

**AGREEMENTS RESTRICTING TRANSFER OF SHARES
OF A PUBLIC LIMITED COMPANY HELD TO BE VALID**

SUMMARY:

A division bench of the Bombay High Court has ruled in Messer Holdings Limited v. Shyam Madanmohan Ruia and others that a private agreement between the shareholders of a public limited company relating to restrictions on share transfer (Right of first refusal) as valid agreement and not violative of Sec. 111A of the Companies Act, 1956. The judgment also held that it is not mandatory that the company is party to agreements restricting such transfers or the same be incorporated in the articles of association of the Company.

This Court overruled the earlier decision of Single Judge of Bombay High Court in the matter of Western Maharashtra Development Corporation Ltd. v. Bajaj Auto Ltd. wherein the Court had ruled that any restriction on free transferability of shares is illegal in view of the principle of free transferability of shares of a public limited company enshrined in S. 111A of the Companies Act, 1956.

The Division Bench held that:

- The expression "freely transferable" in Section 111A does not mean that the shareholder cannot enter into consensual arrangement/agreement with the third party (proposed transferee) in relation to his specific shares.
- Further, such consensual agreements between particular shareholders relating to their shares can be enforced like any other agreements.
- The expression "freely transferable" in S. 111A is in the context of the mandate against the Board of Directors to register the transfer of specified shares of the members in the name of the transferee, unless there is sufficient cause for not doing so. The said provision cannot be construed to mean that it also intends to take away the right of the shareholder to enter into consensual arrangement/agreement with the purchaser of their specific shares.

Thus, in view of the above judgment, it can be concluded that the legal provision laid down in S. 111A of the Companies Act does not expressly restrict or take away the right of shareholders of a public limited company to enter into consensual arrangement / agreements in respect of shares held by them and it is not necessary that the company is a party to such agreements or the same is embodied in the Articles of Association of the Company. With this judgment, the Bombay High Court has reinforced the validity of typical joint venture and investor rights (including rights of first refusal and tag-along rights) that were earlier in a state of confusion due to the previous order by a single judge of the same court.



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