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DELEGATION OF AUTHORITY BY AGENT UNDER INDIAN CONTRACT ACT

INTRODUCTION

This article is written by Anukriti Sharma, a student of University of Petroleum and Energy Studies, Dehradun. This article provides thorough knowledge of 'Delegation of authority' under Indian Contract Act, 1872. Chapter X of Indian Contract Act (ICA), 1872 deals with laws relating to agency. The two terms 'Agent' and 'Principal' is defined under section 182 of ICA. An agent is person who is appointed by principal to represent him or to act on behalf of him and the contract which creates a relationship between them is called an Agency. The contract of Agency exist whenever a person (agent) has the authority to act on behalf of the other (principal) and create a contractual relation between that other and third person (buyer).

DUTIES OF AN AGENT

Following are the duties of an agent towards his principal under contract of agency: -

1. Under section 190 of ICA, It is the duty of an agent to not delegate his duties to someone else.
2. An agent is bound to follow directions of his principal.
3. Under section 212 of ICA, agent has duty to show proper skill and care.
4. Under section 213 of ICA, agent has duty to render proper accounts to the principal.
5. Under section 214 of ICA, agent has a duty to communicate with the principal.
6. Under section 215 and 216 of ICA, agent has duty to not deal on his account in contract of agency.
7. Under section 218 of ICA, agent has duty to pay sums received by him principal's account.

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DELEGATION UNDER CONTRACT OF AGENCY

The term 'Delegation' means an act by which a person assigns his authority to any other person to carry out specific task or activities. Section 190 of Indian Contract Act deals with delegation of authority by agent and according to this section an agent which is appointed by a principal can not further delegate the duties assigned to him under a contract of agency to any other person. The doctrine of *Delegatus Non Potest Delegare* is applied here. This Latin maxim means that delegated powers cannot be further delegated and in contract of agency principal appoints agent on his behalf for performance of some specific task or duty. In case *M/S J.B Industries v. Union Of India*¹, Regional Manager(agent) was appointed by the directors (principal) of the company to answer a suit brought by the respondents. The regional manager further delegated his responsibility to Area Manager. The court by using the doctrine of "Delegatus non potest delegare" held that Regional Manager can't delegate his duty further to Area Manager. Thus, by Applying this maxim we can say that it is duty of an agent to not delegate his authority or duties assigned to him to anyone else. In various cases court held that the relationship between principal and agent is based on trust and confidence and under the maxim of Delegatus Non Potest Delegare, an agent cannot delegate his duties to anyone else. Thus, an agent cannot delegate or substitute his duty to anyone else.

However, there are some exception to Section 190. A person cannot lawfully delegate his duty which he has expressly and impliedly undertaken to perform personally unless by custom of trade a subagent may or from the nature of the agency, a sub agent must be employed. The other exception attached to section 190 are the situations where the principal knows that the agent intends to delegate or where the duties of agent to not require personal skills and can be performed by any anyone else. The last exception to this rule is that an agent can sub delegate is authority or duty further to anyone else in unforeseen emergencies.²

For example, B agent of A, instructed C a transporter to delivery a consignment of apples from Himachal Pradesh to Mumbai. But after covering half distance, C found that apples will perish before reaching Mumbai due sudden lockdown in country. C decided to sell apple in Delhi at local price. So, this is the case of unforeseen emergencies in which an agent can delegate his

¹ MANU / KE / 5485 / 2019

² Section 190 of Indian Contract Act.

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authority to anyone else and selling of apples to local vender by C was done in the goodwill and benefit of the principal.

SUB-AGENT UNDER CONTRACT OF AGENCY

Section 191 of Indian Contract Act talks about Sub-Agent and says Sub-Agent is a person who is appointed by an agent and is acting on behalf of agent under the control of the agent which is appointed by principal under the contract of agency.

Following are the two types of delegation under contract of agency in exceptional cases: -

1). Proper Delegation – Section 192 of Indian Contract Act deals with this type of Delegation. In this an agent has full authority to appoint Sub-agent and to delegate his authority or duty to his sub-agent.

2). Improper Delegation- Section 193 of Indian Contract Act deals with improper delegation and under this an agent appoints a sub-agent and delegates his duties without any authority. This usually happens in case of unforeseen circumstances.

Sub- agent is agent of the agent and he is accountable to his agent not to the principal directly. Therefore, principal can be made liable for his agent but cannot be made liable for the acts of sub-agent appointed by his agent for performance under contract of agency.

SUBSTITUTED AGENTS UNDER CONTRACT OF AGENCY

Under this an agent has authority to delegate his authority to someone else and he recommends another person for the performance to specific task to the principal. The person who is recommend by the agent is known as Substituted agent and he is directly accountable to principal for performance of his duties.

CONCLUSION

Chapter X of Indian Contract Act (ICA), 1872 deals with laws relating to agency. An agent is the person who is appointed by principal to represent him or to act on behalf of him and the contract which creates a relationship between them is called an Agency. Under section 190 of

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ICA, it is duty of an agent to not delegate his authority further to anyone and it is based on the doctrine of '*Delegatus Non Potest Delegare*' which means delegated power cannot be delegated further. The relationship formed between principal and agent under contract of agency is based on trust and confidence and when a principal has trust on its agent it cannot be delegated further to anyone else. However, there are certain exceptions to this doctrine and this doctrine is applicable where the agent has undertaken to perform the contract personally.