companies which are mainly economic actors.

Keywords: *Legal Environment, Risk Management, Contract Management.*

I. LEGAL DEFINITION OF CONTRACTS AND CONTRACTING PARTIES

“An agreement which is legally enforceable alone is a contract.”

“A sales contract is a contract between a seller and a buyer where the seller agrees and promises to sell products and/or services and the buyer in return is willing to buy and promises to pay the consideration for the product/services.”

“A purchasing contract is a contract between a buyer who is willing to buy and promises to pay consideration for the products and/or services and a seller who agrees and promises to sell products and/or services within agreed terms and conditions, thereby binding the seller and buyer into a legally binding contract.”

II. ANTICIPATORY CONTRACTING

Anticipatory Contracting is analogous to Practical Law and mainly focuses on preventing contractual problems and promoting contractual relationships. It denotes acting in anticipation so as to keenly observe the threat of growing difficulties and ambiguities due to the technological evolution so that businesses change with a view to perceive contracts that can meet sustainable development of future demands which has increased due to complex products, manage future problems and make necessary changes immediately. Commerce craves a model change in contracting, approving a more social methodology, as forthcoming contracting intricacies escalate as business dealings are not just through physical limits, but also through secular, ethical and cultural limits. Anticipatory

Contracting comprises of Contract Management, Risk Management and Business Process Management.

The lawful context rises on complications, therefore, an obvious requirement for structuring inevitability which demands sustenance of future business and elude unnecessary losses. With the increase in globalization, sustainability and certainty becomes more vital.

i. CONTRACT MANAGEMENT

Contracts are made and managed with/by clients, sellers, associates or personnel. The individuals associated with managing contracts are vital to discuss, upkeep and accomplish effective contracts for which these individuals are to be educated, trained, and retained, which is often expensive. Contract management comprises negotiation and documentation of the terms and conditions in agreements which later are concluded legal contracts which further warrants compliance as per the Contract Act. Concluded legal contracts may vary at a later stage inclusive of documentation and agreement on any variations/modifications that come up at the time of its application or performance. Contract management is abridged to be the procedure for methodically and resourcefully handling contract formation, implementation and/or scrutiny aimed at the determination by capitalizing on economic and working routine and further diminishing risk peril.

ii. RISK MANAGEMENT

Risk Management is the identification, assessment and prioritization of perils/risks as the consequence of ambiguity on the objectives set. The same is monitored by organized and cost-effective application of resources to

curtail, observe and regulate the possibility or influence of unforeseen circumstances so as to capitalize on the realization of prospects. Risks/Perils emanate from various causes comprising of instability in financial markets, venture failures, legal infirmities, credit risks, mishaps, abnormal sources and adversities. Various strategies and approaches are to be adopted to manage such risks/perils taking into account avoidance, reduction, sharing all or part of the risk/peril to another party and even retaining some.

Risk Avoidance deals with elimination of activities that causes the risk, but then again avoiding risks/perils also warrants losing out on probable advantages that could have been gained by accepting/retaining the risks/perils.

Risk Reduction comprises of severity/separating of the loss or the probability of the loss from happening, by accepting that risks/perils by nature can be of an advantageous or disadvantageous kind. It is by adjusting the risks/perils that there is a balance maintained between adverse risk and the advantage of the activity.

Risk Sharing means the distribution of the burden of loss with another party and also the advantage of gain from risks/perils with another party which is similar in cases of Insurance Policies. Although the risk remains with the policy holder, the insurance company merely offers that, if the event occurs involving the policy holder then some recompense maybe paid to the policy holder to appropriate with the suffering/damage caused.

Risk Retention comprises accepting the loss or benefit of advantage from a risk/peril when it happens. Not all risks/perils are transferred, some that are not transferred due to its very nature of non-transferability are retained by default.

iii. BUSINESS PROCESS MANAGEMENT

The definition of business process management in the words of Gartner is as:

“The discipline of managing processes (rather than tasks) is the means for improving business performance outcomes and operational agility. Managing processes span organizational boundaries by linking together people wherein information flows generating systems and others assets to create and deliver value to customers and constituents.” Business process management is a part of infrastructure/organizational management, the main object being to preserve and elevate the establishment’s tools and basic processes by detecting human error and miscommunication and concentrating participants on the necessities of their roles/performances. The Business Process Management outlines:

Parallel structuring – it lays emphasis on strategy and growth of commercial procedures mainly concentrating on technical knowhow; and

Vertical structuring – it lays emphasis on a precise set of corresponding responsibilities to that of parallel structuring.

III. CONTRACT GOVERNANCE

A Contract governance outline has four constituents:

- An associate managing arrangement as to how contracting parties work along to collate mutually, operating and tactical conclusions).
- A combined routine and renovation regulation procedure planned to supervise the general presentation of businesses.
- A withdrawal managing plan by way of a regulatory device to inspire the establishments towards making principled, practical modifications for the common advantage of all the people involved.
- Obedience to distinct provisions and guidelines, which comprise the modern mechanisms of contractual agreements.

IV. PRACTICAL LAW

It strives for a novel approach to legal concerns in business and society. Laws are observed as restraints/complicated interpretations that business and society mandatorily need to comply with whereas in actuality law being implemented properly can generate achievements and maintain contractual relationships, which through proper implementation transfers the probability to escalate significance for companies, individuals and societies universally. Law protects by acting in anticipation to legal disputes through various legal mechanisms be it the Civil Courts or the Alternative Dispute Redressal Systems, supervising through its regulatory mechanisms the potential problems and providing justice bearing in mind the social transformation.

V. PREVENTIVE LAW

It is usually acknowledged disputes detected earlier in time or probable disputes being addressed or put forth, the probabilities of a fair, just, reasonable and speedy resolution is possible. As acknowledged by legal experts and most corporate executives “It usually costs less to avoid getting into trouble than to pay for getting out of trouble.” Hence four essential ethics of preventive law are:

To predict human behavior – as known in legal parlance ‘PRUDENCY’ is where one can anticipate by taking into account peoples’ capacity to do thereby anticipating and avoiding lawsuits. This prudence tends to improve ones’ individual and corporate relations and hence, establishes a vital part of preventive law.

Managing conflicts in organizations

Embracement of risks emphases being laid on the general risk/peril and the attempt to minimize the same.

Preventive legal expertise in advance— having in-house legal expertise enables detection and prevention legal problems from happening at an earlier stage.

VI. CONCLUSION

'Ignorantia juris non excusat' means ignorance of law is no excuse. It is universally accepted that before entering into any contract which is an essential part of a business/company all pros and cons are looked into for its legal/legitimate validity, implications and consequences. More so, in priority, legal knowledge is the basis of survival of not only businesses/companies, but as a basic need for individual survival. There are many Laws by which these businesses/companies have to abide, adhere and comply with, therefore, a tedious task. Anticipatory contracting in consonance with Practical and Preventive Laws form the foundation of legally binding contracts and contract governance.

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