

## HR Law Hotline

July 03, 2025

### BEYOND REASONABLENESS: DELHI HC'S STRICT SCRUTINY OF POST-EMPLOYMENT RESTRAINTS

- The Delhi High Court's ruling in the Daffodil Software Case critically examines the enforceability of post-employment restrictive covenants under Indian law.
- The court's analysis reaffirms that post-employment covenants must be narrowly tailored and backed by demonstrable legitimate interests. Any agreement that falls within the scope of Section 27 of the Indian Contract Act, 1872 ("ICA") is rendered void, unless it is saved by exception 1 to Section 27 of the ICA.
- By refusing to enforce a post-employment restraint in the absence of demonstrable proprietary interest, the court effectively reinforced employee mobility as a constitutional and economic imperative under Indian law, placing the burden of justifying restrictions squarely on the employer.

#### I. INTRODUCTION

Post employment restrictions such as non-compete, non-solicitation is common in employment contracts, especially for senior, technical, or client facing roles. Employers often rely on these clauses to protect confidential information, preserve client relationships, and prevent unfair competitive advantage after an employee exits. However, under Indian law, such restrictions are subject to strict scrutiny. Section 27 of the ICA, renders void any agreement that restrains a person from exercising a lawful profession, trade, or business, unless it falls within a limited exception such as the sale of goodwill.

Against this legal framework, the Delhi High Court ("High Court") recently, in the case of *Varun Tyagi v. Daffodil Software Private Limited*<sup>1</sup> ("Daffodil Software Case"), considered whether a clause in an employment agreement between an IT Engineer and his former employer, could validly restrain the employee from joining Digital India Corporation ("DIC"), after resignation. The clause, which formed part of his employment contract, sought to restrict the employee from working with any "business associate" of the employer for a period of 3 years post-employment.

The High Court examined whether such a restriction, imposed through a blanket post-employment non-compete, was enforceable under Indian law and whether the employer had established any legitimate proprietary interest to justify the restraint. The judgment serves as a critical reaffirmation of the limited enforceability of post-employment restrictions in India and the heightened burden placed on employers seeking to enforce them.

#### II. DAFFODIL SOFTWARE CASE

##### a. Factual Background

The present case arises from an employment dispute between an Information Technology Engineer ("Appellant") and his former employer i.e. Daffodil Software Private Limited ("Respondent") concerning post-employment restrictions. The Appellant was initially employed by an affiliate of the Respondent on July 29, 2021, and was transferred to the Respondent's rolls on January 01, 2022. An employment agreement dated January 01, 2022 ("Employment Agreement") was executed to govern the terms of this engagement.

The Employment Agreement contained a non-solicitation and non-compete clause that prohibited the Appellant, for a period of 3 years following cessation of employment, from soliciting or working with any of the Respondent's business associates or employees with whom the Appellant had professional contact during his employment.

The Respondent had been engaged by DIC under multiple Letters of Intent, to provide specialized software professionals, specifically full stack developers for the implementation of the POSHAN Tracker—an important public interest project aimed at improving child nutrition. The Respondent categorised DIC as a 'business associate'.

The Appellant was assigned to work on the POSHAN Tracker project from January 2023 and was promoted to a leadership role after undergoing specialized training. On January 06, 2025, the Appellant resigned and served a 3 month notice period, ending on April 07, 2025. During this period, the Appellant was offered and accepted a role with DIC as General Manager, with his employment commencing on April 08, 2025.

Alleging breach of the restrictive covenants, the Respondent filed a civil suit before the Trial Court seeking a permanent injunction and damages. On May 23, 2025, the Trial Court granted an *ex parte* ad interim injunction restraining the Appellant from working with the Respondent's clients and business associates and from disclosing any confidential information.

The Appellant challenged this injunction before the High Court, the High Court clarified that the interim injunction would not operate until the Trial Court passed the order in the application for interim stay.

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Thereafter, the Trial Court allowed the Respondent's application, restraining the Appellant from working with DIC and National E-Governance Division ("NeGD"). The Trial Court found a prima facie case in favour of the Respondent and held that disclosure of confidential or proprietary information by the Appellant could result in irreparable harm.

Aggrieved by the Impugned Order, the Appellant has filed the present appeal.

## Issues raised

In view of the above facts, the key issue framed by the High Court was whether the non-compete and non-solicitation clause in the Employment Agreement was enforceable post-termination under Section 27 of the ICA.

## b. Arguments advanced by the parties

- The Appellant submitted that the learned Trial Court has erroneously interpreted the provisions of Section 27 of the ICA by applying the principle of reasonableness and permitting partial restraint, despite the fact that the Employment Agreement stood terminated on April 07, 2025. The Appellant emphasized that no proprietary material or confidential information belonging to the Respondent was involved, as the intellectual property in question was contractually owned by DIC and the same is evident in the Letters of Intent issued by the DIC.
- The Respondent argued that the Appellant's employment with DIC breached a valid restraint clause intended to protect its legitimate business interests, including proprietary information and client relationships. It was submitted that the Appellant gained access to confidential know-how through the Respondent's investment in training and project work. The Respondent maintained that the restriction was narrow, time-bound (limited to DIC and NeGD for 3 years), and did not prevent the Appellant from seeking employment elsewhere.

## c. Findings of the Court

The principal issue before the High Court was whether Clause 2.16 of the Employment Agreement (*reproduced below*), executed between the Appellant, and the Respondent, which imposed a post-employment restraint, was enforceable under Section 27 of the ICA.

### "D. Non-solicitation and Non-Compete

*2.16 The Employee shall not, directly or indirectly, either as an individual on his/her own account or in any capacity or function, during the employment period and for a period of 3 (three) years following the cessation of employment engage into the following:*

- Solicit or attempt to solicit any of the business associates to entice such business associates in any manner or offer/provide substantially the same or competing services as provided by the Company and its affiliates to such business associates; or*
- Directly or indirectly solicit or associate or advise or undertake employment or otherwise deal with any business associate where the Employee first contacted, or was contacted by, or introduced to the business associate in any manner in connection with any business/professional assignments of Company and its affiliates; or*
- Directly or indirectly solicit, associate, advise or otherwise deal with any of the existing Employees of the Company and its affiliates or any person who was employed by the Company and its affiliates within two years prior to such action."*

The High Court observed that Clause 2.16, read with the definition of "Business Associate," imposed a restriction on the Appellant from engaging with any client, vendor or affiliate of the Respondent with whom he had professional dealings during his employment. This restriction extended for a period of 3 years following the cessation of employment.

Referring to Section 27 of the ICA, the High Court reiterated that any agreement which restrains a person from engaging in a lawful profession, trade or business is void to that extent, except in limited circumstances such as the sale of goodwill. The High Court relied on the decisions in **Superintendence Co. of India v. Krishan**

**Murga<sup>2</sup>** and **Percept D'Mark (India) Private Limited v. Zaheer Khan<sup>3</sup>** to reaffirm that Indian law does not recognise a distinction between partial and absolute restraints, any agreement with the object of restraining trade is void. Any post-employment restriction must fall within the statutory exception to be enforceable.

The High Court held that Clause 2.16 was a post-employment negative covenant and must therefore be tested strictly under Section 27 of the ICA. The clause sought to restrict the Appellant from working with any of the Business Associate entities such as DIC and NeGD, solely because of his prior employment with the Respondent. Under Indian law, all contracts falling within the terms of Section 27 of the ICA are void unless they fall within the specific exception carved out under the provision. Accordingly, the Appellant submitted that Clause 2.16, when read with the definition of 'Business Associates' in the Employment Agreement, was excessively broad and amounted to a blanket prohibition on the Appellant from working with any present or potential customer of the Respondent. Therefore, the restriction sought to be enforced was in clear restraint of trade and void under Section 27 of the ICA.

The High Court referred to **Niranjan Shankar Golikari v. Century Spinning and Manufacturing Company Limited<sup>4</sup>**, where it was held that negative covenants during the term of employment are not necessarily violative of Section 27 of the ICA (*relevant extract given below*).

*"17. The result of the above discussion is that considerations against restrictive covenants are different in cases where the restriction is to apply during the period after the termination of the contract than those in cases where it is to operate during the period of the contract. Negative covenants operative during the period of the contract of employment when the employee is bound to serve his employer exclusively are generally not regarded as restraint of trade and therefore do not fall under Section 27 of the Contract Act. A negative covenant that the employee would not engage himself in a trade or business or would not get himself employed by any other master for whom he would perform similar or substantially similar duties is not therefore a restraint of trade unless the contract as aforesaid is unconscionable or excessively harsh or unreasonable or one-sided as in the case of W.H. Milsted & Son Ltd. Both the trial court and the High Court have found, and in our view, rightly, that the negative covenant in the present case restricted as it is to the period of employment and to work similar or substantially similar to the one carried on by the appellant when he was in the employ of the respondent Company was reasonable and necessary*

for the protection of the company's interests and not such as the court would refuse to enforce.”

In this case, the High Court found that the Respondent had also failed to demonstrate the existence of any such proprietary interest. The documentation on record, including Letters of Intent issued by the DIC, made it clear that all intellectual property, source code and project materials related to the POSHAN Tracker were owned exclusively by DIC. The Respondent had only supplied manpower and had no role in developing or owning any proprietary content.

The High Court relied on *American Express Bank Limited v. Priya Malik*<sup>5</sup> to reiterate that the right of an employee to seek improved employment opportunities is a fundamental right. General claims of confidentiality or business know-how cannot justify a restriction on future employment in the absence of specific and protectable interests.

On the question of balance of convenience, the High Court found it in favour of the Appellant. The Appellant had already joined DIC, and a continuing restraint would severely impact his livelihood and professional advancement. Any potential harm to the Respondent was held to be speculative and capable of being compensated by way of damages.

The High Court accordingly concluded that Clause 2.16, to the extent it imposed a post-employment restriction on the Appellant from working with a client or affiliate of the Respondent, was in violation of Section 27 of the ICA and therefore void.

### III. ANALYSIS AND CONCLUSION

The judgment reinforces the well-settled position under Indian contract law that post-employment restraints are presumptively void under Section 27 of the ICA, unless they are narrowly tailored to protect legitimate proprietary interests such as trade secrets or confidential information.

A critical takeaway from the High Court’s reasoning is that the enforceability of a restrictive covenant hinges on the employer’s ability to demonstrate the existence of proprietary material or commercially sensitive information that warrants protection. In the absence of the same, a covenant that broadly restricts post-employment opportunities, even if contractually agreed to, will not withstand judicial scrutiny.

The High Court noted that the Respondent was merely a staffing agency and that all intellectual property in the POSHAN Tracker project was contractually owned by DIC. It held that the Respondent’s claim of potential misuse of confidential information was misplaced, as the source code and related materials already belonged to DIC. The judgment is also significant in clarifying that a restrictive covenant will not be enforced solely on the basis of an employer’s desire to prevent competition, client attrition, or loss of general know-how. The onus lies firmly on the employer to demonstrate a legitimate interest and actual risk of harm.

Most importantly, the High Court discussed the inherent power imbalance in employer–employee relationships. It noted that restrictive or negative covenants in employment contracts must be approached with caution, as employers often possess greater bargaining power and employees may be compelled to accept standard-form agreements as a condition of employment. In such scenarios, contractual consent cannot by itself justify a restraint that impinges on the employee’s right to livelihood and career progression.

In conclusion, the decision underscores the limited enforceability of post-employment restrictions under Indian law and highlights the need for employers to structure negative covenants in an employment contract narrowly and link them to demonstrable proprietary interests. Clauses that impose blanket prohibitions without adequate justification are likely to be struck down as void under Section 27 of the ICA.

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<sup>1</sup>MANU/DE/4616/2025.

<sup>2</sup>(1981) 2 SCC 246.

<sup>3</sup>(2006) 4 SCC 227.

<sup>4</sup>1967 SCC OnLine SC 72.

<sup>5</sup>III LLJ 540 DEL.

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