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NON-COMPETE OBLIGATIONS VOID UPON CONTRACT TERMINATION

The Bombay High Court (**HC**) on October 17, 2024 in *Indus Power Tech Inc.* case,¹ held that while non-compete clauses are valid during an agreement's existence, they become void after the termination as they restrain trade.

Brief Facts.

Indus Power Tech Inc., USA (**Indus**) and its supplier Echjay Industries Private Limited, India (**Echjay**) entered into Master Service Agreement (**MSA**) in March 2015. The MSA included non-compete/non-solicitation clause that granted Indus exclusive rights to customers introduced by Echjay in the USA, Canada and Mexico. The clause was to operate during the agreement and for 24 months after its termination.

In January 2023, Echjay terminated the MSA under clause 15. Echjay filed application under Section 9² of Arbitration and Conciliation Act, 1996 (**ACA**) for interim injunction restraining Indus from undertaking trade or business after termination of the MSA. The application was allowed by Single Judge (**SJ**).

Indus challenged the SJ order under Section 37³ of the ACA vide appeal before the Division Bench of the HC.

Parties Contentions.

Indus's Contentions:

The non-compete clause would not operate post termination of the MSA.

Section 9 Order of the SJ was passed after notice period.

Post-MSA termination, the restraint clause violated Section 27⁴ of the Indian Contract Act, 1872, hindering its lawful business activities.

Echjay's Contentions:

Indus could not raise the void nature of Clause 3 of the MSA after its termination since it was not raised earlier.

Indus' conduct contradicted its current claim, emphasizing that the SJ order was based on available evidence and law, warranting no interference.

¹*Indus Power Tech Inc vs. M/s. Echjay Industries Pvt Limited* (2024) SCC Online Bom 3349.

² Section 9: Interim measures, etc., by Court.

³ Section 37: Appealable orders.

⁴ Section 27: Agreement in restraint of trade, void.

HC's Judgment and Reasoning.

The Division Bench:

- Held, relying on *Percept D'Mark*⁵ and *VFS Global Services*⁶ cases, that while non-compete clauses are valid during an agreement's existence, they become void after termination as they restrain trade.
- The principle applies even if parties continue to transact business after termination as estoppel cannot override statutory provisions as was held in *Mathra Prashad* case.⁷
- Held that the SJ order only addressed the injunction request and did not restrict the parties from pursuing other rights through arbitration.
- Allowed the appeal, set aside the injunction, and dismissed the arbitration petition.

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⁵ *Percept D'Mark (India) (P) Ltd. v. Zaheer Khan* (2006) 4 SCC 227.

⁶ *VFS Global Services Pvt. Ltd. vs. Surjit Roy*, 2008(3) Mh.L.J. 266

⁷ *Mathra Prasad and Sons v. State of Punjab* 1961 INSC 338.