Chapter 13
Legal Analysis of Contract Management for Effective Supply Chain Administration: The Indian Perspective

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ABSTRACT
Modern businesses have rapidly been transforming to become more competitive by developing competitive advantage through focusing on the core business and outsourcing what is not vital to the principal objective to third party agencies. Thus, the relevance of third party supply chain systems has augmented spawning the necessity to establish an effective legal framework for efficient contract management at national and international levels. The present chapter critically analyzes the Indian perspective of contract management for effective supply chain administration by presenting the legal provisions and case laws pertaining to various aspects of supply chains such as contract formation, unenforceable contracts, UNCITRAL model law, law of agencies, contract indemnity, contractual liability of third party, performance of contracts, international commercial terms, CISG convention, legal bases for recognition of electronic records, and the dispute resolution system through various institutions.

INTRODUCTION
In the battle for customers, our supply chain and distribution network gives us a key advantage, says Meg Whitman, CEO of HP. Modern business has rapidly transformed and has become more competitive as ever in nature. Today, businesses not only need to maneuver to be the cost leader to compete, but

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also develop specific core competencies to differentiate from competition and show up in the market. In this process of developing the necessary competitive advantage, companies need to focus on the core business or what they are best at and outsource the processes and tasks that are not vital to the principal objective of the company. Supply Chain Management (hereafter referred as SCM) permits businesses to reconsider their gamut of operations and restructure them so that they can focus on core competencies and outsource the tasks that aren’t directly linked to the focus of the business. The Japanese automotive industries gain competitive advantage by utilizing their supply chain to maximize their core competencies. Toyota Motor Corporation\(^1\), the Japanese automotive giant, has emerged to be the number one position in the world beating Ford\(^2\) and General Motors\(^3\) of the United States. The Toyota Production System\(^4\), practiced in Toyota, evaluates its supply chain and discriminates between value added and non-value added activities, and revolutionizes the supply chain management towards becoming more agile and flexible towards meeting the end users demands. Nike\(^5\) has taken in the production of a virtual strategy where manufacturing is outsourced and they are only responsible for the design and marketing. By practicing a good inventory control system and system of overseas sales, Nike worldwide has made remarkable achievements. There are numerous analogous examples such as IBM\(^6\), Nissan\(^7\), Apple\(^8\), McDonald’s\(^9\) etc. Thus, SCM facilitates the modern businesses not just to partake productivity advantage, but also enjoy value advantages. Productivity advantage gives a lower cost profile and the value advantage gives the product or offering a differential ‘plus’ over competitive offerings, says Christopher (2002).

As an ancient maxim says, a chain is only as strong as its weakest link, and the supply chains are not an exception. Every component must be considered as vital as every other component. If one component lapses, the entire chain lapses and the effects are felt immediately. Administration of supply chain management can be a demanding task and a serious time drainer. That’s why many businesses choose to outsource their SCM and leave it to a third-party organization. Optimal supply chain performance requires the accomplishment of a specific set of activities. Unfortunately, those actions are not always in the best interest of the members in the supply chain, as the supply chain members are primarily concerned with self-serving, to optimize their own objectives, resulting in poor performance. In fact, companies hinge on supply chain contracts, as the legal underpinnings that ensure timely accomplishment of the scheduled activities. Neglecting to scrutinize these types of contracts carefully can give rise to serious problems that span the operations of entire business. Supply chain contracts are comprehensive and complex, since supply chains themselves are complex and spread across the entire process of business. Key participants in supply chains may include manufacturers, distributors and providers of raw materials etc. Supply chain contracts with such participants include sale of goods contracts, distribution agreements, reseller agreements and manufacturing agreements.

Contract management is a strategic management discipline employed by both buyers and sellers to manage customer and supplier expectations and relationships, control risk and cost, and contribute to organizational success. For effective contract administration, the buyer needs to have a realistic degree of control over the supplier’s performance. Crucial for success in this aspect is the timely availability of accurate data including the contractor’s plan of performance and the contractor’s actual progress. Hence, it is pertinent for the SCM stake holders to take utmost care in entering into such contracts as the terms and conditions are legally binding on the parties. Further, with the usage of Electronic Data Interchange (EDI) in International trade parlance, create inevitable situation to use electronic form as the effective medium of business transactions. The increase in B2B and B2C transactions at national and international levels requires for more regulatory norms and uniform framework for ease of doing business.