

Joint Venture Agreements/Shareholders Agreements

-- Kalidas Vanjpe

Many a times the small entrepreneurs have an excellent business proposition/technology, which they cannot put to use for want of money. Then they start looking out for a financial partner. Sometimes it may happen that they have a business idea but the technical know how is available with somebody else either in India or abroad. Sometimes the market forces compel you to scout for a suitable partner. In all such cases, the joint venture agreement comes into picture. In reality we have come across a number of cases where people have not given much importance to the knitty-gritty of such agreements and afterwards they have suffered a lot. Often the businessman is so overwhelmed by the idea of receiving the money or technical know-how that he often signs on the dotted line. A few days delay in closing the deal is almost unbearable and hence even if he is advised to wait for proper scrutiny of the joint venture agreement, he feels that it is a waste of time. The result is in some cases you tend to lose control over your own company or brand or technology or you agree to some absurd conditions which may be detrimental to your interest in the long run. What is worse is that you come to know of it only when the other party points it out in the Court or in arbitration.

People often ask me what is the difference between Joint venture agreement and a shareholders agreement. As far as content is concerned, in my opinion, there is no much difference. Normally the joint venture agreement is entered into before a new company is formed or before the investment in the existing company is made. Shareholders agreement, by the very name indicates, is an agreement between different shareholders of the existing company. That means that the parties to the agreement are already shareholders of the said company. Further in most of the cases, the shareholders agreements are related to financial participation and related issues whereas joint venture agreements may contain something more than that like technical know-how, supply of materials etc. Thus the relevant clauses may vary depending on the actual commercial understanding between the parties. In the following paragraphs I have tried to explain the different contents which normally appear in such agreements. This is just to give an idea to common man about the importance of such agreements. Please note that it is not necessary that the clauses will flow as per the order mentioned below.

Apart from the parties to the agreement, the agreement mentions in the preamble the purpose of the agreement. Then it mentions the various definitions of the terms used in the agreement, pre-conditions for the deal as well as the warranties and covenants of each of the parties. These are the representations made by each party to other, based on which the commercial understanding is normally finalised. Further, if any warranty/representation is turned to be false, the agreement may come to an end apart from other consequences.

Then there are clauses in relation to the actual deal and the conditions about the same. This should be checked thoroughly as to whether it conforms to the commercial understanding reached between the parties. Depending upon the actual transaction, these conditions may include the management structure, the composition of the Board of Directors, Shareholding pattern, policy decisions etc.

Then there are clauses as to the period during which the agreement may exist, clauses to resolve deadlock, mechanism to resolve deadlock, procedure of transfer of shares etc. Then the agreement usually contains the jurisdiction clause, applicable law and in many cases provision for arbitration in case of any dispute arising out the agreement. One important thing to be remembered here in case of arbitration is that only the matters which are directly the subject matter of the agreement can be referred to arbitration, if the clause is there. If there is a dispute about the other matters between the same parties but which are not covered by the agreement, the same cannot be referred to arbitration even though the agreement may contain a clause for arbitration.

Thus it is an important agreement defining the roles of respective parties and their rights and obligations. If you do not give proper importance to taking care at the time of entering into this agreement, in future there is a possibility that you may suffer a loss.