

Employee Non-compete Agreement

An non-compete agreement under which an employee agrees that he will serve a particular employer for certain duration, and that he will not serve anybody else during that period, is a valid agreement. During the period of employment, the employer has an exclusive right to avail the services of his employee, and therefore a restraint on the employee to serve somebody else at the same is reasonable. Such an agreement is not hit by doctrine of restraint of trade. However, an agreement to restrain an employee from competing with his employer after termination of employment is not allowed in the eyes of law.

Agreement Restraining Legal Proceedings, Void

Every agreement, by which any party thereto is restricted absolutely from enforcing his rights under or in respect of any contract, by the usual legal proceedings, is void. In other words, if an agreement restricts a party from enforcing his contractual rights by bringing usual legal proceedings, the same is void.

Agreement in Restraint of Trade

According to section 27 of the Contract Act, 1872 (the “**Contract Act**”), “Every agreement by which anyone is restrained from exercising a lawful profession, trade or business, is to that extent void.” An agreement which unnecessarily curtails the freedom of a person to trade is against public policy. Restraining a person from carrying on a trade generally aims at avoiding competition and has monopolistic tendency and this is both against individual’s interest as well as the interest of the society and on that ground such restraint is discouraged by law. The aforesaid section which declares an agreement in restraint of trade as void, does not allow any distinction between a total restraint or a partial restraint. Thus, whether an agreement imposes a total restraint example it stipulates that A shall not carry on business anywhere in the country during his lifetime, or it imposes only a partial restraint, requiring A not to do business within a certain area, or for a certain duration, the agreement is void.

Exceptions to an Agreement in Restraint of Trade

Sale of Goodwill

When there is sale of business by a person along with its goodwill, the seller of the business may make an arrangement with the buyer not to carry out business in competition with the buyer. Such an arrangement, if imposes a reasonable restriction on the seller's right to carry on the business, is valid. When a person purchases goodwill of the business, he pays for the right to carry on a certain type of business, in exchange for an express or an implied promise by the seller not to carry on that type of business. If the object of the agreement is to protect the rights of the buyer of the goodwill, the restraint is valid. If however, the agreement in essence is a covenant against competition rather than that of sale of goodwill, it would be void. The only exception to the above rule, lies in the Indian Partnership Act, 1932 (the "**Partnership Act**") under the following four situations:

- a. The Partnership Act, permits the partners of a partnership firm to make a contract which provides that a partner shall not carry on any business other than that of the partnership firm while he is a partner.
- b. Another exemption states that a partner may make an agreement with his partners that on ceasing to be a partner he will not carry on any business similar to that of the firm within a specified period or within specified local limits; such agreement shall be valid if the restrictions imposed are reasonable. Generally an outgoing partner is paid his share of the goodwill of the firm, and it is reasonable that he agrees that he will not carry on a business similar to that of the firm.
- c. The Partnership act contains another exception to the rule and permits such an agreement to be made upon or in anticipation of the dissolution of the firm. Partners may, upon or in anticipation of the dissolution of the firm, make an agreement that some or all of them will not carry on a business similar to that of the firm within a specified period or within specified local limits. Such agreement shall be valid if the restrictions imposed are reasonable.

Dhreej Kumar.

About the author:

The author is a corporate lawyer empaneled with Evaluator. Views expressed are personal.