

July 2025

## **The High Court of Delhi re-affirms un-enforceability of post-termination non-competes and emphasises the need for balance between an employer's confidentiality interests and employee mobility**

In a recent ruling of the High Court of Delhi ("**Delhi HC**") in *Varun Tyagi vs. Daffodil Software Private Limited*<sup>1</sup> the Delhi HC has re-affirmed the well-established legal position under the Indian Contract Act, 1872 ("**Contract Act**") regarding post-employment restrictions, particularly non-compete clauses. This judgement makes it clear that non-compete agreements that seek to restrain an employee's right to work after leaving an organisation are inherently unenforceable.

Through this judgment, the Delhi HC makes it clear that although confidentiality breaches may be addressed through damages, this cannot serve as a pretext to impose sweeping restrictions on an employee's right to employment or entrepreneurship.

### **Brief facts**

The employee, an IT engineer ("**Complainant**"), was initially employed by an affiliate of Daffodil Software Private Limited ("**Company**") and was subsequently transferred to the Company in January 2022. The Company was engaged by Digital India Corporation ("**DIC**") in relation to a high-priority government initiative which was aimed at improving child nutrition nationwide. The Complainant was assigned to work on the said project as a full stack developer, with effect from January 2023. As per the contractual terms between the Company and DIC, the Intellectual Property Rights ("**IPR**") for the project belonged to DIC and not the Company.

After resigning from employment in January 2025 and serving the requisite notice period, the Complainant accepted an offer of employment from DIC and joined DIC as a Deputy General Manager in April 2025. In light of the same, the Company filed a suit seeking an injunction to prevent the Complainant from working with DIC or the other Company's business associates, relying on a clause in his employment agreement which restricted him from engaging with any business associate of the Company for a period of 3 (three) years post-termination of employment.

The District Court ("**Trial Court**") granted an interim injunction in favour of the Company restraining the Complainant from working with DIC and the National E Governance Division until final disposal of the suit before the Trial Court. Aggrieved by such order, the Complainant approached the Delhi HC.

In the proceedings before the Delhi HC, the Complainant *inter alia* contended that:

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<sup>1</sup> FAO 167/2025 & CM APPL. 36613/2025

1. The Company's claim regarding misuse of IPR by the Complainant was invalid as the intellectual property pertaining to the project belonged to DIC and not the Company.
2. The post-termination obligations in the employment agreement were overly broad, amounting to a blanket prohibition impacting the Complainant's right to livelihood.
3. Section 27 of the Contract Act unlike English law, does not distinguish between a partial and absolute restraint. Any agreement that falls within the scope of Section 27 of the Contract Act is rendered void, unless it is covered within the exception provided thereunder.

On the other hand, the Company contended that:

1. post-termination restrictive covenants in the employment agreement if reasonable, limited in scope and duration, and aim to protect the legitimate business interests of the employer, can be enforced; and
2. the Complainant had access to confidential information, proprietary techniques and internal know-how during his employment with the Company and accordingly, the disclosure of the same would cause irreparable harm to the Company.

## Findings and analysis

Upon appeal, the Delhi HC examined the validity of the non-compete and non-solicitation clauses in the Complainant's employment agreement in light of Section 27 of the Contract Act, which provides that any agreement restraining lawful trade, business or profession would be void. The only exception to Section 27 of the Contract Act is sale of goodwill. Accordingly, the Delhi HC overturned the Trial Court's injunction order, by holding that:

1. any contractual term restraining an employee from lawful employment post-termination is void under Section 27 of the Contract Act, thereby reaffirming that post-termination non-compete provisions are unenforceable in India;
2. Indian law does not recognise partial or reasonable post-employment restraints; all such restraints, including a partial restraint, would be void. Hence, the question of reasonableness or whether the restraint is partial or absolute does not arise at all;
3. employees have a fundamental right to seek better employment opportunities, and they cannot be forced to choose between working for the former employer or remaining idle;
4. in employer-employee contracts, it is quite often the case that the employee has to sign a standard form contract or not be employed at all. Accordingly, any term of employment that imposes a restriction on the right of an employee to be employed post-termination of the contract of employment will be void, being contrary to Section 27 of the Contract Act;
5. IPR for the project belonged exclusively to DIC, negating claims of misuse by the Complainant; and
6. negative covenants post termination of the employment can only be enforced to protect the confidential and proprietary information of the employer or prevent solicitation.

In view of all of the above, the Delhi HC emphasised that restrictive covenants must be tailored and justified by legitimate business interests. Blanket prohibitions restricting future employment would be impermissible under Indian law. However, the Delhi HC clarified that in the event the Company is able to prove a breach of the employment agreement, for example, a breach of the confidentiality obligations, it can be compensated by way of damages.

## Conclusion

The Delhi HC's judgment affirms that while confidentiality and trade secrets are critical assets deserving protection, overarching restrictions that seek to prevent employees from joining competitors or starting similar businesses after separation of their employment are un-enforceable. It serves as a reminder to employers that post-termination

restrictions must be carefully drafted, focussing on safeguarding confidential information, rather than relying on broadly drafted non-compete clauses that hinder an employee's career progression.

This judgment can also significantly influence the enforceability and drafting of no-poaching or no-hire clauses in contracts with service providers and service recipients, business partners and other associates. For example, a clause preventing a partner from hiring any employee of the other party for an indefinite period could be viewed as unreasonable. In other words, overly restrictive clauses that are perceived as anti-competitive or that hinder free employment opportunities could be challenged and rendered un-enforceable. Employers should therefore ensure that such contractual restrictions are carefully tailored, reasonable and compliant with the principles laid down by Indian courts to avoid any potential legal challenges.

Ultimately, a balanced approach that respects employee mobility while protecting legitimate business interests will foster a sustainable and legally compliant employment relationship.

## Employment Practice

JSA has a team of experienced employment law specialists who work with clients from a wide range of sectors, to tackle local and cross-border, contentious and non-contentious employment law issues. Our key areas of advice include (a) advising on boardroom disputes including issues with directors, both executive and non-executive; (b) providing support for business restructuring and turnaround transactions, addressing employment and labour aspects of a deal, to minimise associated risks and ensure legal compliance; (c) providing transaction support with reference to employment law aspects of all corporate finance transactions, including the transfer of undertakings, transfer of accumulated employee benefits of outgoing employees to a new employer, redundancies, and dismissals; (d) advising on compliance and investigations, including creating compliance programs and policy, compliance evaluation assessment, procedure development and providing support for conducting internal investigations into alleged wrongful conduct; (e) designing, documenting, reviewing, and operating all types of employee benefit plans and arrangements, including incentive, bonus and severance programs; and (f) advising on international employment issues, including immigration, residency, social security benefits, taxation issues, Indian laws applicable to spouses and children of expatriates, and other legal requirements that arise when sending employees to India and recruiting from India, including body shopping situations.

JSA also has significant experience in assisting employers to ensure that they provide focused and proactive counselling to comply with the obligations placed on employees under the prevention of sexual harassment regime in India. We advise and assist clients in cases involving sexual harassment at the workplace, intra-office consensual relationships, including drafting of prevention of sexual harassment (POSH) policies, participating in POSH proceedings, conducting training for employees as well as Internal Complaints Committee members, and acting as external members of POSH Committees.

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