

The International Cotton Association Limited

Tel: +44 (0) 151 236 6041
Fax: +44 (0) 151 255 0174
info@ica-ltd.org
www.ica-ltd.org

6th Floor, Walker House
Exchange Flags
Liverpool
L2 3YL, UK



5th June 2020

The Southern India Mills' Association
'Shanmukha Manram'
41 Race Course
Coimbatore
Tamil Nadu 641 018
India

By Email: info@simamills.org

Dear Sirs,

The Southern India Mills' Association, Coimbatore circulated a letter to all their members on 3 June 2020 about '*Enforcement of force majeure clause in the contract relating to the import of cotton*'. Unfortunately, there were several inaccuracies and misrepresentations of international obligations contained in this letter. We would be grateful if you would withdraw the inaccurate letter¹ and circulate this correction.

ICA trading rules are impartial and designed to provide a consistent and equitable trading environment for all who buy and sell raw cotton internationally. Your notice, which may be interpreted as advice about how to frustrate an internationally binding and enforceable award, is misleading and wrong. SIMA appears to have inadvertently mis-represented the advice from the Ministry of Finance of the Government of India. The following paragraphs address the key points more fully.

ICA Arbitration. You contend that "Liverpool Court" favours the seller. There is no Liverpool Court, only ICA arbitration by an international pool of arbitrators who are qualified in arbitration; knowledgeable in the application of ICA Bylaws and Rules and experienced in the international cotton trade. The procedure is governed by English law. ICA arbitration is impartial. It does not favour either party but resolves trade disputes through the application of the Arbitration Act and the trading rules. There remains an automatic right to appeal the award of a tribunal. If either party remains dissatisfied after appeal, then the English Courts provide the single and appropriate route to resolve the dispute.

Force Majeure. There are no provisions for force majeure in the ICA BL&R. If a contract cannot be completed, it will be closed by being invoiced back in accordance with Bylaw 201 and Rule 237 and Rule 238. Only if an appropriate force majeure clause is contained in the contract may either party's contractual obligations be altered. The Government of India advice describes the application of FM clauses clearly and accurately – they correctly observe that, first, a FM clause must be included in the contract and it must clearly provide for the circumstances that pertain at the time of contractual performance. If this matter is disputed, the Arbitration Tribunal will decide.

Implementation. Implementation of international arbitral awards is governed by the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (commonly known as the New York Convention). This precludes reference of arbitration disputes to local courts. The Government of India is a signatory to the New York Convention and has made an international commitment that the courts of India will follow it.

¹ SIMA Circular No. 179/2020 dated 3 Jun 20.

By advocating your members resort to the Indian Courts, you are suggesting an unethical or unscrupulous use of the Indian courts facilities to thwart a lawfully obtained, internationally recognised award². This runs counter to India's international obligations.

The ICA continues to encourage all parties to be adaptable to these extraordinary circumstances and to find mutually agreeable terms thereby avoiding disputes, arbitration and defaults during these trying times. We have always recommended such a course of action. The aim of the ICA is to contribute to an environment that enables safe trading and contract sanctity in the cotton supply chain. We are sorry to see the misleading information in your recent circular put into the public domain. We would be grateful if you would now publish a correction.

Yours faithfully,

Bill Kingdon

A handwritten signature in black ink that reads "Bill Kingdon". The signature is written in a cursive style and is positioned above a horizontal line.

Managing Director

² If your members went to the Indian Courts and lost their case, under the principle of 'costs following the event', your members could be punished by the courts themselves by awarding costs against your members for pursuing losing, time-wasting arguments