

# Swiss Supreme Court Clarifies Role of Shareholders in Composition Proceedings (5A\_53/2026)



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## Facts

The case arose from a (non-public) provisional composition moratorium granted to a Swiss GmbH. During the moratorium, the court – upon request of the debtor and the administrator – authorised the sale of substantial parts of the company’s assets ([5A\\_53/2026](#) dated 4 May 2026).

A 48 percent minority shareholder, without signatory authority, challenged this authorisation, arguing in particular that (i) the transaction required shareholder approval and (ii) the decision was fundamentally flawed and therefore void. Both the cantonal court and, ultimately, the Swiss Supreme Court rejected the challenge.

## Key holding

The Court confirms that a non-authorized minority shareholder lacks standing to challenge a court-approved asset sale carried out during a composition moratorium. Even a shareholder holding 48 percent of the equity is treated as a “third party” and is therefore not directly affected within the meaning of procedural standing.

The Court builds on BGE 147 III 226 and reiterates a strict approach: only the debtor itself may challenge an authorisation decision under Art. 298 para. 2 SchKG, whereas creditors and shareholders are only indirectly affected.

## No shareholder veto rights

Importantly, the Court clarifies that insolvency law prevails over company law in this context. The opening of composition proceedings shifts decision-making authority to insolvency bodies. As a result:

- No shareholder resolution is required for the sale of substantial assets or even the business as a whole
- No participation, hearing, or veto rights exist for shareholders in the authorisation process
- The interests of creditors take precedence over those of shareholders

The Court also rejects attempts to challenge such decisions via allegations of nullity, setting a high threshold for nullity that was not met on the facts.

## Practical consequences

This decision confirms a creditor-centric restructuring framework and reinforces the efficiency of “pre-pack”-type transactions in Switzerland:

- **Deal certainty increases:** Asset sales authorised under Art. 298 SchKG are effectively shielded from shareholder challenges

- **Speed and confidentiality are preserved:** Courts can approve transactions without involving shareholders, even in “silent” moratoria
- **Corporate governance is displaced:** Shareholder rights are significantly curtailed once insolvency proceedings are initiated

At the same time, the ruling highlights a structural tension between insolvency law and minority protection, particularly in closely held companies.

### **Recommendations for practice**

#### **1. Plan stakeholder management early**

Even though shareholder consent is not legally required, ignoring key shareholders may lead to parallel litigation or reputational issues. Early communication remains advisable.

#### **2. Document decision-making rigorously**

As judicial review focuses on creditor interests and urgency, robust documentation by the debtor and the administrator is critical to withstand scrutiny.

#### **3. Focus on the role of the Sachwalter**

The administrator’s analysis and recommendation are central. Independent validation of transaction parameters is essential.

#### **4. Consider governance optics in distressed M&A**

Transactions involving management transition or perceived related-party elements should be carefully structured and documented to mitigate later challenges.

#### **5. Prepare for limited remedies**

Shareholders opposing a transaction will have to rely on indirect routes, such as liability claims, rather than challenging the authorisation itself.

### **Bottom line**

The Court confirms a clear prioritisation of restructuring efficiency and creditor protection over shareholder participation. For practitioners, this strengthens Switzerland’s attractiveness for swift distressed transactions, while requiring careful handling of governance and liability risks.