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Open Access Law Journal, ISSN (O): 3049-0057

Editor-in-Chief – Prof. (Dr.) Amit Kashyap; Publisher – Reet Parihar

Role Of Shareholders Agreements In Structuring Mergers And Acquisition Deals

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Published on: 15th April 2025

Abstract

Within the volatile business environment, where the purpose of the agreement for shareholders (SHA) in the field of mergers and acquisitions (M&A) is quite considerable. When corporations go through the order of consolidation, SHAs form the backbone of the transactions, harmonize the incentives of stakeholders, minimize the risk and create a structured framework for management, decision-making and dispute. This dissertation examines the multilateral, formal and theoretical definitions of SHA on M&A. It diverts relatively deeper beyond the normal framework, as these agreements protect shares of shareholders from and after merger, facilitate smoother transactions and deal with submitted observance and regulatory questions.

The contribution uses various examples of real-life to prove how Shas can support or prevent the success or failure of mergers and acquisitions and offers information about proven procedures, possible disadvantages and the properties of such agreements in modern corporate law. In addition to stretching legal discourse, this research further concludes a gap between theory and practice by showing that SHA is not only intended to eliminate the conflict of interest but also causes long-term resistance of the combined entity. Therefore, it is also possible to consider SBA a tool that is in connection with management and management and compliance with regulations and strategic trade in a modern ecosystem of business transactions.

Keywords: *Mergers and Acquisitions (M&A), Corporate Governance, Pre-Emptive Rights, Tag-Along and Drag-Along Rights, Anti-Dilution Clauses,*

INTRODUCTION

The merger and acquisition (M&A) have become an essential strategic tool for the expansion of society, penetrating the market and restructuring of business. In the dynamic economic environment of society, they use transactions of mergers and acquisitions to achieve synergies, increase competitive position and maximize the value of shareholders.

However, the complexity of these transactions requires robust legal frameworks to ensure the rights and obligations of the parties involved. One of the most important tools in this context is the shareholder agreement (SHA), which plays a basic role in the structuring of trades and acquisitions by determining the mechanisms of administration, outlining rights and obligations and mitigating risks. The importance of shareholders' agreements results from inherent conflicts that may occur between most and minority parties, as well as acquirers and target companies.

These agreements act as legally binding contracts that regulate corporate control, voting rights, departure mechanisms and financial guarantees, ensuring that the interests of all shareholders are aligned. Determination of clear conditions for transfer of ownership, valuation methods and dispute resolution methods contribute to the stability and success of transactions of mergers and acquisitions. They also provide a framework for solving merger integration, which may be decisive in ensuring long -term viability of combined entities.

Over time, the role of shareholders has developed in response to changes in management and regulatory frames and regulatory frames. Historically, transactions of mergers and acquisitions were primarily managed according to corporate laws and associations. However, since global markets have expanded and predominant transactions have prevailed, the need for adapted contractual measures has significantly increased. Agreements of shareholders have emerged as a flexible and enforceable tool to solve problems that are not reasonably covered by law.

In addition, the rise of private capital and investment in risk capital has become necessary in the management of investors' rights, the structuring of the Eastern and ensuring compliance with the administration and administration of companies. Investors often negotiate detailed SHA provisions to protect their financial interests, influence key decisions and facilitate smooth exits through mechanisms such as initial public offers (IPO) or strategic sales. In the Indian context, the 2013 Act and Regulatory Instructions issued by the Indian Securities Council and Securities Exchange (SEBI) are The legal basis for agreements for shareholders. However, the courts often emphasized that Shas must deal with legal provisions to ensure enforceability.

In cases of orientation, such as the acquisition of Vodafone-idea and Walmart-Flipkart, SHAs played a key role in defining the structures of administration, provisions and financial obligations and emphasized their strategic significance in transactions of fusion and acquisitions. Global shops such as Disney-Fox Ferger and Microsoft-Twitched Acquisitions also show how agreements for shareholders affect trades, financial considerations and transitions in cross-border transactions.

UNDERSTANDING SHAREHOLDER'S AGREEMENTS MERGERS AND ACQUISITIONS

1. SHAREHOLDERS AGREEMENT

1.1. Definition and Purpose

A shareholder agreement is typically considered a private contract that holds legal weight in terms of the rights, duties, and obligations of shareholders within a company. Unlike a company's articles of association, which are accessible to the public, the shareholders' agreement remains confidential, granting the shareholders significant freedom in deciding how their company is governed, making decisions, and managing its finances.¹

The priorities for an SHA include the following:

- To create, set up, or build a governance structure to regulate relations among shareholders.
- To protect shareholders' interests, notably minority shareholders.
- To set up mechanisms for resolving disputes.
- To establish procedures for transferring shares as well as for exit.
- To ensure continuity and stability in managing the corporation.²

1.2. Primary Elements of SHA:

- 1.2.1. Governance and Decision Making:** Includes the composition of the board and voting rights. Describes the quorum and approval requirements for business decisions.

¹ "Shareholders' Agreements" (*Financial Edge*, July 21, 2023) <https://www.fe.training/free-resources/investment-banking/shareholders-agreements/> accessed March 25, 2025

² Luis, "The Role of Shareholder Agreements in M&A Transactions" *Calkins Law Firm* (November 15, 2024) <<https://calkinslawfirm.com/the-role-of-shareholder-agreements-in-ma-transactions>> accessed March 25, 2025

1.2.2. Transfer of Shares and Exit Provisions

- **Pre-emption Rights:** These confer a right of first refusal in favour of the existing shareholders for buying-out shares before they are made available to outsiders.³
- **Tag-along rights:** Tag-along rights empower minority shareholders to sell their shares in tandem with the majority shareholders whenever any sale negotiations take place, thus guaranteeing their rights.⁴
- **Drag-along rights:** Drag-along rights provide that, when an entire company is sold, majority shareholders can compel minority shareholders to sell their shares as one transaction.
- **Lock-in periods:** Lock-in periods bind shareholders to mandatory periods of holding of their shares so that early exit cannot threaten the stability of the company.⁵

1.2.3. Dispute Resolution Mechanisms

- It establishes procedures for the resolution of conflicts, including negotiation, mediation, or arbitration, setting out the steps to be followed toward such resolutions.
- It specifies deadlock resolution clauses for situations when the shareholders are not able to reach a consensus.

1.2.4. Confidentiality and Non-Compete Clauses

- Ensures shareholders have not divulged business secrets sensitive to the organization.
- Shall prohibit shareholders from engaging in competing businesses within a clearly defined period after their exit.

³ Aitken M, “Understanding Pre-Emption Rights in a Private Limited Company” *1st Formations Limited* (March 11, 2023) < <https://www.1stformations.co.uk/blog/pre-emption-rights/> > accessed March 25, 2025

⁴ expert LC, “Drag along and Tag along—Fundamentals” *LexisNexis* (April 22, 2021) <<https://www.lexisnexis.co.uk/legal/guidance/drag-along-tag-along-fundamentals>> accessed March 25, 2025

⁵ revathi, “Key Terms in Shareholders’ Agreement” (*Hissa*, November 19, 2021) < <https://hissa.com/a-shareholders-agreement-key-terms-that-protect-stakeholder-rights-hissa/> > accessed March 25, 2025

1.3. Importance of SHAs in Corporate Transactions:

SHAs are imperative in securing the relationship between shareholders and corporate stability. The clarity they give to decision-making processes protects investments and helps avoid potential confrontation among shareholders. Their importance received an additional dimension when it comes to transactions of mergers and acquisitions (M&A) involving a heavy amount of structuring to satisfy the interest of shareholders.

SHAs ensure that everything relating to control is clear, the risk is minimized during ownership changes, and provide a rapid resolution of disputes. They grant protection to majority and minority shareholders in M&A transactions, which assists in maintaining the continuity of the business throughout the transition period. In addition, well-defined shareholder agreements will boost investors' confidence, as they lay down clear exit mechanisms, valuation methods, and governance procedures that become extremely vital in complex corporate transactions.

2. MERGERS AND ACQUISITIONS

2.1. Definition and Overview

As a general principle, mergers and acquisitions are corporate transactions in which companies (the merging party) combine their operations and form either into one or otherwise acquire another company. Such transactions are very significant strategic tools for organizations to achieve growth, counter competition in their field, extend market presence, and engineer restructuring for greater efficiency and competitiveness of operations. In other words, M&A is one of the most potent tools for determining the fate of various industries by creating or destroying shareholder value and adjusting to the dynamism of the ever-changing business world.⁶

Mergers typically occur when two or more companies join ranks and give birth to a new entity to achieve needed synergies toward being more competitive. In contrast, an acquisition happens when one company takes over another, thereby gaining control of the target company's physical and non-physical assets, operations, and management.⁷

Types of M&A Transactions

M&A transactions can be classified into two broad categories: **Mergers** and **Acquisitions**.

⁶ Introduction” (*unit 2 mergers and acquisitions - Goseeko*) <https://www.goseeko.com/reader/notes/university-of-mumbai-maharashtra/baf/accounting-and-finance/third-year/sem-6/financial-management-iii-1/unit-2-mergers-and-acquisitions>> accessed March 25, 2025

⁷ Saylor Academy, “BUS608: Overview of Mergers and Acquisitions” (*Saylor Academy*) <<https://learn.saylor.org/mod/page/view.php?id=62121>> accessed March 25, 2025

2.1.1. Mergers

Merger is when two or more companies agree to become one a new larger one. The main reason behind the merger is achieved synergy. Therefore, an increase in operational efficiency, decrease in costs, and increase in market share would require mergers. However, there are three different types of mergers:

➤ Horizontal Mergers:

It refers to those between comparable companies operating in the same industry and their market segments. However, the horizontal merger's primary goal is to reduce competition and obtain larger market share with economies of scale benefits.⁸

For example, the Vodafone India and Idea Cellular merger of 2018 is but a kind of horizontal merger which has helped both strengthen their positions along with integrating their subscriber bases and other resources within the Indian telecom landscape.

➤ Vertical Mergers:

These are described as the mergers of firms operating in the same industry at different levels of the product supply chain.⁹ Efficiency of supply will then result from the higher quality and quantity of supplies available to the firm's production, minimization of raw materials cost, and control in production and distribution.¹⁰

Example: A vertical merger occurs when a tyre supplier merges with a car manufacturing company steady supply of tires is assured while dependence on external vendors is lessened.

➤ Conglomerate Mergers:

These refer to mergers of companies engaged in entirely different lines of business with no business relation whatsoever. Really, a conglomerate merger is for diversification, risk reduction, and further extension into new market domains.¹¹

⁸ UNESCWA, "Horizontal Merger" (*United Nations Economic and Social Commission for Western Asia*) <<https://www.unescwa.org/sd-glossary/horizontal-merger>> accessed March 25, 2025

⁹ 5 Types of Company Mergers" (*Minority Business Development Agency*, April 20, 2012) <<https://archive.mhda.gov/news/blog/2012/04/5-types-company-mergers.html>> accessed March 25, 2025

¹⁰ M&A Community, 'Vertical Mergers: Definition, Challenges, and Real-World Examples' (25 October 2024) <<https://mnacommunity.com/insights/insights-vertical-mergers-guide/>> accessed 24 March 2025

¹¹ Benu Singhal, 'Conglomerate Merger' (Financial Edge Training, 9 September 2024) <<https://www.fe.training/free-resources/ma/conglomerate-merger/>> accessed 24 March 2025

Example: The merger of The Walt Disney Company and ABC Television Network was such a conglomerate merger, with which Disney was able to broaden its interests into media and broadcasting.

2.1.2. **Acquisitions**

Acquisition is a purchase by a company of another company wherein ownership and control are transferred from one organization to another. Unlike a merger, an acquisition does not always require the construction of a new entity. It may remain as a wholly owned subsidiary and, at the other end of the spectrum, be completely integrated by the acquiring firm. There are various types of acquisitions:

➤ **Friendly Acquisitions:**

In friendly acquisitions, the target company would be happy to be acquired. Most friendly acquisitions are deal items by negotiations; mutual interests shared by both parties.¹²

For example, the acquisition of Instagram by Facebook (presently Meta) in 2012 was a friendly acquisition and representatives of Instagram agreed to the acquisition because of the Facebook's resources for growing.

➤ **Hostile Acquisitions (Hostile Takeovers):**

It is a hostile takeover where the acquiring company controls that target company without the consent of the target company through aggressive means such as purchasing a huge stake in the open market.¹³

For example, Vodafone's hostile takeover of Mannesmann in 1999 is one of the fiercest hostile acquisitions in the world; Vodafone acquired the German telecommunication giant forcibly.

2.2. **Motives Behind M&A Transactions**

Companies engage in M&A transactions for various strategic, financial, and operational reasons. Some of the primary motives behind M&A transactions include:

- **Synergy Creation:**

One of the biggest drivers of M&A is the creation of synergies, where the combined entity generates greater value than the sum of the individual companies. Synergies can be:

¹² Law Insider, "Friendly Acquisition Definition" (*Law Insider*) <<https://www.lawinsider.com/dictionary/friendly-acquisition>> accessed March 25, 2025

¹³ Benu Singhal, 'Hostile Takeover' (Financial Edge Training, 15 October 2024) <https://www.fe.training/free-resources/investment-banking/hostile-takeover/> accessed 24 March 2025.

- Cost Synergies: Achieved by reducing redundant functions, eliminating inefficiencies, and leveraging shared resources (e.g., reducing operational costs by consolidating manufacturing plants)¹⁴.
- Revenue Synergies: Achieved by expanding customer reach, cross-selling products, and enhancing product offerings.¹⁵

- **Market Expansion:**

M&A enables companies to enter new geographical markets or customer segments that would have been difficult to penetrate organically. Companies often acquire competitors or businesses in new regions to quickly establish a market presence.¹⁶

Example: When Tata Motors acquired Jaguar Land Rover in 2008, it expanded its footprint in the luxury automobile sector globally.

- **Diversification:**

Acquisitions or mergers allow companies to diversify their portfolio and reduce dependence on a single product, market, or revenue stream. This helps in risk management and ensures business stability during economic downturns.

Example: Amazon's acquisition of Whole Foods in 2017 allowed it to diversify into the grocery retail sector, reducing reliance on its e-commerce business alone.

- **Strategic Realignment:**

Companies may use M&A to focus on their core business areas while divesting non-core assets.¹⁷ This ensures better allocation of resources and enhances profitability.¹⁸

Example: Google (Alphabet Inc.) has acquired and divested multiple businesses, aligning its focus on core areas like AI, cloud computing, and search technology.

Mergers and acquisitions (M&A) transactions play a very integral role in the corporate world, making it possible for specific companies to fortify their market position, raise their efficiency, and

¹⁴ Wall Street Prep, 'Synergies in M&A | Formula + Calculator' (28 May 2024)

<https://www.wallstreetprep.com/knowledge/synergies-revenue-cost/> accessed 24 March 2025.

¹⁵ Kison Patel, 'The Ultimate Guide to Synergies in Mergers & Acquisitions' (DealRoom, January 2025)

<https://dealroom.net/blog/types-of-synergies-in-mergers-and-acquisitions-with-examples> accessed 24 March 2025.

¹⁶ Mateusz Muszynski, 'Rapid Growth: Inorganic Growth Strategies Explained' (Acquinox Advisors, 14 June 2024)

<<https://acquinoxadvisors.com/rapid-growth-inorganic-growth-strategies-explained/>> accessed 24 March 2025

¹⁷ Chris Walton, 'A Deep Dive into Google's M&A Strategy: Key Factors for Acquisition Success' (*Eton Venture Services*, 2 November 2023) <<https://etonvs.com/ma/a-deep-dive-into-googles-ma-strategy-key-factors-for-acquisition-success/>> accessed 25 March 2025

¹⁸ Nima Nogrehkar, 'Mastering the Art of Strategy in Mergers and Acquisitions' (IMAA, 6 December 2023)

<<https://imaa-institute.org/blog/mastering-m-and-a-strategy/>> accessed 24 March 2025

stay contemporary across an invisible and globalizing commercial environment.¹⁹ They are strategic instruments for companies wanting to grow operations, diversify revenue streams, acquire new technology, and achieve economies of scale. And indeed, the benefits of M&A are numerous. They provide companies with a competitive edge by increasing market shares, shutting down competitors, and yielding operational synergies that enhance productivity. They provide access to new markets in which the companies can venture into geographical areas and availability to new customer bases. Through acquisitions, they could also acquire the latest technologies and patents and acquire intellectual property, thus allowing the companies to innovate in highly innovation-driven industries such as technology, healthcare, and finance.²⁰

ROLE OF SHAREHOLDERS' AGREEMENTS (SHAs) IN PRE-MERGER M&A DEALS

CASE STUDY ANALYSIS: JET AIRWAYS ACQUISITION BY ETIHAD AIRWAYS (2013)

1. Introduction

The 24% share purchase in Jet Airways by Etihad Airways in 2013 was indeed a game changer and emerged as the benchmark for India's aviation sector after the liberalization of FDI norms.²¹ It has become one of the most significant foreign investments in the aviation sector of India after the government approved foreign airlines having up to 49% share in domestic airlines in 2012.²² The contract was considered as writing profit and certainly strengthened Jet Airways' financial condition and, at the same time, provided a value creation opportunity for Etihad to expand its global network through access to the rapidly growing Indian aviation market. The deal was entailed in an SHA or shareholder agreement that defines the roles, rights, and obligations of the parties enabling them to jointly work strategically in compliance with applicable laws. Therefore, the SHA was formulated by the business administration, the right to vote, control of control and operational synergy between both companies, thus identifying the balance between independence of Jet Airways and that of

¹⁹ 'Merger – Overview, Types, Advantages and Disadvantages' (*Corporate Finance Institute*, 9 May 2023) <<https://corporatefinanceinstitute.com/resources/valuation/merger/>> accessed 25 March 2025

²⁰ Patel K, "10 Benefits of Mergers and Acquisitions You Should Know" (*DealRoom*) <<https://dealroom.net/blog/benefits-of-mergers-and-acquisitions>> accessed March 25, 2025

²¹ Rajat Sethi, Simran Dhir, and Dhruv Agarwal, 'Defining Control: A Study of the Jet-Etihad Case' (2015) 27(2) *National Law School of India Review* 1, 15 <<https://repository.nls.ac.in/cgi/viewcontent.cgi?article=1205&context=nlsir>> accessed 24 March 2025

²² Ibid

strategic influence by Etihad on decision -making processes.²³

2. Major Matters

- A. Degree of Control: Does the SHA give Etihad undue power over Jet Airways?
- B. Regulatory Compliance: Was the SHA consistent with the Indian laws relating to foreign direct investment and corporate governance?

3. KEY SHA PROVISIONS IN THE PRE-MERGER PHASE

a. BOARD REPRESENTATION

The original Shareholders' Agreement (SHA) dated 2013 and concerning Jet Airways and Etihad Airways allowed Etihad to appoint four directors on Jet Airways' ten-member board. Thus, it was granted considerable influence on corporate decisions despite holding only a 24% equity stake. This arrangement created doubt about possible foreign control of an Indian airline and the applicability of India's FDI policy and regulatory restrictions on foreign ownership and management control.

After an extensive examination by the authorities, who included the Foreign Investment Promotion Board (FIPB) and the Directorate General of Civil Aviation (DGCA), concerns were raised whether such an amount of board representation by Etihad could actually result in control over Jet Airways itself, thereby violating India's substantial ownership and effective control (SOEC) requirements.

In order to mitigate these concerns, the SHA was again revised, whereby Etihad was reduced from four to two members on the board. On such amended terms, adequate protection could be given to the Indian promoters, Naresh Goyal in particular, for retaining majority control over the board decisions and would also be in compliance with the Indian aviation and foreign investment laws.

b. VOTING RIGHTS

There were various approvals that required Etihad's consent as provided in their SHA concerning major business operations, financial commitments, and policy changes made within the strategic interest of the Etihad management. In this regard, some of the decisions taken were:

I. Fleet Growth & Route Planning:

Anything that constitutes major development for acquisition of new aircraft or for international route expansion will require Etihad's consent according to the terms of the SHA between Jet

²³ Securities and Exchange Board of India, 'Order in the Matter of Acquisition of Shares of Jet Airways (India) Limited by Etihad Airways PJSC' (8 May 2014) https://www.sebi.gov.in/sebi_data/attachdocs/1399545948533.pdf accessed 24 March 2025

Airways and Etihad Airways.²⁴ Of significance were certain key strategic decisions in the areas of fleet expansion or changes in route development so that neither airline could independently and unilaterally make a strategic decision. The largest institute on this route has taken, for instance, a collective decision in route development, as well as to afford wider passenger options, particularly along the India-Abu Dhabi sector.²⁵

II. Financial Decisions:

Hence, any important financial decisions, including capital raising and substantial borrowings and financial restructuring, would need Etihad's tacit agreement. It thus ensured that all principal financial undertakings were presented under shared concern by both shareholders, with respect to transparency and accountability in the fiscal management of the airlines. Such became salient to guarantee the financial consistency and the envisage of converging investment strategy across Jet Airways and Etihad. Operational and Management Control: While Jet Airways retained operational independence, the appointments of executives in Jet Airways, especially for key managerial positions like CEO and CFO, required Etihad's approval.

III. Operational and Management Control:

The operational independence of Jet Airways would have tacit approval from Etihad regarding the appointment of its chief executive officer and chief financial officer, which would have legally been a stipulation of the SHA's counterparty provisions. Thus, the joint acceptance of leadership in these quintessential roles shall guarantee that both are bound to the same general strategic direction. The fact that James Hogan, president and chief executive officer of Etihad, along with the chief financial officer, was made an additional director at the Jet Airways board enhances the image of active management and strategic decisions being taken by Etihad regarding the affairs of Jet.

c. ANTI-DILLUSION

Understanding Anti-Dilution Clauses in SHAs

Anti-dilution clauses are contractual provisions included in Shareholders' Agreements (SHAs) to protect existing shareholders from a reduction in their ownership percentage due to the issuance of additional shares. These clauses ensure that minority investors, such as Etihad Airways in the Jet-

²⁴ CUTS Institute for Regulation & Competition, 'Case of Jet Airways (India) Limited and Etihad Airways PJSC (Combination Regulation)' (Case Study 18) <<https://circ.in/competition-issues-case-study-18.php> accessed 24 March 2025>

²⁵ 'Controversy over Jet-Etihad deal: DIPP should set elaborate guidelines for conditions of investments' *The Economic Times* (14 July 2013) <<https://economictimes.indiatimes.com/industry/transportation/airlines/-aviation/controversy-over-jet-etihad-deal-dipp-should-set-elaborate-guidelines-for-conditions-of-investments/articleshow/21057264.cms>> accessed 24 March 2025

Etihad deal, can maintain their proportionate stake even if new shares are issued in the company.

There are two primary types of anti-dilution protection:

1. **Price-Based Anti-Dilution Protection:** The protection of anti-dilution price basically means that at some point in the future, if the same company issues new shares at a price lower than that paid by the investors initial, they would be shielded from the ill effects. Such a scenario usually termed as a "down-round" shares" would result in a decrease of the value existing stocks, bringing down the percentage of ownership of the investor. Anti-dilution provisions would adjust the conversion rate of preferred stock to common stock, hence keeping intact the proportional ownership for the investors with respect to their value of investment.²⁶ This is further divided into:

Full Ratchet: Under this practice, the existing conversion price of the preferred shares will be equal to the lower price of the new issuance, regardless of whether or not new shares are issued. Thus, investors will now be entitled to convert their preferred shares into more common shares to fully adjust for the price drop. This has the maximum protection to the investors; however, it can be quite averse to founders and other shareholders, as it dilutes their ownership significantly.²⁷

Weighted Average: Under this method, the conversion price is determined using a formula that applies to the new lower price and the actual volume of new shares issued. By considering how far the down round is down, the weighted average approach brings about a more equitable adjustment for both investor protection and avoiding too much dilution among existing shareholders.

2. **Pre-Emptive Rights (Right of First Refusal - ROFR):** Allows existing shareholders to purchase new shares before they are offered to external investors, thereby preventing dilution of their ownership percentage.

ANTI-DILUTION CLAUSES IN THE JET AIRWAYS & ETIHAD AIRWAYS SHA

When Etihad Airways acquired a 24% stake in Jet Airways, which amounted to \$379 million, there were several anti-dilution conditions in the SHA designed to protect Etihad's investment and prevent dilution of its equity stake resulting from future share issuances by Jet Airways.²⁸ The

²⁶ Vitali M, "Antidilution Protection" *LEXR* (June 18, 2020) <<https://www.lexr.com/en-ch/blog/antidilution-protection/>> accessed March 25, 2025

²⁷ "What Are the Price-Based Anti-Dilution Formulas?" (*DLA Piper Accelerate*) <<https://www.dlapiperaccelerate.com/knowledge/2017/what-are-the-price-based-anti-dilution-formulas.html>> accessed March 25, 2025

²⁸ Sharmistha Mukherjee, 'Etihad sets terms to lower strength on Jet board' *Business Standard* (New Delhi, 26 August 2013) <https://www.business-standard.com/article/companies/etihad-sets-terms-to-lower-strength-on-jet-board-113082600068_1.html> accessed 24 March 2025

following were the main features:

1. Pre-Emptive Rights on Future Equity Issuance:

- Under this provision, ETIHAD had first right of refusal (ROFR) to subscribe to any new share issuance by Jet Airways.
- This meant that in case Jet Airways raised capital by issuing shares in the future, Etihad would have the first opportunity to buy shares in such a manner as to retain its existing stake.²⁹
- Relevance to SHA: The pre-emptive rights in an SHA must be upheld for strategic investors like Etihad, keeping dilution at bay and thereby insuring their continued participation in critical decision-making processes.

2. Protection Against Dilution:

- In case Jet Airways issued new shares at a price lower than what were originally paid by Etihad, the terms of the SHA reiterated that Etihad's interest would maintain its value.
- That was either by issuing extra shares to Etihad at the lower price or through a compensation mechanism to cover for the loss that arose.
- Relevance to SHA: Price protection clauses are inserted in the SHA to safeguard the interest of investors against loss arising due to lower subscriptions of share issued subsequently.

3. Restrictions on Capital Infusion:

- The SHA provided that any scenario wherein an infusion of capital or restructuring would occur that could impact the holding structure was subject to Etihad's consent.
- Therefore, in such a way, Jet Airways could not issue shares with new third parties without the prior approval of Etihad.
- Relevance to SHA: Such clauses in SHAs ensure that strategic investors like Etihad can exercise consent over financial matters that will affect their ownership and control.

²⁹ Stakeholders Empowerment Services, 'Jet Etihad Deal – Governance Update 2013' (2013)

<<https://www.sesgovernance.com/admin/assets/pdfs/govern-research/jet-etihad-update.pdf>>accessed 24 March 2025

d. REGULATORY SCRUTINY AND ADJUSTMENTS

Given the significance of these provisions, Indian regulatory authorities examined them closely to ensure compliance with Foreign Direct Investment (FDI) regulations:

- **Securities and Exchange Board of India (SEBI):** SEBI scrutinized the SHA to assess whether the provisions conferred excessive control to Etihad beyond its 24% stake, which could violate foreign ownership laws in the aviation sector.³⁰
- **Foreign Investment Promotion Board (FIPB):** The FIPB reviewed the agreement to confirm that control of Jet Airways remained with Indian promoters and that the SHA did not indirectly transfer management rights to Etihad.
- **Competition Commission of India (CCI):** The CCI evaluated the competitive impact of the deal and concluded that adjustments to the SHA, including modifications to anti-dilution clauses, ensured compliance with FDI rules and did not create an anti-competitive environment.³¹

ROLE OF SHAREHOLDERS' AGREEMENT IN POST-MERGER M&A DEALS USING A CASE STUDY

VODAFONE INDIA AND IDEA CELLULAR MERGER

1. OVERVIEW OF THE MERGER

In 2018, merger of Vodafone India and Idea Cellular made it Vodafone Idea limited, the largest telecom operator in Indias history. This merger was positional against the aggressive constructions happening in the telecom industry, which was largely played under competitive duress created by reliance Jio. Since its entry into the telecom market in 2016, reliance Jio disrupted the market cruelly by free offering voice calls, almost zero tariffs, and very cheap data plans - an earlier revolutionary change in consumer choices and hyper competition amongst telecom service providers.³²

Since the merger of Vodafone India and Idea Cellular in 2018, the idea of Vodafone limited has become the largest telecom operator in India. This merger was an answer to the changing pace of

³⁰ Securities and Exchange Board of India, 'Order in the Matter of Acquisition of Shares of Jet Airways (India) Limited by Etihad Airways PJSC' (8 May 2014) <https://www.sebi.gov.in/sebi_data/attachdocs/1399545948533.pdf>accessed 24 March 2025

³¹ Stakeholders Empowerment Services, *Jet Etihad Deal – Governance Update 2013* (2013) <<https://www.sesgovernance.com/admin/assets/pdfs/govern-research/jet-etihad-update.pdf>>accessed 24 March 2025

³² "What Are the Price-Based Anti-Dilution Formulas?" (*DLA Piper Accelerate*) <<https://www.dlapiperaccelerate.com/knowledge/2017/what-are-the-price-based-anti-dilution-formulas.html>> accessed March 25, 2025

the telecom environment, with most of the action focusing on competition with Jio which has thrust considerable pressure on the industry. Since 2016, entry by Jio into the telecommunications sector has really shaken the premises of the industry with either very low tariffs or free voice calls, with highly subsidized and well-defined plans causing a colossal change in mindset of consumers and hypercompetition among service providers.

Profits for Vodafone India and idea cellular were already dwindling as the market was progressively becoming more concerned about price when they were even beginning to consider this issue. With revenues falling and a huge debt burden looming on the two organisations, it was, therefore, expected that they will work out their problems by merging their operations so that it ensures financial stability, efficiency, and market penetration. The merger's main objective was to pool resources like spectrum, infrastructure, and customer base to improve network coverage, and service quality, and reduction in operational expenses.³³

This merger was supposed to be cleared under various statutory approvals by the Department of Telecommunications (DOT) and the Competition Commission of India (CCI). In a single motion, it pitted the new telecom giant against reliance on Jio and Bharti Airtel. It gave some benefits through mergers like economies of scale enabling the company to survive competition. The financial position of Vodafone idea deteriorated, notwithstanding the merger, on account of heavy Adjusted Gross Revenue (AGR) liabilities, huge spectrum debts, and brutal pricing competition, which made ambiguous the company's future sustainability outlook.

2. SHAREHOLDING STRUCTURE

Vodafone group held 45.1% of Vodafone idea limited after the merger, while the **Aditya Birla Group (the parent company of idea)** still owned 26% of it. The remaining shares were owned by the general public and other institutional investors. Although Vodafone had a larger equity stake, the Shareholders' Agreement (SHA) was designed to ensure that both the primary shareholders had an equal share of power and decision-making.³⁴

This provided for equal representation of Vodafone and Aditya Birla Group on the board, wherein such critical decision-making processes were made with their involvement. Thus, no one had too much power under this arrangement. The governance framework hence, encapsulated provisions for joint approval on important aspects such as major investments, raising funds, and policy-making

³³ Mehta C, Chopra M and Dhamija S, "The Curious Case of Vodafone Idea Merger: Is It a Saga of Turbulence or a Move Towards Potence?" (2024) 49 Vikalpa: The Journal for Decision Makers 67

³⁴ Mehta C, Chopra M and Dhamija S, "The Curious Case of Vodafone Idea Merger: Is It a Saga of Turbulence or a Move Towards Potence?" (2024) 49 Vikalpa: The Journal for Decision Makers 67

decisions. This has been placed for stability, joint decision-making, and interest protection of both shareholders.

The deal included provisions for exit clauses, voting rights, and conflict resolution. However, it was planned to cover and manage possible contentions. Despite these efforts, Vodafone idea is now in serious financial trouble carrying huge debts and regulatory obligations, which have adversely affected the shareholder value over time.

3. KEY PROVISIONS OF THE SHAREHOLDERS' AGREEMENT (SHA) IN THE POST-MERGER PHASE

3.1 Governance Framework

One of the main goals of the sha was to establish the governance structure of Vodafone Idea Limited. The Shareholders Agreement provided for:

- **Equal Board Representation:** Despite Vodafone having a larger stake, board representation was equally divided between Vodafone and Aditya Birla group to ensure fairness in decision-making.
- **Executive Appointments:** The shareholders agreed that key executive positions, such as the CEO and CFO, would be appointed through mutual consent, ensuring that no single shareholder group could dominate management decisions.³⁵

3.2 Voting Rights and Decision-Making:

The shareholders agreement (SHA) between Vodafone group and the Aditya Birla group includes provisions that dissect voting rights and decision-making processes in the light of just governance and to avoid concentration of power in one shareholder. This ensures that the most important decisions in the business would require the unanimous consent of stakeholders and be made collaboratively in running the company.

- **Collaborative decision-making:**

- Important strategic decisions required the consent of both Vodafone and Aditya Birla Group, thereby ensuring that neither party could steer the company in any one direction.
- Although Vodafone had a greater ownership in the company, this structure was

³⁵ Business Standard, 'Vodafone Idea Governance Structure Analysis' (23 March 2025)< <https://www.business-standard.com/companies/news/vodafone-idea-governance-structure-analysis>> accessed 24 March 2025

designed to ensure a balance between the two key shareholders.

- The joint decision-making applicable to long-term business plans, market development, mergers and acquisitions, financial re-structuring, and all other paramount matters involving running the business.

- **Limiting unilateral decisions:**

- No single shareholder had the power to take necessary financial decisions that could impair the company's sustainability and well-being in the long run.
- Such limits ensured minority shareholders were protected and promoted an equitable approach to corporate governance.
- Any attempt to get around this requirement would trigger the dispute-resolution procedures provided in the sha.

- **Shared Reserved Matters:**

The categories of certain strategic operational and financial decisions which were reserved matters. Therefore, all those approvals had not to be blessed by one shareholder group but instead mutually agreed upon both groups. Those included:

- Approvals Being Capital Expenditures: Investments worth a lot, infrastructure development, and extension of a network are supposed to have a green card from both parties since it is supposed to resonate with the overall business strategy.
- Fund-Raising or Debt Management: New shares were to be issued, external capital raised, or an additional bank loan incurred. These exercises were supposed to be agreed on to prevent mismanagement of finance or dilution of control.
- Changes in Business Strategy and Policy: Changes considered major in policy, including changes to the pricing strategy, service offerings, or any approach to compliance with regulations, require the necessary approval of both shareholders.
- Appointment and Removal of Key Executives in Terms of their Final Version: The appointment and removal of key executives (like CFO or COO) necessarily needed mutual agreement but appointed CEO of Vodafone and chaired by Aditya Birla Group.
- Mergers or Acquisitions or Divestitures: Any merger, acquisition, joint venture, or

significant asset/debt-selling decision called for mutual consent between the parties so that neither party skews the consent between strategic partners.³⁶

- Legal Proceedings and Litigating Strategies: All matters of regulatory nature and tax liabilities or litigating strategies will be referred to the input of both shareholders since it will have to be implemented with a unified approach.

The SHA intended these governance mechanisms to establish a procedure for joint decision-making, fiscal discipline, and strategic alignment. However, as Vodafone Ideas continued to face its financial challenges, tensions arose around the capital infusion responsibility, giving rise to problems in effectively carrying out key decisions for the company.

4. EXIT CLAUSES:

The SHA for Vodafone Idea Limited contained structured exit provisions that would stabilize ownership and ensure that shareholder interests are protected from unexpected events of control shifting. Such clauses mandated the substitution of mechanisms for dilution of stake, strategies for exit, as well as resolution of any conflict in case a stockholder chose to divest their stake.

- Pre-emptive Right (Right of First Refusal - ROFR)

If one shareholder decided to sell part of his stake in the company, the other existing shareholder would come first in the line to buy the shares before being offered to any external investor.³⁷ This mechanism ensured that shares would not go to an undesirable third party, thus maintaining balance between Vodafone Group and Aditya Birla Group. The shares would then only be sold to an external party at predetermined terms if the existing shareholder had opted out of purchasing the shares.

- Drag-Along and Tag-Along Rights.

Drag-Along Rights (Protection for Majority Shareholder)

Under drag-along rights, if the majority shareholder (the Vodafone Group in this case) decides to sell its stake to any third party, he has the right to compel the minority shareholder (Aditya Birla Group) to also sell their stake under the same terms and conditions. This ensures that any potential buyer will get full control over the company and will have to deal with none of the minority

³⁶ Reuters, 'India's Vodafone Idea Posts Bigger-Than-Expected Q2 Loss as User Base Shrinks' (13 November 2024) <<https://www.reuters.com/business/media-telecom/indias-vodafone-idea-posts-bigger-than-expected-q2-loss-user-base-shrinks-2024-11-13/>> accessed 24 March 2025

³⁷ Lawyers M, "What Are Pre-Emptive Rights in Shareholders Agreements? — Merton Lawyers" *Merton Lawyers* (February 13, 2023) < <https://www.mertonlawyers.com.au/blog/pre-emptive-rights> > accessed March 25, 2025

shareholders, making the deal much more attractive to them.

Tag-Along Rights (Protection for Minority Shareholder)

It entailed providing the minority shareholder with an option to sell their shares under similar financial terms along with the majority shareholder at the time the latter found a buyer for their shareholding. The clause guaranteed that the Aditya Birla Group would not be unilaterally stuck with an unwanted controlling party who had not reached an agreement.³⁸

- **Lock-In Period and Restrictions on Transfer:**

The SHA further locked up shares for a specific time, during which neither party could exit the company, thereby assuring stability in ownership and preventing any premature sales of stakes. Any transfer of shares to an outsider shall be subject to regulatory approvals and in accordance with the governance structures in prevalence.³⁹

- **Buyout and Put-Option Rights:**

In the eventuality of financial distress or disputes between shareholders, this allows for a buyout mechanism whereby one shareholder can buy out the stake of the other under terms mutually agreed upon. Put-option rights entitle a shareholder to exit by selling its stake to the other shareholder at a previously agreed price or at a fair market price, thereby ensuring an orderly transition.

While the exit options were established to safeguard shareholder value, prevent a hostile takeover, and preserve strategic control over the company's functions, these mechanisms became rather difficult because of the financially imprudent actions of Vodafone Idea itself. This allowed Vodafone Group to curtail its financial support, while the Aditya Birla Group also appeared apprehensive about committing further funds without some government support.

5. LEGAL ISSUES ARISING FROM THE SHAREHOLDER'S AGREEMENT

Ensuring Parity in Control and Representation:

A big challenge for the law was very much keeping the control even though Vodafone had a larger stake. The SHA, though, provided equal board representation. With this provision sometimes it results in deadlocks in decision making, hence in those situations, one should look for other conflict

³⁸ The Economic Times, 'Vodafone Idea Faces Strategic Challenges Amidst Industry Competition' (22 March 2025)

³⁹ revathi, "Key Terms in Shareholders' Agreement" (*Hissa*, November 19, 2021) <<https://hissa.com/a-shareholders-agreement-key-terms-that-protect-stakeholder-rights-hissa/>> accessed March 25, 2025

resolution mechanisms.⁴⁰

Handling Disputes Over Operational Strategies:

The competitive environment of the telecom sector; therefore, Vodafone Idea is now becoming operationally challenged and has to face some operational difficulties.

- Price and tariff policy sometimes require a consensus, thereby delaying decision-making.⁴¹
- Apart from that, shareholders had conflicting priorities of investment so there were many disputes on capital allocation.
- But there are differences in strategic vision mainly cause difficulties in the alignment of business objectives.

6. ROLE OF THE SHAREHOLDERS AGREEMENT IN THE POST-MERGER PHASE

BALANCED CONTROL:

Although Vodafone controls 45.1% of the shares, the SHA maintained a balance through equal representation on the board; thus, it did not allow any shareholder to dominate and allowed joint decision-making.

DISPUTE MITIGATION:

The SHA laid down some clear mechanisms that would assist in resolving disputes, such as:

- Mandatory Arbitration: Any disagreements that could not be resolved internally had to be addressed through arbitration.
- Structured Voting Mechanisms: Disputed matters required enhanced voting thresholds to ensure broad consensus.

STRATEGIC INTEGRATION:

The SHA facilitated:

- Facilitating the integration of networks for concomitant efficiency.

⁴⁰ sanyamaggarwal, "From Blueprint to Reality – Mastering the Shareholders Agreement" (*Metalegal Advocates*, July 14, 2024) < <https://www.metalegal.in/post/from-blueprint-to-reality-mastering-the-shareholders-agreement> > accessed March 25, 2025

⁴¹ www.ETTelecom.com, "Operational Challenges Remain, Tariff Hikes Needed: Vodafone Idea" *ETTelecom* (August 7, 2022) < <https://telecom.economictimes.indiatimes.com/news/vodafone-idea-says-industry-needs-tariff-increases-at-regular-intervals/93409557> > accessed March 25, 2025

- Retaining employees and integrating culture.
- Ensuring financial transparency and regulatory compliance.

7. OUTCOME AND ANALYSIS

Significant case study by relatively defining the work of Shareholders' Agreement (SHA) in post-merger governance; Vodafone-Idea merger is significant in this respect. While the SHA claims to provide a structure for stability and joint decision-making, extreme financial and market-pressure situations arose and put it to the test. Discusses outcomes in governance so far enabled by the SHA and problems it faces concerning external market conditions while teaching lessons for future transactions in M&A.

SUCCESS IN GOVERNANCE:

The SHA of Vodafone Idea edges forward in being pivotal to stabilizing the post-merger operations. Some notable governance achievements were further seen:

i. Preserving stability in the first years after the merger:

When the merger occurred, it ensured the provision of structured guidelines for the governance of the merged entity, which was highly beneficial during the first years after the merger. Such distribution of decision-making rights among the stakeholders would avoid whatever disturbance might arise through conflict of perception.

ii. Setting clear governance guidelines prohibiting shareholder conflicts:

It has also defined well the management of relations with shareholders that may prevent or resolve disputes. As far as representation in the board, voting rights, and dispute resolution mechanisms are concerned, the SHA has significantly ensured the reduction of uncertainty in governance.

iii. Making certain decisions strategically taken jointly:

Any strategic decision, including investment plans, mechanisms for extending operations, or restructuring efforts, must be made jointly by the key stakeholders. This allowed the company to gauge the alignment of its strategic vision with shareholders' expectations through a collaborative decision-making process. Though made breakthroughs in the above governance, the instance could still face serious challenges in the outside world that SHA could hardly remedy.

DIFFICULTIES AND PRESSURIZING CONDITIONS OF MARKETS

The SHA may have facilitated a formal governance structure for the company, but it could not prevent external business considerations and competition from adversely affecting the company's long-term viability.

- i. **Regulatory Dues:** This industry faces tremendous regulatory dues in terms of spectrum charges, license fees, and Adjusted Gross Revenue (AGR) liabilities imposed upon it by the Indian telecom authorities. Non-intervention by these obligations has, thus, acted upon Vodafone Idea's financial strength.

The cash outflows from legal proceedings relating to the AGR dues really hindered the economic expansion of the company and its investment in technology upgrading.

- ii. **Market Competition:** Jio's aggressive pricing and cheap data plans suddenly disrupted the telecom market. Vodafone Idea found it increasingly difficult to retain market share as customers migrated to competitors with more attractive tariffs and better network coverage.
- iii. **Debt Problems:** Vodafone Idea bore the brunt of severe debts, which diminished its operational flexibility.⁴² The contest of servicing its debts, all the while maintaining capital expenditures for the upgrading and expansion of the network, became rather difficult. While the SHA provided the governance framework, deep-rooted financial instability stood in the way, pointing once again to the limitations of a legal document vis-a-vis more fundamental economic concerns.⁴³

CHALLENGES AND FUTURE PROSPECTS OF SHAREHOLDERS' AGREEMENTS IN M&A TRANSACTIONS

1. OVERVIEW

Merging with capital markets, the Shareholders' Agreements constitute one manner of accomplishing mergers and acquisitions; thus, they stipulate many rights, obligations, and governance structures between the shareholders. However, with Shas establishing a framework for

⁴² Mobile World Live, 'Analysis: Can Debt-Laden Vodafone Idea Recover?' (*Mobile World Live*, date unknown) <https://www.mobileworldlive.com/operators/analysis-can-debt-laden-vodafone-idea-recover/> accessed 25 March 2025

⁴³ Reuters, 'India's Debt-Burdened Vodafone Idea to Raise Over \$5 Bln' (*Reuters*, 27 February 2024) <https://www.reuters.com/business/media-telecom/indias-debt-burdened-vodafone-idea-raise-over-5-bln-2024-02-27/> accessed 25 March 2025

consolidating and merging practices, certain obstacles may inhibit its performance, such as enforceability under law, clashes with corporate charter documents, and changing market conditions. In this chapter, the sketchy prospects and challenges SHA may face in future mergers and acquisition transactions are examined.

2. **CHALLENGES IN IMPLEMENTING SHAS IN M&A DEALS**

2.1 Legal and Regulatory Aspects:

The shareholders agreements (SHAs) being contracts must comply with the legal framework governing business entities. There are stark differences in approaches to SHA in various jurisdictions-some treat them as binding, while others limit their enforcement if to contrary to any legal provision. For instance, corporate laws may provide mandatory administrative rules which sometimes cannot be modified by private agreement in some jurisdictions. Securities regulation could therefore also play a role in the determination of rights and obligations of shareholders, particularly with regard to announcement requirements for minority protection and for restrictions of transfer. The comparison of the SHA with any laws may end up in disputes, sanctions, or in the course of which some provisions are rendered absolutely non-enforceable.⁴⁴

2.2 Enforceability of the Provision of SHA:

One of the major hurdles Shas faces is enforceability, especially with respect to being contra articles of the company (AOA) or illegal. Therefore, the courts in a number of jurisdictions give preference to AOA over Shas, for the former retain public character for maintenance of the internal affairs of the society.

A celebrated precedent in this regard is *V.B. Rangara v. V.B. Gopalakrishnan (1992)*, where the Supreme Court of India gave a ruling that any restriction on transfer of shares must find mention in the AOA for it to be efficient in law. This necessitates that the provisions of the SHA have to be carefully drafted so as to come in line with the public company documents to avert legal ambiguity and potential litigation.⁴⁵

⁴⁴ JS JP, "ENFORCEABILITY OF SHAREHOLDER'S AGREEMENT IN INDIA" (*Law Portal*, October 28, 2021) <<https://lawcolumn.in/enforceability-of-shareholders-agreement-in-india/>> accessed March 25, 2025

⁴⁵ Amudha Murthy, 'Shareholders Agreement Versus Articles of Association' (AKM, 9 March 2017) <<https://www.akmlp.com/edulaw/shareholders-agreement-versus-articles-of-association/>> accessed 24 March 2025.

2.3 Governance and decision-making deadlocks:

Management and decision-making have a tendency to stipulate the administrative structure, voting rights and decision-making processes. Although such provisions are designed to ensure a balanced performance structure, whereby in some cases such provisions result in cumbersome blocking, particularly in conjunction companies or closely-held companies where shareholders are similarly represented. This is particularly relevant in disagreements regarding major strategic matters such as a merger, expansion of a company, or changes in management decision-making and running down activities. To alleviate the blockage, the SHA often calls for remedial mechanisms such as the appointment of an independent director, mediation, or granting a casting vote to a certain shareholder. Still, the success of these mechanisms will depend on their specificity and the cooperation of the shareholders with the set-up.

2.4 Exit related Disputes:

Commonly included in a shareholders' agreement are provisions regarding the exit of shareholders such as rights of first refusal (ROFR), tag-along rights, and drag-along rights. These provisions are intended to facilitate transferability; however, if ambiguous or unreasonably disadvantageous to some shareholders, such provisions could lead to conflict.⁴⁶ For instance, disputes may arise when a majority shareholder uses drag-along rights to force minority shareholders to sell their shares at a valuation considered objectionable by the minority. Once again, a restricted ROFR can place a roadblock in the path of a shareholder wishing to sell his shares on advantageous terms. On the other hand, if these clauses are clearly defined and establish a level playing field amongst all parties involved, they will go a long way in the avoidance of conflicts and facilitating share transfers.

2.5 The Provisions with Respect to External Market Condition:

Market conditions are critical determiners of SHA viability because recessionary conditions, regulatory flips, and disruptive industries impact the fulfillment of agreed terms. For example, SHAs usually prescribe valuation formulas for determining share prices during buyouts or existences, but these formulas quickly become irrelevant when market dynamics are volatile. Index-based formulas rely on historical figures and thus may not reflect an actual value for a particular firm in that speedy change in an economy. Amendments have also included matters as diverse as changes in tax legislation to changes in foreign investment conditions and sectoral regulations that have an impact on shareholder agreements. Such issues sometimes require renegotiation or

⁴⁶ 'Shareholder Agreements – A Guide to Successful Exit Strategies' (Invest Ottawa, 25 January 2025) <<https://www.investottawa.ca/blog/shareholder-agreements-a-guide-to-successful-exit-strategies/>> accessed 24 March 2025

amendment of SHAs. By bringing in flexible valuation mechanisms and force-majeure clauses, one can more likely avoid such problems.

3. PRIORITY OF ARTICLES OF ASSOCIATION OVER SHAREHOLDERS' AGREEMENTS

If the agreements between shareholders (Shas) are against the Articles of the Company (AOA), its enforcement will be the legal challenge. Throughout various jurisdictions, the courts were consistent in the fact that in case of conflict, the AOA would always supersede the Shas. This is because the AOA is a public document that forms the constitutional framework of a company that binds both the company and its shareholder, while the SHA is a private contract bound only by its parties. Since the administration and management of companies are determined primarily by the AOA, any clause in the SHA contrary to the AOA will be considered repudiated, unless it is enshrined in the Constitution of the Society.

4. LEGAL PRECEDENTS AND JURISPRUDENCE

Indian Case Laws:

V.B. Rangaraj v. V.B. Gopalakrishnan (1992): Held by the observeddia that restrictions on transfer of shares imposed by SHA were not enforceable unless incorporated into the AoA. The bench made an observation that the AoA governs the rights and obligations of shareholders, in a binding manner on the company, while private agreements cannot override any statutory provisions or corporate governance norms. This very case went a long way in making important precedents on SHAs being made by the AoA to have any bearing.⁴⁷

IL&FS Trust Co. Ltd. Versus Birla Perucchini Ltd. (2004): The Bombay High Court reaffirmed that in case of conflict between the shareholders agreement (SHA) and articles of association (AoA), the latter shall prevail.⁴⁸ The judgment reinforces the view that the company cannot be bound by the terms of an SHA unless those terms are contained in its charter documents.

⁴⁷ Krishnan A, "VB Rangaraj Judgment and Its Impact on Shareholder Agreements Regarding Transferability of Shares" (IRCCL, July 29, 2023) <<https://www.irccl.in/post/vb-rangaraj-judgment-and-its-impact-on-shareholder-agreements-regarding-transferability-of-shares>> accessed March 25, 2025

⁴⁸ "CONFLICTS BETWEEN ARTICLES OF ASSOICIATION ANDSHAREHOLDERS' AGREEMENT IN LAW LAND" (*The Amikus Qriae*, March 6, 2024) <<https://theamikusqriae.com/conflicts-between-articles-of-assoiciation-andshareholders-agreement-in-law-land/>> accessed March 25, 2025

World Phone India Pvt. Ltd v. WPI Group Inc USA Case: There cannot be obligations placed on the company by these amended agreements without incorporation into its AoA; the Company Law Board, now the National Company Law Tribunal, held.⁴⁹ Important decisions stated that ultimately, into the AoA does a company's internal management come, and all those provisions under the SHA which were sought to be enforced against the company would fall by the wayside as being legally untenable.

This brings the cases nicely together as the requirement for putting SHA provisions into the AoA for enforceability. Since it relevant to companies and shareholders to diligent in structuring SHAs to avoid a conflict with the AoA, any such critical rights or obligations agreed on privately be duly reflected in the company's constitutional document. Otherwise, the important provisions will be unenforceable, leading to future legal disputes and uncertainty in corporate governance.

5. FUTURE TRENDS AND RECOMMENDATIONS

As corporate dynamics constantly modify themselves, different organizations and shareholders should adopt various best practices ensuring that all forms of Shareholders' Agreements (SHAs) would always stay enforceable, transparent, and, in particular, aligned with corporate governance norms. The mentioned recommendations below would have several matters such as concerning clauses for improving the effectiveness of the SHA and reducing conflicts with the articles of association (AoA).

Integration of SHA Provisions into Articles of Association

To enhance enforceability and avoid conflict, it is advisable to incorporate critical SHA provisions into the AoA. This is because the public AoA becomes a document which binds both the company and all its shareholders/ prospective shareholders acquiring the shares by transfer or otherwise. Incorporation of nearly all major provisions of the SHA such as transfer of shares restrictions, voting rights, preemptive rights, and governance structures into the AoA would ensure their universality and enforceability.

In addition, it is prudent for companies to revise continuously and update their AoA following the changes made in the SHAs, composition of shareholders, or legal regulatory requirement changes. This proactivity would eliminate any ambiguity and legal disputes and contribute significantly to

⁴⁹ S Chilumuri and A Gambhir, 'Invocation of Arbitration Clauses in Shareholder Agreements for Disputes under Articles of Association' (2020) 13(4) *NUJS L Rev* < <https://nujlawreview.org/wp-content/uploads/2020/12/13-4-Chilumuri-Gambhir-Invocation-of-Arbitration-Clauses-in-Shareholder-Agreements-for-disputes-under-Articles-of-Association.pdf>> accessed 24 March 2025

good corporate governance by ensuring that internal agreements comply with statutory frameworks.⁵⁰

Use of Technology in Drafting and Managing SHAs

The legal technology revolutionizes the techniques of SHAs being drafted, executed, and enforced. Smart contracts and blockchain technology innovations are in the lead of automating and securing SHA provisions and removing unnecessary intermediaries in implementing SHA provisions:

- Smart Contracts: Self-executing contracts on conditions pre-agreed are automatically invoked to enforce transfer restrictions, dividend distribution, and vote execution, thereby removing manual intervention from having to do with terms outlined in SHAs. Reducing such risks creates compliance rather than breach of contract.
- Blockchain Technology: The terms of the SHA cast on an immutable, decentralized ledger are transparent, secure, and authentic. Generally, this denies any unauthorized changes and builds trust between shareholders.⁵¹
- AI-Powered Contract Management: Artificial intelligence can be used to find and monitor SHAs, which will alert the owner about any potential conflicts with the AoA or legal frameworks thereby reducing the risks and ensures compliance.⁵²

Those advances in technology will have the effect of increasing efficiency, enforceability, and security of SHAs and thus reducing fish disputes, toward more streamlined corporate governance.

CONCLUSION:

Shareholders' agreements (SHAs) are crucial documents in transactions by mergers and acquisitions, defining shareholder rights, obligations, and structures of administration. The effectiveness of SHAs can thus be impeded by circumstances such as enforceability issues, conflicts with articles of association (AOA) in legal applications, deadlock situations on decisions, and matters arising out of external market conditions. The courts across many jurisdictions, especially in India, recognized the dominance of AOA over SHAs and reinforced the need for SHA provisions to be coordinated with corporate charter documents. Social enactments increasing

⁵⁰ Timothy Kurbis, 'Shareholder Agreements – Issues and Considerations in Drafting and Approach' (Taylor McCaffrey LLP, 17 April 2013) < <https://www.tmlawyers.com/?resources=shareholder-agreements-issues-and-considerations-in-drafting-and-approach> > accessed 24 March 2025

⁵¹ Christoph Van der Elst and Anne Lafarre, 'Blockchain and Smart Contracting for the Shareholder Community' (2019) 20(1) *European Business Organization Law Review* 111 < <https://link.springer.com/article/10.1007/s40804-019-00136-0> > accessed 24 March 2025

⁵² 'How AI is Transforming Contract Management' (PandaDoc Blog, 21 October 2024) < <https://www.pandadoc.com/blog/contract-ai/> > accessed 24 March 2025

enforcement and effectiveness of SHAs should therefore see companies incorporating crucial provisions into their AOA, accepting flexible exit mechanisms, and leveraging new-age technologies in the form of smart contracts and blockchain for transparency and compliance. In light of that, the ability to dynamically evolve from a legal standpoint as well as an outlook towards constant administration and management will be paramount for ensuring that SHAs become a most well-rounded tool for shareholder protection and the decision-making in the company amid an evolving market scenario.

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