

INTERNATIONAL JOURNAL OF LAW
MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 5 | Issue 2

2022

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Conflict between the Shareholder's Agreement and Articles of a Company

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ABSTRACT

With the rise in the shareholder's agreement entered into by the shareholders of the company, it is important to analyse the enforceability of the agreement, especially when held against the document of Articles of Association, which is a part of the bible of the company. There stands ambiguity as to whether it is actually beneficial and of relevance to enter into a Shareholder's agreement when there lacks clarity as to whether it is actually enforceable and whether on conflict with the Articles of Association of the company, what would prevail and the rationale behind it adjudicated by the courts. It is important to trace and highlight the progress in the history of the Shareholder's agreement and how it is at the position where it is currently and the prediction of the future of the enforceability of the provisions under the agreement. This project aims to clarify the legal position of the Shareholder's agreement with respect to its enforceability and provide clarity on the possible outcomes of a conflict between the SHA and AoA.

I. INTRODUCTION

In the present day, it is very common to find the existence of a Shareholder's agreement between the shareholders of a company and/or between the shareholders of the company and the company itself. The agreement aims to highlight various rights and obligations of the shareholders of the company, and commonly include provisions such as-

- a) proportion in which shareholders are going to hold the shares,
- b) pre-emption rights of shareholders,
- c) powers of the board of directors with respect to issuance and transfer of shares,
- d) rights of minority shareholders, etc.⁴

The Shareholder's agreement is an agreement which is private in nature, whereas the Articles of Association of the Company is a public document which is a part of the constitution

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⁴<https://www.mondaq.com/india/shareholders/1089446/enforcing-shareholders39-agreements-in-india-a-legal-laggard>

of the company, under Section 399 of the Companies Act, 2013. Articles of Association is a document which aims to describe and enlist the rules and regulations for the internal management of the company and the operation of the business. Some of these rules include-

- a) Qualifications required for the employees and directors.
- b) Forfeiture and transfer of shares.
- c) Duties and rights of the auditors.
- d) Responsibility of the Directors.

(A) What is the importance of this topic?

This topic is of sufficient relevance and interest to the legal community as with the rise in the shareholder's agreement entered into by the shareholders of the company, it is important to analyse the enforceability of the agreement, especially when held against the document of Articles of Association, which is a part of the bible of the company. There stands ambiguity as to whether it is actually beneficial and of relevance to enter into a Shareholder's agreement when there lacks clarity as to whether it is actually enforceable and whether on conflict with the Articles of Association of the company, what would prevail and the rationale behind it adjudicated by the courts. It is important to trace and highlight the progress in the history of the Shareholder's agreement and how it is at the position where it is currently and the prediction of the future of the enforceability of the provisions under the agreement. This project aims to clarify the legal position of the Shareholder's agreement with respect to its enforceability and provide clarity on the possible outcomes of a conflict between the SHA and AoA.

(B) Research Questions

1. Whether there is any real conflict between the Articles of Association and Shareholder's Agreement about what will prevail upon any contradiction between the two?
2. If there is contradiction between a provision of Shareholder's agreement and Articles of Association, will that provision be valid and if Articles of Association is silent about a provision of Shareholder's Agreement, will that provision then be enforceable?
3. Whether any remedy is available to a Shareholder upon the breach of SHA by other shareholders, even though such conduct would not be construed as breach under the Articles of the Company?

(C) Research Methodology

The research done for this project has been through a doctrinal approach. Analysis of the

research topic and the research questions has been done through case laws, articles and through the use of legal textbooks. Reliance has been placed only on primary and secondary sources and not on statistical data or empirical data.

II. WHETHER THERE IS ANY REAL CONFLICT BETWEEN THE ARTICLES OF ASSOCIATION AND SHAREHOLDER'S AGREEMENT ABOUT WHAT WILL PREVAIL UPON ANY CONTRADICTION BETWEEN THE TWO?

The Judicial stand on the conflict between the prevalence of Articles of Association and Shareholder's agreement remains to be an ambiguous area throughout the history of precedents, which this section of the research paper aims to analyse and arrive at a conclusion. The main question lies about whether there is any real conflict between the Articles of Association and SHA (Shareholder's agreement) about what will prevail upon any contradiction between the two. The Judiciary has throughout the years taken different stances on the applicability of the clauses in the Shareholder's agreement on the basis of the subject of the clauses enlisted in the Shareholder's Agreement which might tend to go against the Articles of Association or is an important subject of consideration for it to be a purely contractual right and not an essential part of the Articles of Association. Some of the objects of the Shareholder's agreement usually includes the following:

- a) Appointment and removal of directors which are in the nature of management and ownership rights.
- b) Rights regulating the sale of the shares held by the shareholders.
- c) The operation of the company and the structure to be followed.
- d) Rights of the minority shareholders.

To highlight the current position of the jurisprudence of upholding the Shareholder's agreement, it is important to trace the history of the landmark judgments on the same and the various amendments to the stance of the Judiciary. One such landmark judgment is that of **V.B. Rangaraj v. V.B. Gopalakrishnan**⁵, the judgment under this case was under the old regime of the provisions of the Companies Act 1956, where one of the issues was the enforceability of the clause in the Shareholder's agreement which restricted the transfer of shares by shareholders. The Supreme Court in this case held that,

"The only restriction on the transfer of the shares of a company is as laid down in its articles,

⁵ AIR 1992 SC 453

if any. A restriction which is not specified in the Articles is, therefore, not binding either on the company or on the shareholders. The vendee of the shares cannot be denied the registration of the shares purchased by him on a ground other than that stated in the Articles."⁶

Hence, upholding that in the matter of restriction on transfer of shares, if the same is not included in the Articles of Association, it will not be held binding on the shareholders of the company and the company itself, as the clause imposes restrictions of "*it imposes a restriction on a living member to transfer the shares only to the existing members and secondly the transfer has to be only to a member belonging to the same branch of family*"⁷ and "*imposes additional restrictions on the member's right to transfer his shares which are contrary to the provisions of the Article 13*"⁸, and therefore, the Shareholder's agreement would not prevail or bind the shareholders as the same clause is not included in the Articles of Association. This judgment, therefore, established that in order to uphold the clause of the Shareholder's agreement which restricts the Shareholder's right to transfer the shares, should be incorporated in the Articles of Association for it to have a binding force. This precedent acted as a guiding force for courts and the judgment of the same was upheld in cases such as **Mafatlal Industries Ltd. v. Gujarat Gas Co. Ltd. And Ors.**⁹, **IL& FS Trust Co. Ltd. v. Birla Perucchini Ltd**¹⁰.

Post the regime and induction of the Companies Act 2013, the strict binding restriction placed on the Shareholder's agreement was seen to be somewhat modified and eased. Under Section 58(2) of the Companies Act 2013, which states that, "*(2) Without prejudice to sub-section (1), the securities or other interest of any member in a public company shall be freely transferable: Provided that any contract or arrangement between two or more persons in respect of transfer of securities shall be enforceable as a contract.*"¹¹ Though the proviso is aimed to relax the strict interpretation by the Judiciary in the past, it failed to provide for the private companies and is only applicable to the public companies. The proviso upholds the contractual obligation aspect of the Shareholder's agreement in matters where there is no specific provision providing for a specific object, in the Articles of Association.

Even though the Supreme Court, in the case of **Vodafone International Holdings BV v. Union of India**¹², upheld its disagreement with the judgment held in the **Rangaraj** case. The

⁶ AIR 1992 SC 453

⁷ Ibid

⁸ Ibid

⁹ (1999) 97 Comp Cas 301

¹⁰ [2004] 121 Comp Cas 335.

¹¹ Companies Act 2013, s.58(2)

¹² (2012) 6 SCC 613

apex court was of the view that

“Shareholders can enter into any agreement in the best interest of the company, but the only thing is that the provisions in the SHA shall not go contrary to the Articles of Association. The essential purpose of the SHA is to make provisions for proper and effective internal management of the company. It can visualize the best interest of the company on diverse issues and can also find different ways not only for the best interest of the shareholders, but also for the company as a whole.”¹³

Thus, the Supreme Court held that it did not subscribe to the same view as held in the **Rangaraj** case and differed on the ground that if the provisions in the Shareholder’s agreement did not contradict the provisions in the Articles of Association, and the Articles of Association was silent on the provisions in the Shareholder’s agreement, then, the provisions in the SHA would be upheld and would have a contractual binding effect on the company and the shareholders. This judgment changed the face of the applicability of the Shareholder’s agreement as it had not been given due importance and was treated as unenforceable in most of the judgments prior to the **Vodafone** judgment, and thus, opened the opportunity for the enforceability of the Shareholder’s agreement, which however, should not be contradictory to the Articles of Association of the company.

Although the Supreme Court had ruled in applicability of the Shareholder’s agreement provisions subjected to the aforementioned rules, the same was overlooked in the case of **World Phone India Pvt. Ltd. & Ors. v. WPI Group Inc**¹⁴. The ruling in this case further strengthened the grey area around the applicability of the provisions of SHA, as the court took a stance which varied from the judgment in the Vodafone case. In the case of **World Phone India Pvt. Ltd. & Ors. v. WPI Group Inc**.¹⁵, the Company Law Board had held that even though the provisions of affirmative vote in the Shareholder’s agreement were not incorporated in the Articles of Association, the same would still be enforceable, however, the High Court was of a different view and held that,

“The legal position is that where the AoA is silent on the existence of an affirmative vote, it will not be possible to hold that a clause in an agreement between the shareholders would be binding without being incorporated in the AoA. The question to be asked is whether the provisions of an agreement, that are not inconsistent with the Act, but are also not part of the AoA, can be said to be applicable. All that Section 9 states is that clauses in the agreement that

¹³ Vodafone International Holdings BV v. Union of India (2012) 6 SCC 613

¹⁴ (2013) 178 Comp Cas 173 (Del)

¹⁵ Id.

are 'repugnant' to the Act shall be 'void'. This does not mean that clauses in the agreement which are not repugnant to the Act would be enforceable, notwithstanding that they are not incorporated in the AoA."¹⁶

Since the provision for affirmative vote was not included in the Articles of Association, the same could not be upheld and was unenforceable even though it was not contradicting to the provisions of Articles of Association and was not binding on the parties, thus overlooking the **Vodafone** judgment.

With the ambiguity around the applicability of provisions in the Shareholder's agreement, there is a constant area of doubt as to whether the same is enforceable and protects the rights provided to the shareholders under this agreement. Since the Articles of Association is the charter document of the company and holds the most relevance, it is bound to be the legal document which prevails over other agreements made out of the capacity of the documents of the company. It is clear that in the cases where the provisions in the Shareholder's agreement contradict the provisions in the Articles of Association, the AoA will supersede and be held enforceable and not the contractual obligation under the Shareholder's agreement. However, that being said, the question of whether there is any real conflict between the Shareholder's agreement and Articles of Association is answered and more than evident that the conflict exists, as seen from the varied judgments and position of the courts on the matter of whether the provisions of the Shareholder's agreement can be enforceable. Even after the **Vodafone** judgment, the same was overlooked in the World Phone case, thus displaying the conflict between the validity of the provisions included in the Shareholder's agreement.

III. IF THERE IS CONTRADICTION BETWEEN A PROVISION OF SHAREHOLDER'S AGREEMENT AND ARTICLES OF ASSOCIATION, WILL THAT PROVISION BE VALID AND IF ARTICLES OF ASSOCIATION IS SILENT ABOUT A PROVISION OF SHAREHOLDER'S AGREEMENT, WILL THAT PROVISION THEN BE ENFORCEABLE?

In India, every provision of every act is known to be valid and enforceable if it is not against or is not in violation of any other law of the country, but there are some provisions whose validity and enforceability is always in question or has been deemed invalid or unenforceable. One such example is of the Shareholder's Agreement. There has been a lot of debate regarding the contradiction between Shareholder's Agreement and Articles of Association, and all the judgements passed make it clear that the latter will prevail. The two major points of

¹⁶ World Phone India Pvt. Ltd. & Ors. v. Wpi Group Inc. (2013) 178 Comp Cas 173 (Del)

contradiction between the Shareholder's Agreement and the Articles of Association have been regarding the transfer of shares and the management of the company.

CONFLICT REGARDING TRANSFER OF SHARES

One of the earliest precedents in India, regarding the conflict between Shareholder's Agreement and Articles of Association in the issue regarding transfer of shares was **Shanti Prasad Jain v. Kalinga Tubes Ltd.**¹⁷ The issue in this case was if a provision has been added in the Shareholder's Agreement but not in the Articles of Association, will that provision be binding on the shareholders or the company? The Court held that any provision of the Shareholder's Agreement that is not added to the Articles of Association would not be binding or enforceable on the shareholders or the company.

In the matter of conflict related to transfer of shares, The Supreme Court had passed a landmark judgement in the matter of **VB Rangaraj v. VB Gopalakrishnan**¹⁸, the main issue was if a shareholder can sign an agreement regarding transfer of shares between themselves which is not in accordance with the Articles of Association.

*"The only restriction on the transfer of the shares of a company is as laid down in its Articles, if any. A restriction which is not specified in the Articles is, therefore, not binding either on the company or on the shareholders. The vendee of the shares cannot be denied the registration of the shares purchased by him on a ground other than that stated in the Articles."*¹⁹

The Supreme Court was of the view that any provision of Shareholder's Agreement which would not be in accordance with the Articles of Association would not be binding on the shareholders or the company. The Apex Court placed reliance on the case of **Shanti Prasad Jain v. Kalinga Tubes Ltd.**²⁰ and therefore, making the provision unenforceable or invalid. The court also established the principle that Shareholder's Agreement cannot be above the Articles of Association and that Articles of Association will always have the upper hand in any kind of contradiction.

CONFLICT REGARDING MANAGEMENT OF THE COMPANY

In the matter of conflict related to management of the company, Bombay High Court in the case of **IL and FS Trust Co. Ltd. v. Birla Perucchini Ltd**²¹ placed reliance on the decision

¹⁷ 35 Com. Cas. 351 SC

¹⁸ AIR 1992 SC 453

¹⁹ V.B. Rangaraj v. V.B. Gopalakrishnan AIR 1992 SC 453

²⁰ 35 Com. Cas. 351 SC

²¹ (2003) 47 SCL 426.

of The Supreme Court in the matter of **VB Rangaraj v. VB Gopalakrishnan**.²²

*“The Supreme Court has held that a restriction which is not specified in the articles of association is not binding either on the company or on the shareholders. An attempt was made to distinguish the judgment of the Supreme Court by counsel for the petitioners on the ground that the law laid down by the Supreme Court in that judgment applies only in the context of a restriction on the transfer of shares of the company in V.B. Rangaraj's case (supra) undoubtedly involved a situation relating to a restriction on the transfer of shares but the principle of law which has been enunciated by the Supreme Court cannot be confined to only that situation.”*²³

It was held that even if Articles of Association is silent about a certain provision in the Shareholder's Agreement, that particular provision of Shareholder's agreement will only be enforceable when the provision is included in the Articles of Association because the governing body for the relationship between shareholders is Articles of Association and therefore, if a provision in Shareholder's Agreement has not been included in the Articles of Association, it will be unenforceable against the shareholder or against the company.

IV. RECENT JUDGEMENTS

Surprisingly, the stance of the court is changing regarding the enforceability and validity of the Shareholder's agreement which can be seen in the recent judgements passed. The Supreme Court, in the case of **Vodafone International Holdings B.V. v. Union of India**²⁴ was of the opinion that:

*“Shareholders can enter into any agreement in the best interest of the company, but the only thing is that the provisions in the SHA shall not go contrary to the Articles of Association. The essential purpose of the SHA is to make provisions for proper and effective internal management of the company. It can visualize the best interest of the company on diverse issues and can also find different ways not only for the best interest of the shareholders, but also for the company as a whole.”*²⁵

The Supreme Court held that a restriction which is laid down in Shareholder's Agreement can be imposed even if that particular restriction is not laid down in Articles of Association. The Court disagreed with the view of the court in the case of **VB Rangaraj v. VB**

²² AIR 1992 SC 453

²³ IL and FS Trust Co. Ltd. v. Birla Perucchini Ltd (2003) 47 SCL 426.

²⁴ (2012) 6 SCC 613

²⁵ Vodafone International Holdings B.V. v. Union of India (2012) 6 SCC 613

Gopalakrishnan²⁶ where only those provisions of Shareholder's Agreement can be imposed which are included in Articles of Association. It was a major development in the never-ending conflict between Shareholder's Agreement and Articles of Association because till now, all the past judgements declared the provisions of Shareholder's Agreement not included in the Articles of Association as invalid and unenforceable in nature but this judgement-imposed validity of a provision of Shareholder's Agreement without being included in the Articles of Association.

Another case where a provision of Shareholder's Agreement has been upheld is **Premier Hockey Development Private Ltd vs. Indian Hockey Federation**²⁷

*"In the present case as well, there is no Article pointed out by the petitioner, in the Articles of Association of the petitioner company, which conflicts with Articles 10.3.2 and 10.3.3 of the Subscription and Shareholders Agreement. The said articles are also not in contravention of any legal provision in the Companies Act or Rules. Such an agreement would clearly bind not just the shareholders, but also the company, as the company is also a party to the Subscription and Shareholders Agreement."*²⁸

The court clearly upheld the provision of Shareholder's Agreement which was not included in the Articles of Association. The Court was of the view that the provisions are not in contradiction of any law or Articles of Association and therefore can be imposed on the shareholders of the company and the company itself. The Court in this case placed reliance on the case of **Modi Rubber Ltd. vs Guardian International Corp.**²⁹ where the Court upheld the provision of Shareholder's Agreement even when it was not included in the Articles of Association. The Court, in the case of **Modi Rubber Ltd. vs Guardian International Corp.**³⁰ was of the view that if a clause of Shareholder's Agreement is not included in the Articles of Association, it would still be binding the parties to the agreement. The reasoning behind enforcing the agreement was that there was no contradiction with Articles of Association or any law and was just for benefit of the company. The Court also explained that the issue in this case was different from **VB Rangaraj v. VB Gopalakrishnan**³¹ and therefore the precedent of **VB Rangaraj v. VB Gopalakrishnan**³² was not followed and therefore, the court decided that the Shareholder's Agreement would be enforceable and valid which will bind the parties

²⁶ AIR 1992 SC 453

²⁷ O.M.P. 92/2011 & O.M.P. 52/2011

²⁸ Premier Hockey Development Private Ltd vs. Indian Hockey Federation O.M.P. 92/2011 & O.M.P. 52/2011

²⁹ 2007 (2) ARBLR 133 Delhi

³⁰ 2007 (2) ARBLR 133 Delhi

³¹ AIR 1992 SC 453

³² AIR 1992 SC 453

in the agreement.

Therefore, through the case laws, both recent and earlier judgements, it can be concluded that it is not possible for a provision of Shareholder's Agreement to be valid and enforceable when it is in contradiction to the Articles of Association. Though, the earlier judgements were totally against the idea of upholding the provisions of the Shareholder's Agreement when it was not included in the Articles of Association, the recent cases are showing a change in the opinion of the court, but at the same time, even after judgements like **Vodafone International Holdings B.V. v. Union of India**³³, the later judgements are following precedents like **VB Rangaraj v. VB Gopalakrishnan**³⁴, so as we can see there is clearly a sense of confusion in deciding the enforceability and validity of a provision of Shareholder's Agreement when Articles of Association is silent on that particular provision. So clearly, the conflict is still not settled as some judgements are in favour of enforceability of a provision in Shareholder's Agreement when the Articles of Association are silent on the matter while some judgements are not in favour of enforceability of a provision in Shareholder's Agreement when the Articles of Association are silent on the matter. Hence, the dispute remains undecided.

V. WHETHER ANY REMEDY IS AVAILABLE TO A SHAREHOLDER UPON THE BREACH OF SHA BY OTHER SHAREHOLDERS, EVEN THOUGH SUCH CONDUCT WOULD NOT BE CONSTRUED AS BREACH UNDER THE ARTICLES OF THE COMPANY?

A breach of a Shareholder's Agreement (SHA) can arise due to multiple reasons, especially when an action is undertaken that violates the terms of the agreement. A breach of Shareholders Agreement occurs if a shareholder sells the assets of the company or transfers the shares in an unauthorized manner, without adhering to the rules of the Shareholders Agreement. Taking major company decisions without having a meeting with the shareholders or without the required majority, Causing a devaluation of shares, Regressive dividend policies of the company and Engaging in actions that are against the company's confidentiality policies and code of conduct would also amount to breach of Shareholder's Agreement. However, in several instances the rights that are enforceable within the Shareholder's Agreement are not incorporated in the Article of Association (AOA). As, the provisions of the Articles of Association are widely considered to be sacrosanct and are preferred over the provisions of the Shareholder's Agreement, the terms that would amount to breach under SHA may not be construed as breach under Articles of Association. In such circumstances, the aggrieved

³³ (2012) 6 SCC 613

³⁴ AIR 1992 SC 453

Shareholder cannot pursue remedial measures under The Companies Act, 2013 and has to seek relief envisaged in general law of the land.

In the case of **Vodafone International Holdings BV v. Union of India**³⁵, where it was enumerated that the provisions of the Shareholder's Agreement shall not be contrary to the Articles of the Company, the Supreme Court also observed that

*“A breach of SHA which does not breach the Articles of Association is a valid corporate action but, as we have already indicated, the parties aggrieved can get remedies under the general law of the land for any breach of that agreement.”*³⁶

The Apex Court relied on the judgement in **S. P. Jain v. Kalinga Cables Ltd.**³⁷ where it was held that there's nothing unlawful in entering into agreement for transfer of shares and opined that the manner in which such agreements are to be enforced in the case of breach is given in the general law between the company and the shareholders³⁸. By applying this logic to the case of **World Phone India Pvt. Ltd. & Ors vs WPI Group Inc**³⁹, it can be extended that even though the resolution approving a rights issue is considered valid under The Companies Act and no 'affirmative vote' clause is incorporated in the Articles of the Company, such an action would still amount to a breach of the Shareholder's Agreement as 'affirmative vote' of the shareholders was a clause under Shareholders Agreement. In such instances of breach, no remedy is available in the Companies Act 2013 and the aggrieved shareholder can pursue an action for breach of contract under S.73 of the Indian Contract Act, 1872. By virtue of this section, the aggrieved shareholder is entitled to get damages and compensation after the assessment of loss/injury/damage suffered upon such a breach. If the loss suffered would be remote, then the damages awarded could be nominal in nature, so as to prevent future breaches. Nominal damages would be awarded even if there is no loss but there has been a clear violation of the terms of the Shareholder's Agreement, irrespective of the clauses mentioned in Articles of the Company. However, in extreme cases, the Court can order injunctive relief under S. 36 and 37 of the Specific Relief Act 1963, upon non-performance and also to deter possible breaches of SHA. In case the actual damage cannot be ascertained or if the monetary compensation would not be adequate, the Court can also order a decree of specific performance according to Section 10 of the Specific Relief Act 1963.

Similar view has been held in several English Law cases such as **Southern Foundries Ltd v.**

³⁵ (2012) 6 SCC 613

³⁶ Id.

³⁷ (1965) 2 SCR 720

³⁸ Vodafone International Holdings BV v. Union of India (2012) 6 SCC 613

³⁹ 2013 SCC OnLine Del 1098

Shirlaw⁴⁰. In this case, the Managing Director of Southern Foundries was removed after the company was taken over by another company and its articles of association were altered. The amended articles of the company vested rights in the hands of two directors and a secretary to remove a director and by exercising this right, the Managing Director was removed prior to the expiration of his tenure. The Managing Director then went on to claim damages for the breach of contract. The Court held that –

*“A company cannot be precluded from altering its articles thereby giving itself power to act upon the provisions of the altered articles - but so to act may nevertheless be a breach of contract if it is contrary to a stipulation in a contract validly made before the alteration.....If, therefore, the altered articles had provided for the dismissal without notice of a managing director previously appointed, the dismissal would be intra vires the company but would nevertheless expose the company to an action for damages if the appointment had been for a term of (say) ten years and he were dismissed in less.”*⁴¹

The Articles of the company were altered validly and the existence of a prior contract does not affect the validity of amending the articles. However, the Managing Director could still claim for damages as his employment contract existed prior to such amendment and the clauses of his contract with SF would not be changed after altering the clauses of Articles of the company. The reasoning behind this decision was that his job tenure was an ‘implied term’ of the employment contract and if the company exercises its rights to amend the clauses of its articles, then it would be liable to pay damages if the said amendment causes loss/injury. Therefore, even though the mode of removal of the Managing Director was incorporated in the Articles of the company, the Court awarded damages to the Managing Director for breach of contract.

This above-stated position has also been added in Section 58(2) of The Companies Act, 2013 that lays down the free transferable nature of shares and interests of a public company, also states that ‘any contract or arrangement between two or more persons in respect to transfer of securities shall be enforceable as a contract.’⁴² This proviso which was added in line after the case of **Messer Holdings Limited vs. Shyam Madan Mohan Ruia & Others**⁴³, clears the ambiguity with regards to the enforceability of Shareholder’s Agreement, clarifying that such an arrangement would be treated as a binding contract and it would not restrict the free transferability of shares. In light of this, any restriction on the transfer of shares imposed by the

⁴⁰ [1940] AC 701

⁴¹ Id.

⁴² S.58(2), The Companies Act 2013

⁴³ [2010 159CompCas29(Bom)]

shareholders agreement shall be lawful and binding as a 'contract' between the shareholders. A Shareholders Agreement that includes a public company will be enforceable against it in the same way as any other contract. In case of breach of such contract by any party, the aggrieved party may avail such legal remedies as available in case of 'breach of contract' including the specific performance of such contract under the Specific Relief Act, 1963⁴⁴. Furthermore, after The Specific Relief (Amendment) Act, 2018 was passed, suit of specific performance upon breach of contract is treated as a statutory right and is no longer a discretionary or equitable relief. Thus, the aggrieved party can avail this remedy as a matter of statutory right. However, in the Indian context, it remains to be seen whether the Courts would openly enforce such contractual rights upon the breach of Shareholders Agreement. The position of a Private Company with regards to such a breach in Shareholders Agreement is also unclear as any proviso explaining this is not mentioned in The Companies Act, 2013 and hence, the remedy available to shareholders of a private company in case of such breach is ambiguous and depends upon the discretion of the Court.

As most of the clauses of Shareholders Agreement are not incorporated in Articles of Association, a discrepancy occurs. Breach of SHA is also subject to such a discrepancy and from the aforementioned analysis, it is clear that Companies Act 2013 does not extend any relief in matters of breach of shareholders agreement. Breach of Shareholders Agreement that does not breach and is valid according to the clauses of the Articles of the Company is a valid corporate action and may arise due to the said discrepancy. A Shareholders Agreement is, in essence, a contract and rules applicable to a contract are also applicable to this arrangement. Hence, upon the breach of Shareholders Agreement, the aggrieved party/shareholder needs to seek relief under the Indian Contract Act 1872 or the Specific Relief Act 1963.

VI. CONCLUSION

After analysing various case laws in all the three research questions, it would be safe to conclude that Articles of Association will always have an upper hand in the matter of conflict with Shareholder's Agreement, it is evident from the case laws, both the recent and earlier judgements. In the first research question, it is clear that there is still unsettled confusion between the matters involving Shareholder's Agreement and Articles of Association because of the contradicting judgements passed by the court in the recent cases. There is some clarity regarding provisions mentioned in both Shareholder's Agreement and Articles of Association,

⁴⁴ <https://www.mondaq.com/india/shareholders/603222/is-restriction-on-transfer-of-shares-valid-under-companies-act-2013>

that is the provisions mentioned in the latter will be followed. In the second research question, it is evident that when a provision of Shareholder's Agreement is in contradiction to Articles of Association, it will be invalid and unenforceable in law even if it is not in violation of any other law. But, when there is a provision in Shareholder's Agreement that is in consistence with Articles of Association and also not included in Articles of Association, it is unclear if that provision will be enforceable in law or not, because judgements have been passed both in favour of both enforceability and unenforceability in law and along the same timeline which is why, the dispute remains undecided. In the third research question, there is sufficient evidence to believe that the possible remedies that is available in matter of conflict between Shareholder's Agreement and Articles of Association is through The Indian Contract Act 1872 or The Specific Relief Act, 1963. There is possible remedy available in The Companies Act, 2013 because most of the provisions in the Shareholder's Agreement have not been included in the Articles of Association. Shareholder's Agreement in the basic sense is a contract and therefore all the provisions relevant to a breach of contract in The Indian Contract Act, 1872 and The Specific Relief Act, 1963 would be applicable in the case of breach of Shareholder's Agreement.
