

1 IN THE SUPREME COURT OF INDIA  
ORIGINAL CIVIL WRIT JURISDICTION  
I.A. NO. \_\_\_\_\_ OF 2020

IN

WRIT PETITION (CIVIL) NO. \_\_\_\_\_ OF 2020

(DIARY NO. 10983 OF 2020)

**N THE MATTER OF:**

FICUS PAX PRIVATE LIMITED

...PETITIONER

**VERSUS**

Union of India &Ors.

...RESPONDENTS

**AND IN THE MATTER OF:**

All India Central Council of Trade Unions (AICCTU)

...APPLICANT / INTERVENER

APPLICATION FOR INTERVENTION

**WITH**

APPLICATION SEEKING LISTING DUE TO EXTREME URGENCY  
AND EXEMPTION FROM FILING DULY AFFIRMED AFFIDAVIT AND  
STAMPED VAKALATNAMA

PAPER – BOOK

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**ADVOCATE FOR APPLICANT / INTERVENER: APARNA BHAT**

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(DIARY NO. 10983 OF 2020)

**IN THE MATTER OF:**

FicusPax Private Limited ...PETITIONER

**VERSUS**

Union of India &Ors. ...RESPONDENTS

**AND IN THE MATTER OF:**

1. All India Central Council of Trade Unions

Through its General Secretary

Address: U 90, Shakarpur,

Delhi-110092 ...APPLICANT / INTERVENER NO. 1

2. Trade Union Centre of India

Through its Central Committee Member

Address: 180C, J.J. Keni Lane, Dharavi Road,

Mumbai – 400017 ...APPLICANT / INTERVENER NO. 2

**APPLICATION FOR INTERVENTION**

TO

THE HON'BLE CHIEF JUSTICE OF INDIA

AND HIS LORDSHIP'S COMPANION JUSTICES OF THE  
HON'BLE SUPREME COURT OF INDIA

THE HUMBLE APPLICATION  
OF THE ABOVE NAMED  
APPLICANT / INTERVENER

**MOST RESPECTFULLY SHOWETH:**

1. That the present Writ Petition (Civil) Diary No. 10983 of 2020 has been filed and is pending admission before this Hon'ble Court.
2. That the said Writ Petition (Civil) Diary No. 10983 of 2020 has been filed challenging the constitutionality of section 10(2)(1) of the Disaster Management Act 2005 for setting aside or quashing of Government Order dated 29.03.2020, to the limited extent of Clause (iii) stipulating that "all the employers, be it in the industry or in the shops and commercial establishments, shall make payment of wages of their workers, at their workplaces, on the due date, without any deduction, for the period their establishments are under closure during the lockdown", issued by the Ministry of Home Affairs, Government of India. The applicants submit that there are two other petitions filed by the employers before this petition and they are yet to be listed. The applicants had filed their intervention application in those matters as well.
3. That the Applicant / Intervener is fundamentally interested in the present Writ Petition as the issue of payment of wages during the present nationwide lockdown and resultant closure of workplaces is an issue that directly affects the sustenance and livelihood of its members. The

applicants submit that any order passed in one matter will affect all the other workers/staff in all the establishments across the country and it is therefore imperative that a key stakeholder like the applicant be heard.

4. That the Disaster Management Act, 2005 (hereinafter referred to as the “DM Act”) provides for the passing of orders in an emergent situation to deal with a disaster. It is clear that such an emergent situation exists from the Government Order dated 24.03.2020 issued by Respondent No. 2 whereby provisions of Section 10(2)(I) of the DM Act were invoked and guidelines were issued to the Departments of Government of India, State and Union Territories for strict implementation of the 21 day lockdown commencing from 25.03.2020. to curb the spread of COVID-19 During such lockdown, apart from essential services such as medical professionals, bank employees, certain government workers, etc., the movement of persons outside their homes is barred. As a result, workers are unable to attend work at establishments.

5. That Respondents derive the authority to issue the impugned order dated 29.03.2020 from Section 10 (2) (I) of the DM Act. The said provision confers the following power on the National Executive Committee:

“lay down guidelines for, or give directions to, the concerned ministries and departments of the government of India, the State governments and the State authorities regarding measures to be taken by them in response to any threatening disaster situation or disaster”.

6. That the DM Act was enacted to deal with “disasters” which are “of such a nature or magnitude as to be beyond the coping capacity of the community of the affected area”[Section 2(d)]. The act is concerned with disasters and the emergent situation that may arise with each disaster has to be

administratively dealt with by the executive through its administrative orders issued under the Act. The act therefore cannot explicitly provide and describe every situation and its objective is to stipulate mechanisms to deal with disasters. The determination of what constitutes such measures has been left to the wisdom of the respective State Authorities. With much of the population relying on private establishments for employment and wages, the regulation of the relationship between such establishments and workers becomes a necessary corollary to fulfill the objective of the DM Act in the present situation. This is also clear from section 2(e) of the DM Act which defines “disaster management” to mean measures to prevent, reduce and prepare to deal with a disaster. In the present situation, the DM Act empowers the Respondents herein to issue orders to the Petitioner and other employers to continue to meet their end of the bargain, in the continuance of force majeure events i.e. the COVID-19 lockdown.

7. That the legislative competence of Respondent No. 1’s issuing authority vis-a-vis order dated 29.03.2020 cannot be called into question in light of the fact that during an emergent situation, Section 35 of the DM Act stipulates that the “central government shall take all such measures as it deems necessary or expedient for the purpose of disaster management.”
8. That the impugned order dated 29.03.2020 notes that the said order was passed not just to mitigate economic hardship caused by the lockdown but also for “effective implementation of the lockdown measures” because “movement of a large number of migrants have taken place in some parts of the country so as to reach their hometowns. This is a violation of the lockdown measures on maintaining social distance”.
9. That it is settled principle that where the source of power exists, the exercise of power is referable to that source alone, and neither the failure

to mention the source, nor even the mention of an incorrect source of power, will derogate from or vitiate the exercise of that power. In **Ram ManoharLohia v. State of Bihar**, AIR 1966 SC 740, this Hon'ble Court found that:

“16. ... When the power of the person making the order is challenged, the only fact to be proved is that the power to make the order had been duly delegated to him. That can be proved by the necessary evidence, that is, by the production of the order of delegation. That would be a case somewhat like the *Carltona case*. In spite of the mistake in the order as to the Notification delegating the power, evidence can be given to show that the delegation had in fact been made. ...”

Further, in **Union of India v. Tulsiram Patel**, (1985) 3 SCC 398, this Hon'ble Court held that:

“126. ... There cannot be an exercise of a power unless such power exists in law. If such power does not exist in law, the purported exercise of it would be an exercise of a non-existent power and would be void. The exercise of a power is, therefore, always referable to the source of such power and must be considered in conjunction with it. ... It is also well settled that where a source of power exists, the exercise of such power is referable only to that source and not to some other source under which were that power exercised, the exercise of such power would be invalid and without jurisdiction. Similarly, if a source of power exists by reading together two provisions, whether statutory or constitutional, and the order refers to only one of them, the validity of the order should be upheld by construing it as an order passed under both those provisions. Further, even the mention of a wrong provision or the omission to mention the provision which contains the source of power will not invalidate an order where the source of such power exists. (See *Dr Ram ManoharLohia v. State of Bihar* [AIR 1966 SC 740 :



(1966) 1 SCR 709, 721 : 1966 Cri LJ 608] and *Municipal Corporation of the City of Ahmedabad v. Ben Hiraben Manilal* [(1983) 2 SCC 422 : (1983) 2 SCR 676, 681] .) ...”

10. That the proper and timely payment of wages will mitigate the disruption caused by the COVID-19 lockdown. The directions issued by the impugned order are necessary measures to safeguard the rights of workers in the face of severe social and economic hardships caused by the COVID-19 lockdown. If employees are terminated or wages are reduced it would further deepen the crisis and weaken the financial condition of the employee and also hamper their morale to combat their fight with the epidemic.
11. That the factum of workers not being able to work during the lockdown is undisputed. It is also undisputed that the workers have been compelled to stay away from their workplaces. The lockdown and its consequence has affected everyone in the country and has affected the poor and the marginal the most. The employers are mostly profit driven and most of them have been showing significant profits made by them in the preceding period and will be able to recover their losses. It is wholly misconceived to represent the woes of private establishments to be on a worse footing as compared to workers, most of whom are poor with negligible to no savings with many of them being indebted to money lenders. Loss of wages to them will lead to complete loss of their livelihoods.
12. That the relationship between the employer and the worker subsists under a contract. It cannot be claimed by the Petitioner herein that the employer's obligation to pay the workers stands suspended “if no work is done”. The contract between the employer and the worker is that the worker will get his wages as long as he is employed and is ready to work. It

cannot be read into the contract that he will not be entitled to wages if the employer is unable to provide him with work. The establishments which are shut are so shut because they are prohibited from working during the lockdown. In those establishments where they are permitted to work, the workers are attending work as per the permissions given.

13. That the workers, even though not given work, are expected to abide with all other terms of the contract such as not taking employment elsewhere, not disclosing trade secrets to rivals, etc. In such a situation it is clear that the contract of service is valid and subsisting during the lockdown and workers are entitled to wages under such a contract.
14. That there can be no change of service conditions of the workers without following proper procedure under the law and that an arbitrary pay cut would be illegal. The impugned order does not afford any greater protection to the workers than they already receive under the law. Respondent No. 1 in its executive discretion has chosen to provide a stronger and more efficient redressal mechanism for violations of these workers' rights. There is no new, arbitrary, or impractical obligation being cast upon the employer as a result of the impugned notifications.
15. That the right to wages is a pre-existing right which flows, *inter alia*, from the contract of employment as well as a broader constitutional and statutory scheme flowing from Articles 14 and 21 of the Constitution and encompassing, the Payment of Wages Act, the Minimum Wages Act, the Contract Labour (Regulation and Abolition) Act, the Industrial Disputes Act, 1947, etc.

16. That the impugned orders have been passed by the Respondents herein with the objective of taking steps to mitigate the effects of the COVID-19 pandemic. In the present case, the contract between the Petitioner and its workers has not been rendered wholly impossible since the COVID-19 pandemic is, at most, a mere temporary difficulty to comply.
17. That it is wholly misconceived for the Petitioner to expect any benefits under the Employees State Insurance Corporation (ESIC) and Provident Fund schemes beyond the deferment of ESIC contributions by a period of 45 days and 24% contribution by the Central Government for March, April and May 2020 for companies having less than 100 workers and where 90% employees are earning less than Rs. 15,000.
18. That the Applicant / Intervener submits that if the present Application to intervene is not allowed, it will prove detrimental to the interests of workmen who stand to be directly affected by any decision that this Hon'ble Court takes. Millions of workers cannot approach this Hon'ble Court and there needs to be a voice that has to be heard on their behalf as any decision taken will adversely affect them. The present Writ Petition should not be heard without considering the most affected stakeholder for whose benefit the impugned order has been passed i.e. the workmen of the country.
19. That the present Application is bona fide and made in the interest of justice.

### **PRAYER**

In the facts and circumstances, it is most respectfully prayed that this Hon'ble Court may be pleased to:

- A. Allow the present Application and permit the Applicants / Interveners to intervene in *FicusPax Private Limited v. Union of India & Ors.* [Writ Petition (Civil) Diary No. 10983 of 2020];

B. Pass such other order(s) as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

**AND FOR THIS ACT OF KINDNESS, THE APPLICANTS / INTERVENERS AS IN DUTY BOUND SHALL EVER PRAY.**

**Filed by:**



**APARNA BHAT**

**Advocate for the Applicant / Intervener**

Place: New Delhi

Filed on: 26.04.2020

IN THE SUPREME COURT OF INDIA  
CIVIL ORIGINAL JURISDICTION  
I.A. NO OF 2020  
IN  
WRIT PETITION (CIVIL) NO. OF 2020  
(Diary No. 10983/2020)

**IN THE MATTER OF:**

FicusPax Private Limited ...Petitioner

Versus

UNION OF INDIA &Ors. ...Respondents

**IN THE MATTER OF :**

All India Central Council of Trade Unions(AICCTU)

and another. ....Applicants

**AFFIDAVIT**

I, Rajiv Dimri, aged about 56 years of the address U-90, Shakarpur, Delhi-110092 do hereby solemnly affirm and state as under.

1. That I am the General Secretary of the Applicant no. 1 union in the above-mentioned matter and in such capacity I am well conversant with the facts and circumstances of the case and am competent to swear this affidavit.
2. I have read and understood the contents of the accompanying I.A'S and I say that the contents thereof are true and correct to the best of my knowledge and belief and nothing material has been concealed.



**DEPONENT**

(Rajiv Dimri)

**VERIFICATION**

Verified that the contents of paragraph 1 to 2 of my above affidavit and I say that the same are true and correct to the best of my knowledge and belief and nothing material has been concealed therefrom.

Verified at    Delhion this the    day of April 2020



**DEPONENT**

(Rajiv Dimri)

IN THE SUPREME COURT OF INDIA

ORIGINAL CIVIL WRIT JURISDICTION

I.A. NO. \_\_\_\_\_ OF 2020

IN

WRIT PETITION (CIVIL) NO. \_\_\_\_\_ OF 2020

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**VERSUS**

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**AND IN THE MATTER OF:**

All India Central Council of Trade Unions

(AICCTU)...APPLICANT / INTERVENER

**APPLICATION SEEKING LISTING DUE TO EXTREME URGENCY AND  
EXEMPTION FROM FILING DULY AFFIRMED AFFIDAVIT AND STAMPED**

**VAKALATNAMA**

TO

THE HON'BLE CHIEF JUSTICE OF INDIA

AND HIS LORDSHIP'S COMPANION JUSTICES OF THE

HON'BLE SUPREME COURT OF INDIA

THE HUMBLE APPLICATION  
OF THE ABOVE NAMED  
APPLICANT / INTERVENER

**MOST RESPECTFULLY SHOWETH:**

1. That the present Application is being filed on behalf of the Applicants / Intervenors praying for urgent hearing of the accompanying Intervention Application in

**SYNOPSIS OF EXTREME URGENCY**

2. That the Applicants / Intervenors are fundamentally interested in the present Writ Petition as the issue of payment of wages during the present nationwide lockdown and resultant closure of workplaces is one directly affecting the sustenance and livelihood of its members.
3. That despite the closure of most functions, all expenses of the workers remain fixed and unchanged, which include school fees, rent, loan repayments, electricity, food, etc. In fact, some of these costs have also increased.
4. That most of the workers of the unions represented by the Applicants / Intervenors are poor with negligible to no savings. Additionally, many of them are indebted to money lenders.
5. That the accompanying Intervention Application has been filed praying that the Applicants / Intervenors herein be allowed to intervene in *FicusPax*



*Private Limited v. Union of India &Ors.* [Writ Petition (Civil) Diary No. 10983 of 2020] and address this Hon'ble Court on the issues involved.

6. That the urgency in the matter is that the Petition should not be heard without considering the most affected stakeholder for whom the impugned Government Order dated 29.03.2020 was passed i.e. the workmen of the country.
7. That if the accompanying Intervention Application is not heard urgently, it will become infructuous.
8. That the Advocate-on-Record's contact details are given hereunder:
  - **Mobile no.:** (+91)9811113979
  - **Email address:** aparna.bhat@gmail.com
  - **Office address:** A-11, Lower Ground Floor, NeetiBagh, A Block, New Delhi – 110049
  - **Residential address:** W-141, 2<sup>nd</sup> Floor, Greater Kailash – I, New Delhi – 110048
9. That it is prayed that in the prevailing circumstances, exemption from filing duly affirmed affidavit be granted for the time being.
10. That it is prayed that in the prevailing circumstances, exemption from filing duly stamped vakalatnama be granted for the time being.
11. That it is undertaken that the deficit court fees will be paid subsequently once prevailing circumstances are clear.
12. That consent is given for the matter to be taken up through video-conferencing mode. The Advocate-on-Record will connect through her own desktop/mobile for the hearing.

**PRAYER**

In the facts and circumstances, it is most respectfully prayed that this Hon'ble Court may be pleased to:

- A. Grant urgent listing of the accompanying Intervention Application seeking permission to intervene in *FicusPax Private Limited v. Union of India & Ors.* [Writ Petition (Civil) Diary No. 10983 of 2020];
- B. Grant exemption from filing duly affirmed affidavit in the prevailing circumstances;
- C. Grant exemption from filing duly stamped vakalatnama in the prevailing circumstances;
- D. Pass such other order(s) as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

**AND FOR THIS ACT OF KINDNESS, THE APPLICANT / INTERVENER AS IN DUTY BOUND SHALL EVER PRAY.**

**Filed by:**



**APARNA BHAT**  
**Advocate for the Applicants / Intervenors**

Place: New Delhi

IN THE SUPREME COURT OF INDIA  
CIVIL ORIGINAL JURISDICTION  
I.A. NO OF 2020

IN  
WRIT PETITION (CIVIL) NO. OF 2020  
(Diary No. 10983/2020)

**IN THE MATTER OF:**

FicusPax Private Limited

...Petitioner

Versus

UNION OF INDIA &Ors.

...Respondents

**IN THE MATTER OF :**

All India Central Council of Trade Unions  
(AICCTU) and another

....Applicants

**VAKALATNAMA**

I, Rajiv Dimri, Applicant no.1 in the above noted petition do hereby appoint and retain **MS. APARNA BHAT**, Advocate, Supreme Court to act and appear for us in the above petition and on our behalf, to conduct and prosecute/defend the same and all proceedings that may be taken in respect of any application connected with the same or any decree or order passed therein, including proceedings in taxation and application for Review, and to file and obtain, return to documents, and deposit and receive any money on our behalf in the above petition and in application of review, and to represent us, and to take all necessary steps on our behalf in the above matter. We agree to pay his fees and our pocket expenses, agree to ratify all acts done by the aforesaid Advocate in pursuance of his authority.

Dated this the \_\_\_\_\_ day of April, 2020.

ACCEPTED



Applicants

Rajiv Dimri)



( MS. APARNA BHAT )

ADVOCATE FOR THE APPLICANTS

MEMO OF APPEARANCE

To  
The Registrar  
Supreme Court of India,  
New Delhi-110 001.

Sir,

Kindly enter my appearance in the above mentioned Petition made on behalf of the Petitioners.

Yours faithfully,



( MS. APARNA BHAT )

ADVOCATE FOR THE APPLICANTS

IN THE SUPREME COURT OF INDIA  
CIVIL ORIGINAL JURISDICTION  
I.A. NO OF 2020

IN  
WRIT PETITION (CIVIL) NO. OF 2020  
(Diary No. 10983/2020)

IN THE MATTER OF:

Ficus Pax Private Limited ...Petitioner

Versus

UNION OF INDIA & Ors. ...Respondents

IN THE MATTER OF :

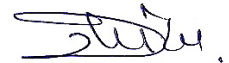
AICCTU and another ....Applicants

VAKALATNAMA

I, Dhirubhai C. Patel, Applicant no.2 in the above noted petition do hereby appoint and retain **MS. APARNA BHAT**, Advocate, Supreme Court to act and appear for us in the above petition and on our behalf, to conduct and prosecute/defend the same and all proceedings that may be taken in respect of any application connected with the same or any decree or order passed therein, including proceedings in taxation and application for Review, and to file and obtain, return to documents, and deposit and receive any money on our behalf in the above petition and in application of review, and to represent us, and to take all necessary steps on our behalf in the above matter. We agree to pay his fees and our pocket expenses, agree to ratify all acts done by the aforesaid Advocate in pursuance of his authority.

Dated this the 26 day of April, 2020.

ACCEPTED



Applicants

( MS. APARNA BHAT )  
ADVOCATE FOR THE APPLICANTS

MEMO OF APPEARANCE

To  
The Registrar  
Supreme Court of India,  
New Delhi-110 001.

Sir,

Kindly enter my appearance in the above mentioned Petition made on behalf of the Petitioners.

Yours faithfully,



( MS. APARNA BHAT )

ADVOCATE FOR THE APPLICANTS

**IN THE SUPREME COURT OF INDIA**  
**ORIGINAL CIVIL WRIT JURISDICTION**  
**(UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA)**

**WRIT PETITION (CIVIL) NO. \_\_\_\_\_ OF 2020**

**(DIARY NO. 10993 OF 2020)**

**MEMO OF PARTIES**

**BETWEEN**

**POSITION OF  
THE PARTIES**

FicusPax Private Limited  
No.95/2B, Along NH 207, Koralur Village,  
HoskoteTq, ThirumalashettyHalli Cross, Bangalore  
Karnataka 560067  
Through its Authorised Representative Sh.  
PrapanchMandana

Petitioner

**VERSUS**

1. Union of India  
Cabinet Secretariat, RashtrapatiBhawan  
New Delhi – 110004

Respondent No.  
1

2. Ministry of Home Affairs  
Through Home Secretary  
North Block  
New Delhi – 110001

Respondent No.  
2

3. Ministry of Corporate Affairs,  
Through its Secretary, 'A' Wing,

ShastriBhawan, Rajendra Prasad Road,  
New Delhi-110 001

4. Ministry of Micro, Small and Medium  
Enterprises through its Secretary  
UdyogBhawan, Rafi Marg,  
New Delhi-110001.
  
5. Employees State Insurance Corporation,  
Through its Director General,  
PanchdeepBhawan,  
CIG Marg,  
New Delhi-110002

1



MS. APARNA BHAT