

## Restrictive covenants in employment: Delhi High Court holds non-compete clause unenforceable post-termination

By: Sanchita Makhija, Majmudar & Partners, India

### Introduction

In India, restrictive covenants are subject to strict scrutiny. Just recently, in *Vijaya Bank & Anr. v. Prashant B. Narnaware*, 2025 INSC 691, India's Supreme Court, while specifying that its ruling should not be treated as definitive law for all cases, upheld the validity of an employment bond which required the employee to pay liquidated damages to the employer in case of failure to complete a minimum-service tenure requirement (please see [here](#) a detailed analysis of the Supreme Court's decision).

An Indian court was yet again called upon to interpret the scope and enforceability of restrictive covenants in *Varun Tyagi v. Daffodil Software Private Limited*, CM APPL. No. 36613 of 2025. In this case, the Delhi High Court (the "**Delhi HC**") held that post-termination restrictions on employment are void under Section 27 of the Indian Contract Act, 1872 (the "**Indian Contract Act**"), unless they protect confidential information or proprietary interests.

This update discusses the judgment and analyses its potential impact.

### Background

Varun Tyagi (the "**Appellant**"), an information technology engineer, was employed by Daffodil Software Private Limited (the "**Respondent**") and assigned to a government project called the POSHAN Tracker (the "**Project**") for the Digital India Corporation ("**DIC**"). At the time of employment, the Appellant had executed an employment agreement with the Respondent which included a non-solicitation and non-compete clause prohibiting the Appellant from working with any "business associate" of the Respondent during the subsistence of employment and for three (3) years post-termination.

The Appellant resigned from the Respondent's employment in January 2025 and, after serving a three (3) month notice period, joined DIC in April 2025. DIC, at the time, was a "business associate" of the Respondent.

The Respondent, alleging breach of the restrictive covenants, filed a suit before the trial court seeking a permanent injunction to restrain the Appellant from working with DIC and the National E-Governance Division (the "**NeGD**"). The trial court granted an interim injunction restraining the Appellant from working with DIC and NeGD and also enjoined the Appellant from disclosing confidential information belonging to the Respondent, which had been acquired by the Appellant during the course of his employment with the Respondent. It should be highlighted that the confidential information, intellectual property, source code, and proprietary material relating to the Project subsisted entirely with DIC under its engagement with the Respondent.

The trial court's interim injunction was later confirmed by the trial court's order dated June 3, 2025 (the "**Impugned Order**"). The Appellant challenged this Impugned Order before the Delhi HC.

### **The Delhi HC ruling**

The Delhi HC quashed the Impugned Order and allowed the Appellant to continue his employment with DIC by holding that the non-compete clause provided in the employment agreement of the Appellant is void under Section 27 of the Indian Contract Act. The Delhi HC relied on established precedents, including *Superintendence Co. of India v. Krishan Murgai*, (1981) 2 SCC 246, *Percept D'Mark (India) (P) Ltd. v. Zaheer Khan*, (2006) 4 SCC 227 and *Wipro Ltd. v. Beckman Coulter International S.A.*, OMP 463 of 2005, to reinforce the principle that any restrictive covenant extending beyond the term of employment is void and that partiality of restraint is irrelevant under the Indian Contract Act. For context, Section 27 of the Indian Contract Act stipulates that an agreement which restrains anyone from carrying on a lawful profession, trade or business, is void to that extent, unless it falls within a limited exception such as the sale of goodwill.

The judgment further provides as follows:

- **Partial restraints**: The Delhi HC held that reasonableness and the extent of restraint, i.e., whether the restraint is partial or complete, is irrelevant when determining whether a contractual term amounts to a restraint of trade, business, or profession under Section 27 of the Indian Contract Act.
- **Proprietary claims**: The Respondent contended that the Appellant had access to confidential information and proprietary technology. However, the Delhi HC noted that the agreements between DIC and the Respondent expressly stated that the intellectual property and source code rights in the Project vested with DIC and not the Respondent. The Delhi HC, therefore, held that there was no legitimate proprietary interest justifying a restraint on employment by the Respondent.
- **Balance of convenience**: The Delhi HC observed that restraining the Appellant from continuing in his role at DIC will result in significant hardship and financial prejudice to him. Conversely, the Delhi HC also stated that the Respondent's concerns can be addressed through damages, if the breach of contract is proven; therefore, the balance of convenience lay in favour of the Appellant.

### **Our comments**

The judgment of the Delhi HC affirms the strict approach of Indian courts towards post-termination restrictive covenants, emphasizing that such restraints are unenforceable unless they are narrowly tailored to protect confidential information or genuine proprietary

interests. Needless to say, this ruling may be appealed to the Supreme Court, and it will be interesting to watch how the Supreme Court rules.

In any case, employers should ensure that employment agreements are carefully drafted and any post-termination restrictions are limited to the protection of confidential information and do not amount to a general prohibition on future employment. In our view, as Indian employment jurisprudence continues to evolve, companies should revisit their employment contracts to ensure compliance with prevailing legal standards and mitigate litigation risk.