

A purchaser of shares in a court-monitored liquidation process steps into the shoes of the transferring shareholder and is bound by the rights, obligations, and liabilities of the predecessor, including non-compete clauses contained in a Joint Venture and Share Purchase Agreement

The **National Company Law Appellate Tribunal (NCLAT), Principal Bench, New Delhi** in the case of **GH Energy vs Flovel Hydro Technologies [Company Appeal (AT) No.87 of 2024]** **dated April 08, 2026**, has held that a purchaser of shares in a court-monitored liquidation process steps into the shoes of the transferring shareholder and is bound by the rights, obligations, and liabilities of the predecessor, including non-compete clauses contained in a Joint Venture and Share Purchase Agreement. This is strictly applicable when the Articles of Association mandate that a transferee must agree to be bound by such obligations as a condition precedent to the transfer, and such shareholder agreements are binding even if not explicitly incorporated into the Articles, provided they are not repugnant to them.

The paramount consideration of the Tribunal under Sections 241 and 242 of the Companies Act is the interest of the company, which prevents a competitor-transferee from competing with the joint venture company in violation of the predecessor's non-compete obligations.

The NCLAT observed that Flovel had made the payment of the entire consideration amount, acquired an order of the Paris Commercial Court confirming the sale, and the Judicial Liquidator recognized all legal rights and financial interest vested in Flovel. The NCLAT thus held that since the Appellant Company had withheld the issuance of duplicate share certificates, it could not allege that Flovel cannot maintain the petition, affirming that a person entitled to hold shares based on beneficial/financial interest can maintain a petition under Section 241-242.

Regarding the EOGM dated June 2021, the NCLAT observed that the notice was validly served on the official email ID of the Liquidator, and there was no legal requirement to send the EOGM notice to the secretary of the Liquidator. The amendment of Article 63 was necessitated in the interest of the Appellant Company to maintain its going concern status, thus the NCLAT set aside the NCLT's order and held the service of notice of the EOGM as valid.

On the binding nature of the JVSPA, the NCLAT observed that Article 22 of the Articles of Association restricts the transfer of shares to a third party unless such party agrees to be bound by the rights, obligations, and liabilities of the transferring party, "including" those defined in the Memorandum and Articles of Association. The NCLAT interpreted the word "including" to mean that the Board may look beyond the Articles and refuse to register the transfer unless the transferee adheres to obligations noted elsewhere, such as the JVSPA.

The NCLAT observed that Article 25 provides a deeming fiction for the transfer of shares in case of insolvency, meaning it must be assumed that Mecamidi France is on its own transferring the 47% shares to Flovel. If Mecamidi France cannot transfer the shares without Flovel agreeing to the non-compete obligations, Flovel cannot purchase the shares. The

expression "pertaining to" in Article 22 is synonymous with "in relation to" and "concerning with", which are expressions of expansion, signifying that rights and obligations of the French company concerning the Indian company need to be seen.

The conjoint usage of the words "none" and "unless" in Article 22 makes it abundantly clear that the restriction contained therein is a condition precedent/pre-requisite and not a condition subsequent, added the Tribunal.

The NCLAT held that shareholder agreements are binding even if they are not incorporated in the Articles, so long as they are not contrary to the Articles, and the non-compete clause is not contrary to the Articles. Flovel, having acquired the 47% shares, steps into the shoes of Mecamidi France and cannot take a stand contrary to the obligations of its predecessor, which was a party to the JVSPA.