Manipal Business Solutions Private Limited Vs Aurigain Consulants Private Limited & Ors.

Court: Delhi High Court

Date of Decision: Aug. 17, 2022

Acts Referred: Constitution Of India, 1950 â€" Article 19(1)(g), 19(6), 21
Code Of Civil Procedure, 1908 â€" Section 151, Order 39 Rule 4, Order 7 Rule 11
Indian Contract Act, 1872 â€" Section 27
Copyright Act, 1957 â€" Section 13(1)

Hon'ble Judges: V. Kameswar Rao, J

Bench: Single Bench

Advocate: Jayant Mehta, Atanu Mukherjee, Kanchan Yadav, Aishani Narayan, Sonia Dube, Shantha Devi Raman, Parth Kaushik, Arihant Jain

Judgement

V. Kameswar Rao, J

Ã, By this order, I shall decide the following two applications filed by the plaintiff and defendant No.1.

I.A. 5188/2022

1. This application has been filed under Order XXXIX Rules 1 and 2 read with Section 151 of the Code of Civil Procedure (CPC) by the plaintiff in

the titled suit bearing CS(OS) No. 190/2022 seeking ad interim injunctions against the defendants, restraining the defendants, its associates, business

partners, legal heirs or any person involved with the defendant No. 1 from carrying on any business in contravention of the terms of a Non-Disclosure

Agreement (Ã¢â‚¬Ëœ NDA Ã¢â‚¬â„¢, for short).

I.A. 6453/2022

2. This application has been filed under Order XXXIX Rule 4 of the CPC by the defendant No. 1 in the titled suit bearing CS(OS) No. 190/2022 to set

aside the Order of this Court dated April 04, 2022 whereby the defendants in the said suit, its associates, business partners and employees were

restrained from carrying on any business in contravention to the aforementioned NDA.

3. For the sake of convenience and brevity, the applicant in IA 5188/2022 shall be referred to as the Ã¢â‚¬Ëœplaintiff Ã¢â‚¬â„¢ and the applicant in IA 6453/2022

shall be referred to as the Ã¢â‚¬Ëœdefendant company Ã¢â‚¬â„¢ hereinafter.

4. According to the plaintiff, it is a private limited company incorporated under the Companies Act, 1956, engaged in the business of providing

integrated outsourced technology solutions and field services to Banks and other financial institutions to facilitate the financial inclusion initiative in

India. The plaintiff has over the years developed a unique in-house technology in rural banking services by providing a fully functional and certified

end-to-end system for enabling authentication/e-KYC & payments on UIDAI-Aadhaar Enabled Payments System (AEPS) platform to financial

institutions, as well as providing Gold Loan Sourcing. Defendant Nos. 2-20 in the original suit had been employed by the plaintiff to carry on its

business, and for this purpose, certain important trade secrets, business connections and confidential information had been disclosed to them. The

defendants in the suit were also signatories to an NDA, Clause 11 of which stated that they could not disclose such information to anybody for a

period of two years from the date of their resignation. In December 2020, defendant Nos. 2, 3 and 4 resigned from the plaintiff company. Later, in

March 2021, it was found that they had setup their own firm, i.e., the defendant company and were carrying out similar business as rivals to the

plaintiff company. It is also stated in the application of the plaintiff that defendant Nos. 2, 3 and 4 also lured defendants Nos. 5 to 20, who also

possessed certain information regarding the plaintiffÃ¢â‚¬â„¢s business, to join the defendant company. It is the case of the plaintiff that therefore, the

defendants in the suit have violated the terms of the NDA, as a result of which the plaintiff has suffered loss, which is evident from the audit report

submitted by it.

5. Subsequently, the plaintiff came to know that the defendant company had approached ICICI Bank, who was a regular customer of the plaintiff

company and was doing business with it. They had also influenced defendant Nos. 5-20 in the suit to leave the plaintiff company and join them.

Thereafter, on August 18, 2021, the plaintiff company issued a legal notice to the defendant company demanding them stop carrying on any business in

competition with the plaintiff but the defendant company did not reply to it. Subsequent thereto, the plaintiff, alleging that there has been a violation of

the NDA, filed the titled suit on April 01, 2022 seeking a permanent injunction restraining the defendants from making any further use of the

confidential information and trade secrets. During the course of the hearing, this Court, vide order dated April 04, 2022 granted an ex-parte ad interim

injunction to the plaintiff till the next dated of hearing, which position still continues.

6. Ms. Shantha Devi Raman, learned counsel appearing for the defendant No.1 company (and also for some other defendants) has submitted that it

has approached ICICI Bank for the purpose of seeking business with them through its directors, and not through the involvement of defendant Nos. 2

to 20. In any case, the nature of the defendant companyÃ¢â‚¬â„¢s contracts with ICICI Bank is of an exclusive nature and prohibits the defendant

company from engaging with other companies. Therefore, the question of the defendant company trying to exploit the plaintiffÃ¢â‚¬â„¢s contacts by

approaching them does not arise. Moreover, the Service Provider Agreement between the defendant company and ICICI Bank had in no way

affected the relation between the plaintiff and ICICI Bank, which is still providing services to ICICI bank. She has also contended that the defendant

Nos. 5-20 had not been poached; rather they had approached the defendant company out of their own free will without any sort of inducement. It is

also stated that the defendant company is unaware of any previous employment contracts of the impleaded employees, as it is not in its policy to do so.

It has only sought the resignation certificates of the employees wherein it was mentioned that the employees are restrained from disclosing sensitive

information up to a period of one year. She has stated that since the defendant company is not using the clientele or contacts of the employees, the

NDA has not been violated.

7. It is further stated that the plaintiff company had alleged that defendant No. 4 in the suit holds 4,000 shares of the holding company of the

defendant, namely Calance Software Limited, and therefore, he was indirectly controlling it. However, the shares held by defendant No. 4, had been

issued to him by the aforementioned company even before he had joined the plaintiff. The allegation that the defendant No. 4 had mala fide resigned

from the plaintiff company in order to join a rival firm is also baseless.

8. Ms. Raman has stated that there is no privity of contract between the plaintiff and the defendant company, as the plaintiff did not enter into any

contract with the defendant company. Therefore, the plaintiff cannot sue the defendant company for any alleged breach of contract by its ex-

employees. The defendant company, while an employer of some of the ex-employees of the plaintiff, at no point has ever entered into any contract

with it in any fashion. It absolutely is not bound by Clause 11 of the NDA between the plaintiff and its ex-employees. The locus of the plaintiff exists

only with its ex-employees and they can only seek redressal of alleged violation of the NDA against them and not from the defendant company which

is a completely unrelated party. There exists no cause of action in favour of the plaintiff against the defendant company. Therefore, to halt the

functioning of the defendant company due to the contractual stipulations between the plaintiff and its ex-employees not only is prima facie erroneous

but also would cause irreparable damages and loss to the defendant company. She has also opposed the averment by the plaintiff that defendant

company is merely a corporate cloak and that defendant Nos. 2-4 are owners of the business.

9. Ms. Raman has also contested the submission of the plaintiff that signing the NDA was a precondition for the appointment of the defendants in the

plaintiff company, as all the employees except defendant No.3 received the NDA at the date of their joining. Moreover, it is also pointed out that the

employees were compelled to sign the NDA as they had already left their previous jobs. She has relied upon the judgment of the Supreme Court in

Superintendence Company of India v. Krishan Murgai, (1981) 2 SCC 246 to contend that such contracts must be carefully scrutinised.

10. She has further contended that the defendant company has already terminated the services of the defendant Nos. 2 to 20 and therefore, the

working of the company in no way violated the injunction order of April 04, 2022, and as such, it must be allowed to function. That apart, she has

stated that the defendant Nos. 5, 12, 13, 15 and 20 have also filed their own separate applications under Order VII, Rule 11 of the CPC pleading that

they were employed at positions of very low hierarchy, and as such were not privy to any kind of confidential information. In any case, the offer

letters received by defendant Nos. 2,4,8,9,10,11, on the basis of which they had left their previous jobs did not mention any NDA, and as such they

should not be bound by the NDA. Moreover, even during the resignation, some defendants had unambiguously declared that they were joining a rival

company, yet the plaintiff did not advise them against it.

11. That apart, she stated that the NDA which the plaintiff is using as the basis for its pleadings have not been signed by majority of the defendants

including defendant Nos. 5, 6, 7, 12, 13, 14, 15, 16, 17, 18, 19 and 20, as is evident even from the unsigned NDAs that the plaintiff itself has filed along

with its plaint, and as such, they could not be bound by its terms. It is also stated that the defendant Nos. 14 and 18 have already left the employment

of the defendant No. 1 and rejoined the services of the plaintiff. It is also contended that defendant No. 7 has worked with the plaintiff company for

only 19 days, defendant No. 13 has worked only for 9 months and defendant No. 15 has worked only for 4 months. Defendant No. 17 never joined

defendant company at all. Therefore, the contention of the plaintiff that all these employees were key performers of the plaintiff and had access to

confidential information is false. She has alleged that this misrepresentation and concealment has been done to project before this Court that a number

of employees have left the plaintiff and joined the defendant company so as to artificially balloon the magnitude of the alleged injury.

12. That apart, it is also contended that defendant No. 3 had resigned from the plaintiff company on January 29, 2021 and had joined the defendant

company as a consultant only on February 08, 2022. The resignation certificate of defendant No. 3 was similar to the NDA, however, it stipulated that

the employee is restricted only for a period of one year. It is argued by Ms. Raman that since the Resignation Certificate was issued later, it must

supersede the provisions of the NDA. Therefore, defendant No. 3 had complied with the restrictions mandated by the plaintiff.

13. She has further stated that according to Section 27 of the Indian Contract Act, 1872, (Ã¢â‚¬Ëœ Contract ActÃ¢â‚¬â„¢, hereinafter) agreements in restraint of

trade are void. Clause 11 of the NDA seeks to impose a restriction upon the defendant Nos. 2-20 to seek further employment in the future. It is her

submission that therefore, this clause should be held as void. It is the case of the defendant company that since the plaintiff had processed all the exit

formalities of the defendants, they had no legal liability to adhere to the non-compete clause of the NDA. According to her, it is settled law that post-

employment restraint on employees is impermissible. In this regard, reliance has been placed on the judgment of the Supreme Court in Percept

DÃ¢â‚¬â„¢Mark (India) Pvt. Ltd. v. Zaheer Khan, (2006) 4 SCC 227, and the judgments of this Court in American Express Bank Ltd. (supra), Modicare

Ltd. v. Gautam Bali and Ors., 2019 SCC OnLine Del 10511; EV Motors India Pvt. Ltd. v. Anurag Agarwal, 2017 SCC OnLine Del 12373; and Pepsi

Foods Ltd. v. Bharat Coca-Cola Holdings Pvt. Ltd. and Ors., 1999 SCC OnLine Del 530.

14. It is submitted the plaint and even the present application for ad interim injunction are liable to be rejected, as the same are vague and do not

disclose essential aspects regarding what exactly is the confidential information, what makes such information confidential, how the employees got to

know about it and how the defendant company has used this information. No material has been placed on record to show which piece of information

provided by plaintiff was classified as 'confidential' which has been misused by the defendants. In this regard, she has referred to the judgment of this

Court in the case of Transformative Learning Solutions Pvt. Ltd. and Anr. v. Pawajot Kaur Baweja and Ors., 2019 SCC Online Del 9229.

15. Ms. Raman has also submitted that the information regarding the customer database is not Ã¢â‚¬Å“confidential informationÃ¢â‚¬, as has been claimed by

the plaintiff. To buttress her argument, she has relied upon the judgments of this Court in the cases of American Express Bank Ltd. v. Priya Puri,

2006 SCC OnLine Del 638; Tech Plus Media Private Ltd. v. Jyoti Janda and Ors., 2014 SCC OnLine Del 1819 and M/s Stellar Information

Technology Private Ltd. v. Rakesh Kumar and Ors., 2016 SCC OnLine Del 4812. In any case, gold loans are given only for a period of 5-6 months

and most customers do not take gold loans twice. Therefore, the customer lists become stale even before the compilation is completed. So, the

allegation made regarding usage of confidential information is baseless. Her contention is that information which is available in the public domain and

cannot be termed as copyright, confidential information or a trade secret. Moreover, if a party wants to claim that it has copyright over its data, then it

must show who the author of the work is. A company, being a juristic person, cannot be an author; it can only be an owner. She has relied upon the

judgment of this Court in the case of Navigators Logistics Ltd. v. Kashif Qureshi and Ors., 2018 SCC OnLine Del 11321 to submit that if employees

in the course of their employment has come to know about important information without any special effort, they would not be deemed to be holders

of trade secrets or confidential information.

16. The allegation that the defendant company had poached the clients of the plaintiff has been vehemently denied. In the Gold Loan Sourcing

business, all information regarding clients is retained only by the Bank and not by the Direct Selling Agent (Ã¢â‚¬ËœDSAÃ¢â‚¬â„¢, for short), i.e., the plaintiff

company. Even the information regarding the interest rate, gold rate, percentage of loan against mortgage gold and percentage of commission is not

permitted to be retained by the DSA. Therefore, the plaintiff cannot claim that it has confidential information regarding the business with it. In other

words, it is the case of the defendant company that Gold Loan Sourcing does not involve the creation of any confidential information. Moreover,

contrary to what has been averred in the plaint, the plaintiff has not developed any software or technology for the conduct of its business.

17. That apart, it is her contention that there is no uniqueness in the product of the plaintiff as has been claimed. It has been unable to prove that the

defendant company has acquired and has been using the so called confidential information. Mere hiring of ex-employees of the plaintiff does not give

the defendant company access to any confidential information. Moreover, the plaintiff during its inception itself had taken its top managerial personnel

from an established company namely M/s. Fino Pvt. Ltd. Therefore, it cannot be allowed to raise the present claim against the defendant company.

18. It is the submission of Ms. Raman that there is no urgency shown by the plaintiff to warrant any injunction from this Court and there would be no

irreparable loss to the plaintiff by the conduct of defendant company. The plaintiff came to know about the employment of its ex-employees with the

defendant company in March 2021. It was only after five long months from the date of the knowledge that the plaintiff issued a legal notice on August

18, 2021. Finally, it is after a further lapse of seven months, that the plaintiff instituted the present suit on April 01, 2022. Therefore, as per the

judgment of the Supreme Court in M/s Ambalal Sarabhai Enterprise Limited and Ors. v. KS Infraspace LLP Limited and Ors., Civil Appeal No.

7843/2019, no temporary injunction could be granted. Further, the balance of convenience does not lie in favour of the plaintiff as losses, if any, caused

to it by the conduct of the defendant company, can be compensated in monetary terms.

19. It is submitted that the reliance placed by the plaintiff upon the Audited Balance Sheets is completely misfounded as those accounts pertain to the

year 2019-20, which is much before the time when defendant company started its operation (2021-22). Moreover, the Audited Balance Sheets contain

the data of multiple business of the plaintiff and not just the Gold Loan Sourcing business. The plaintiff had already been witnessing a downward

plunge in its businesses much before the incorporation of the defendant company, therefore, the loss cannot be attributed to the defendant company.

20. She has also submitted that the judgment in M/s Gujarat Bottling Company Ltd. & Ors. v. Coca Cola Co., & Ors., 1995 SCC (5) 545, as referred

to in the Order of this Court dated April 04, 2022 is not applicable to the facts of the present case, inasmuch as in paragraph 42 therein on which

reliance has been placed by the plaintiff to pray for grant of an injunction, it was stated that the position in England was that a breach of a negative

covenant would warrant injunction. However, the position in India is different, as here, Ã¢â‚¬Å“an injunction to enforce a negative covenant would be

refused if it would indirectly compel an employee either to idleness or to serve the employerÃ¢â‚¬â€‹. She seeks prayers as made in her application.

21. Mr. Jayant Mehta, learned Senior Counsel appearing for the plaintiff has submitted that the defendant company has still not complied with the

order dated April 04, 2022 of this Court. It is still continuing to run its business through its associate company M/s Loansi Consultants Pvt. Ltd. This

company has already done a business of approximately ?70 crore with ICICI Bank in the months of May, June and July 2022. It is his submission that

there is an urgent need of restraining the defendant company from continuing on its business in order to safeguard the interests of the plaintiff. He has

placed reliance in this regard on the judgment of this Court in the case of Oravel Stays Pvt. Ltd. v. Kota Hotels Federation, 2020 SCC OnLine Del

2363.

22. In reply to the application filed by the defendant company, he stated, it is settled law that such an application is permissible only if in the application

seeking temporary injunction or in the affidavit supporting such application, a party has made false and misleading statements in respect to a material

particular and injunction was granted without notice to the opposite party. This principle was reiterated by this Court in an order dated February 21,

2022 passed in the case of Bank of Baroda v. Union Bank of India and Ors., (CM Appl. No. 4514/2022). No such false/misleading statement has

been pointed out by the defendant company in the present case.

23. Further, he submitted that it was not merely the directors of the defendant who had approached ICICI Bank soliciting business, rather the same

had been done in connivance with and using the confidential information provided by defendants Nos. 2, 3 and 4. Further, the plea taken by the

defendant company that it cannot engage in any other transactions is completely wrong as no proof of the said agreement with ICICI Bank has been

placed on record. Therefore, no inference can be said to be made regarding the nature of work or whether even such an agreement exists.

24. It is also submitted that defendant Nos. 2-4 had convinced the ex-employees of the plaintiff to opt out of the company and join the defendant. He

has referred to an email dated December 23, 2021, wherein, according to him the poaching of the clients of the plaintiffs was mentioned and admitted

by the defendants. Moreover, he has refuted the assertion that defendant No. 3 did not occupy any important position within the company and was

only a consultant, as the affidavit filed by the defendant in its application has been affirmed by him. Upon lifting the corporate veil of the defendant

company, it would also be clear that it is run by defendant Nos. 2, 3 and 4.

25. Further, he has submitted that the defendant company was fully aware about the employment contracts of the impleaded employees and therefore,

their appointment was not done in good faith. He has also contested the submission of Ms. Raman that the defendant has its own technical knowhow

and clientele. He has claimed that the defendant company has directed the ex-employees of the plaintiff to disclose their own trade secrets and

confidential information.

26. Mr. Mehta has stated that the restrictions imposed by the NDA are reasonable as they do not restrict the trade operations of the defendants in the

suit, but are only there to safeguard the plaintiffÃ¢â‚¬â„¢s confidential information. Regarding the contention that post-termination restraint is void, he has

stated that even according to the judgments submitted by Ms. Raman, only those restrictions that are too wide are hit by Section 27 of the Contract

Act. He has placed reliance upon the judgment of the Supreme Court in Niranjan Shankar Golikari v. Century Spinning and Mfg. Co. Ltd., (1967) 2

SCR 378, to contend that a negative covenant cannot be taken as a direct restraint on trade unless such a covenant is unconscionable, excessively

harsh or unreasonable. Since in the present case, the NDA imposes only reasonable restrictions on the employees, it cannot be held as void under

Section 27 of the Contract Act. He has also contended that the judgment of the Supreme Court in Percept DÃ¢â‚¬â„¢Mark (India) Pvt. Ltd. (supra) relied

upon by Ms. Raman is not applicable as it deals with a right to first refusal while in the present case, there is an NDA clause.

27. Regarding the contention of Ms. Raman that customer lists do not constitute confidential information, Mr. Mehta has stated that confidential

information is anything for which the maker of the document has used his brain and produced a result which can only be produced by someone who

goes through the same process, and would include client lists. To fortify this argument, he has referred to the judgment of the Bombay High Court in

the case of Anindya Mukherjee v. Clean Coats Pvt. Ltd., Mumbai, 2011 (1) Mh.LJ 573. The present case at hand involves data which is not available

in the public domain and is unique inasmuch as it is available with the plaintiff company only. He submitted that therefore, this plea of Ms. Raman

should be rejected. He has sought to distinguish the judgments of this Court in Navigators Logistics Ltd. (supra) and American Express Bank Ltd.

(supra) by stating that in those cases, the information claimed to be confidential was available in public domain. Further, he has relied upon the

judgment in Vogueserv International Pvt. Ltd. v. Rajesh Gosain and Ors., 2013 (137) DRJ 244, to contend that compilation of clients database would

amount to confidential information and that the onus to show that such database is not confidential lies with the defendant, which it has evidently failed

to prove.

28. An affidavit has been filed on behalf of the plaintiff wherein it is stated that the defendants No. 2 to 20 were privy to the following confidential

data:-

i. Customer Data

ii. Agents Data

iii. Contract Data

iv. Employees Data

v. Market Data and Business Plan

29. Mr. Mehta has also contended that defendant Nos. 2-20 resigning in a quite close time frame and receiving offer letters from the defendant

company at the same time is not a mere coincidence. The defendants have deliberately tried to cover their wrongs by shielding the defendant

company as a corporate cloak. He has argued that reliance was misplaced on the judgment in EV Motors India Private Limited (supra), as in that

case, only one Director had resigned and joined a rival company, while here a number of employees have done so in quick succession.

30. It is his submission that according to the judgment of the Supreme Court in K.K. Modi Investment & Financial Services Pvt. Ltd. v. Apollo

International Inc., 2014 SCC OnLine Del 2200, the implied conduct of the defendants extended the privity of the contract to include them also.

Therefore, in this case, the defendant company can also be made privy to the contract as it is merely a corporate cloak which has been used by

defendant Nos. 2-20 to circumvent the contract. He has also alleged that the sole purpose of defendant Nos. 1 to 4 was only extract the knowledge

and experience gained by the employees of the plaintiff company and to develop an identical system for Gold Loan Sourcing.

31. That apart, Mr. Mehta has submitted that the judgments relied by Ms. Raman in Modicare Limited (supra), Transformative Learning Solution Pvt.

Ltd. (supra) and Pepsi Foods Ltd. (supra) are not applicable as the plaintiffÃ¢â‚¬â„¢s case is not that the defendants cannot be engaged in another

venture, but only that they cannot be allowed to use the confidential information of the plaintiff. He seeks prayers as made in his application.

CONCLUSION:-

32. Having heard the learned counsel for the parties and perused the record, as these applications are concerning the order dated April 04, 2022 of

which vacation is being sought by the defendant No.1, I deem it appropriate to reproduce the relevant part of the order as under:

Ã¢â‚¬Å“1. The plaintiff, a private limited company, is engaged inter-alia in the business of providing integrated outsourced technology solutions

and field services to Banks and other financial institutions to facilitate the financial inclusion initiative in India. It is contended that the

plaintiff has over the years developed a unique in-house technology in rural banking services by providing a fully functional and certified

end-to-end system for enabling authentication/e-KYC & payments on UIDAI-Aadhaar Enabled Payments System (AEPS) platform to

financial institutions as well as providing gold loan sourcing.

2. As per the plaintiff, defendants No.2 to 20 were its employees and defendants No.2 to 4 resigned from the plaintiff company and setup

defendant No.1 and thereafter, poached some of its employees and defendants No.4 to 20 resigned from the plaintiff company and joined

the defendants.

3. It is contended that defendants are engaged in providing identical services as that of the plaintiff. Reference is drawn to the

Memorandum of Association of defendant No.1 company to show that they are engaged in similar venture.

4. Learned senior counsel for the plaintiff submits that defendants 2 to 20 had all entered into confidentiality agreement at the time of their

employment and they had specifically entered into a covenant that while in service and for a period after two years of termination of

service, they shall not engage in any prohibited activity.

5. Reference is drawn to one such agreement, particularly, clause 11 thereof, which reads as under:-

Ã¢â‚¬Å“11. While the Second Party is in service of the First Party, and for two years after termination of service, by either party, with or without

cause, voluntarily or involuntarily, the Second Party shall not engage in ""Prohibited Activities"" as defined below. ""Prohibited Activities"", as

used herein, shall mean owning, managing, operating, controlling, being employed by, acting as an independent contractor or agent or

consultant for, participating in or being connected in any manner, with the ownership, management, operation or control of any relating to

or capable of relating to the Business of the First Party or its clients or related business: (a) which attempts to interfere with any existing

client relationship or potential client relationship of the First Party; or which (b) attempts to solicit, divert, or take away, any (i) client

prospect or client of the First Party or (ii) any officer, employee or director of the First Party. For purposes of this paragraph, a ""client"" of

the First Party means any person or entity, which the First Party does or did business during the term of service of the Second Party with the

First Party. The terms ""potential client relationship"" or ""client prospect"" mean any potential client which was identified by any Employee of

the First Party as a prospective client of the First Party during the term of service with the First Party, and some effort was undertaken by

the First Party to solicit that potential client. It is the intention of the parties that the First Party is given the broadest protection allowed by

law with regard to these restrictions. The Second Party's obligation under this Section shall survive the expiration or termination of this

Agreement for an additional two years period.Ã¢â‚¬â€‹

6. Learned senior counsel for the plaintiff also refers to offer of employment given to some of its existing employees purporting as if they

had applied and even appeared for interview. However, it is submitted that said employees had neither applied nor left the services of the

plaintiff.

7. It is contended that the defendants are continuously engaging not only in poaching the employees of the plaintiff, but also soliciting the

identified clients of the plaintiff.

8. Learned senior counsel relies on the judgment of the Supreme Court in M/s. Gujarat Potteling Company Ltd. & Ors. Vs. Coca Cola Co. &

Ors., 1995 (5) SCC 545 to contend that in the matter of grant of injunction, where a contract contains a negative covenant, the breach of it

would be restrained by injunction and injunction is normally granted as a matter of course even though the remedy is equitable and

discretionary one.

xxx xxx xxx

12. I am of the view that plaintiffs have made out a prima facie case for grant of an ad-interim injunction, balance of convenience is also in

their favour and in case injunction is not granted, plaintiffs are likely to suffer irreparable loss and injury. Accordingly, till the next date of

hearing, defendants, its associates, business partners and employees are restrained from carrying out any business in contravention to the

terms of the nondisclosure agreement, particularly, para 11 extracted hereinabove.Ã¢â‚¬â€‹

33. A perusal of the order would reveal that the case set up by the plaintiff in the suit against the defendants herein is on the basis of a stipulation in

the offer of employment with respect to some of the defendants, which stated that for a period of two years of termination of service, they shall not

engage in any Ã¢â‚¬Ëœprohibited activityÃ¢â‚¬â„¢ like solicit, divert or take away client or any client prospect, officer, employees or the Directors of the

plaintiff company. It is the case of the plaintiff that the defendants are not only poaching its employees but also soliciting the identified clients of the

plaintiff.

34. On the other hand, the argument of Ms. Raman in support of her application for vacation of order dated April 04, 2022 are the following:

(i) There is no privity of contract between the plaintiff and the defendant No.1 company, and as such the plaintiff cannot sue the defendant company

for any breach of contract including Clause 11 of the NDA between the plaintiff and its ex-employees.

(ii) The restraint order is causing irreparable loss and damage to the defendant company.

(iii) The NDA which the plaintiff is using as a basis for its case has not been signed by majority of the defendants including defendant Nos.5, 7, 12, 13

and 15.

(iv) The defendant Nos. 14 and 18 are serving with the plaintiff.

(v) Even the defendant No.6, 16, 17 and 19 have not signed the NDA and as such are not bound by it.

(vi) The defendant No.3 has resigned from plaintiff company on January 29, 2021 and had joined the defendant company on February 8, 2022. The

employee is restricted only for a period of one year, which period had since expired.

(vii) In view of Section 27 of the Contract Act, agreements in restraint of trade are void and such a restriction is apparent in this case, as is clear from

clause 11 of the NDA which imposes a restriction upon the defendants who have signed the NDA to seek further employment in future.

(viii) As the plaintiff has processed all the exit formalities of the defendants they had no legal liability to adhere to the non-compete clause of the

NDA.

(ix) No information or material has been placed on record to show what particular information provided by the plaintiff was classified as confidential

which has been misused by the defendants who have signed the NDA.

(x) Information regarding customer base is not confidential information as has been claimed by the plaintiff company.

(xi) Information which is available in public domain cannot be termed as confidential / copyright or trade secret.

(xii) The allegation that the defendant company has poached the clients of the plaintiff is denied as in Gold Loan Sourcing business all information

regarding clients is retained by the bank and not by the DSA, i.e., the plaintiff company.

(xiii) Even the information regarding gold rate, percentage of loan against mortgaged gold and percentage commission is not permitted to be retained

by the DSA. In other words, Gold Loan Sourcing does not involve creation of any confidential information.

(xiv) The reliance on the audited balance sheet is completely misplaced as those accounts pertain to the year 2019-2020 which is much before the

defendant company started its operation in 2021-2022, and the same contains data of multiple businesses of the plaintiff.

(xv) The plaintiff was already witnessing a downward trend in its business much before the incorporation of the defendant company.

35. Having noted the broad submissions made by the learned counsel for the parties, the issue which arises for consideration in these applications is

whether the plaintiff can seek implementation of the NDA against the defendant company or for that matter against other defendants as well, so as to

restrict them from carrying out any business / activity in violation of the terms of NDA, particularly clause 11 thereof which is reproduced hereunder:-

Ã¢â‚¬Å“11. While the Second Party is in service of the First Party, and for two years after termination of service, by either party, with or without

cause, voluntarily or involuntarily, the Second Party shall not engage in ""Prohibited Activities"" as defined below. ""Prohibited Activities"", as

used herein, shall mean owning, managing, operating, controlling, being employed by, acting as an independent contractor or agent or

consultant for, participating in or being connected in any manner, with the ownership, management, operation or control of any relating to

or capable of relating to the Business of the First Party or its clients or related business: (a) which attempts to interfere with any existing

client relationship or potential client relationship of the First Party; or which (b) attempts to solicit, divert, or take away, any (i) client

prospect or client of the First Party or (ii) any officer, employee or director of the First Party. For purposes of this paragraph, a ""client"" of

the First Party means any person or entity, which the First Party does or did business during the term of service of the Second Party with the

First Party. The terms ""potential client relationship"" or ""client prospect"" mean any potential client which was identified by any Employee of

the First Party as a prospective client of the First Party during the term of service with the First Party, and some effort was undertaken by

the First Party to solicit that potential client. It is the intention of the parties that the First Party is given the broadest protection allowed by

law with regard to these restrictions. The Second Party's obligation under this Section shall survive the expiration or termination of this

Agreement for an additional two years period.Ã¢â‚¬â€‹

36. To answer this question, it is necessary to examine the stand of the plaintiff as to what according to it constitutes confidential data / information

which the defendants cannot use while carrying out any business activity.

37. According to Mr. Mehta, the same include customer data, agent data, contract data, employee data, market data and business plans.

38. I may at the outset state here that the plaintiff is not claiming any copyright in the above information. It is only claiming that the data is confidential.

Even if such an argument was to be raised, the question would be whether the above information shall fall within the definition of copyright as defined

under Section 13(1) of the Copyright Act. This Court in a series of judgments including the judgment in the case of Navigators Logistics Ltd. (supra),

has in paragraphs 22 to 35, by referring to the judgment of the Supreme Court in Eastern Book Company v. DB Modak, (2008) 1 SCC 1, held that to

claim copyright, the author must produce the material created with exercise of his skill and judgment, which must not be so trivial that it would be

characterised as a purely mechanical exercise. The Court was of the opinion that the plaintiff therein, being a juristic person is incapable of being the

author of any literary work in which a copyright may exist, though it may be the owner of copyright. As the plaintiff had failed to disclose the identity

of the author, it could not claim any copyright in a list of customers/clients with their contact numbers.

39. Even the plea of confidentiality taken by Mr. Mehta is unsustainable, as merely stating that there exists some confidential and secret information

does not convince this Court that such information is, in fact confidential, more so, when the plaint and the pleadings do not disclose the nature of the

information / data of which confidentiality is claimed. I find that no material / document connected with the aforesaid data / information has been filed

by the plaintiff. In fact this aspect has been accepted by Mr. Mehta during his submissions.

40. It is for the first time that the plaintiff, through an affidavit filed on July 21, 2022, sought to refer the aforesaid information as confidential without

filing it. As per its own case, the plaintiff is engaged in providing gold loans. It is the information related to such loans, like customer data, agent data,

contract data, employee data, market data etc. for which confidentiality is being claimed. The plaintiff is not engaged in any research work, the result

whereof can be said to have been achieved through its own skill and judgment. It is an accepted case that many entities are carrying out similar

business activity. It is not pleaded as to how the confidentiality claimed is different from the data of any entity engaged in similar business.

41. It has not been filed nor shown to the satisfaction of this Court, as to what exactly is the confidential information, how it is confidential, and how, if

at all, the defendant company has used such information to the detriment of the plaintiff.

42. In the absence of any material on record, it is difficult for the defendants to meet the case of the plaintiff and for that matter for this Court to

accept the plea of the plaintiff. Based on such vague assertions, interim order as sought for cannot be granted. Even if any such order has been

granted, its continuance cannot be sustained.

43. The Coordinate Bench of this Court in Navigators Logistics Ltd. (supra) has in paragraphs 41 to 47 by referring to various judgments in the cases

of Star India Pvt. Ltd. v. Laxmiraj Seetharam Nayak, 2003 SCC OnLine Bom 27, Ambiance India (Private) Ltd. v. Naveen Jain, 2005 SCC OnLine

Del 367, Stellar Information Technology Private Ltd. (supra) and American Express Bank Ltd. (supra) held as under:

Ã¢â‚¬Å“41. On facts as pleaded in plaint it appeared that there can be no confidentiality about such a list. Just like customers/clients of an

Advocate practicing in the field of acquisition of land and determination of compensation therefor can comprise only of those whose land

has been acquired and whose particulars are contained in the acquisition notification and/or award pronounced by the Land Acquisition

Collector, similarly the list of customers/clients of the plaintiff, carrying on business in the field of logistic and freight forwarding, can only

comprise of businesses/industry requiring carriage of goods and material and none else. Names and contact addresses of such businesses

are easily available in public domain. Any competitor of the plaintiff worth its salt would also know of such businesses/industry and be free

to market his services to them, even if presently employing the service of the plaintiff. I am thus unable to fathom the confidentiality therein

and during the hearing also repeatedly enquired about the same and also enquired about the particulars of other works/databases and in

which also copyright and confidentiality was claimed. No answer was forthcoming. Every customer list cannot qualify as confidential

information or a trade secret unless the confidentiality around such a list is of economic value/business value/commercial value. A thought

also crossed my mind, whether not any employee of the plaintiff, dealing with the customers/clients of the plaintiff on behalf of the plaintiff,

would have knowledge of the said customers/clients and their contact address even in the absence of a list and how could such an

employee, when joining the employment of a competitor, be prevented from marketing the services of the competitor to the employees/clients

at the address on which he was earlier servicing them under employment of the former employer and whether not it would amount to

restraint of trade.

42. In fact today, trade/business directories are available of each trade/business and wherefrom names and addresses of all in a particular

trade/business/industry can be known.

43. In Star India Pvt. Ltd. v. Laxmiraj Seetharam Nayak, 2003 SCC OnLine Bom 2i7t was held that everyone in any employment for some

period would know certain facts and would get to know some information without any special effort; all such persons cannot be said to

know trade secrets or confidential information and that every opinion or general knowledge of facts cannot be labelled as trade secrets or

confidential information. It was yet further held that if such items are called as trade secrets, or secret, would lose its meaning and

significance. It was held that the basic nature of the business dealings of the plaintiff in that case with its advertisers would be openly

known and cannot be called a trade secret or a confidential information; the rates of the advertisements are within the public domain and

every businessman generally knows the rates of his rivals; the concerned people know the rates of the advertisements; unless they are told

the rates and other conditions of the advertisements, no business transaction can be done; such matters are not even open secrets. Similarly

it was held that fixation of rates etc. depends on a number of factors including the popularity, in that case of T.V. serial and the time-slots of

the display of such T.V. serials and mere use of the words Ã¢â‚¬Ëœstrategies Ã¢â‚¬â„¢, Ã¢â‚¬Ëœpolicy decisions Ã¢â‚¬â„¢ or Ã¢â‚¬Ëœcrucial policies Ã¢â‚¬â„¢ repeatedly

in all the items does not acquire the position or character of secrecy. It was held that there was nothing on record from which it could be

inferred that the defendant had come to know any trade secrets or confidential information concerning the plaintiff company and its

business especially when the trade secrets and the confidential information were not even spelled out.

44. This Court also, in Ambiance India (Private) Ltd. v. Naveen Jain, 2005 SCC OnLine Del 36h7e ld that written day to day affairs of

employment which are in the knowledge of many and are commonly known to others cannot be called trade secrets. It was further held that

trade secret can be a formulae, technical know-how or a peculiar mode or method of business adopted by an employer which is unknown to

others. It was yet further held that in a business house, the employees discharging their duties come across so many matters but all these

matters are not trade secrets or confidential matters or formulae, the divulgence of which may be injurious to the employer and if an

employee on account of employment has learnt some business acumen or ways of dealing with the customers or clients, the same do not

constitute trade secret or confidential information, divulgence or use of which should be prohibited.

45. This Court again in American Express Bank Ltd. v. Priya Puri, 2006 SCC OnLine Del 638h eld that the plaintiff in that case, in the garb

of confidentiality, was trying to contend that that once the customer of the plaintiff, always a customer of the plaintiff. It was further held

that the plaintiff, a bank in that case, could not restrain its competitor banks from dealing with the customers of the plaintiff bank on the

ground that the plaintiff bank maintained written record of its customers and their financial portfolios which had been acquired by the

competitor bank and so the competitor bank should be restrained even to contact those customers. It was reasoned, that if the competitor

bank without acquiring any information as to with whom a particular person or company is banking, can approach him and canvass about

themselves, even after acquiring information that a particular person of company is banking with a bank is still entitled to approach him

and canvass about themselves and it is for the customers to decide with which bank to bank. It was further held that creating a database of

the clients/customers and then claiming confidentiality about it, will not permit creation of a monopoly about such customers. It was yet

further reasoned that without impleading the customers in the suit, the competitor could not be restrained from dealing with the customers. It

was thus held that details of customers are not trade secrets or property. The argument, on the basis of copyright therein, was also

negatived.

46. The High Court of Bombay again in Bombay Dyeing and Manufacturing Co. Ltd. v. Mehar Karan Singh, 2010 SCC OnLine Bom 1243,

relying on the judgments of the United States of America, Court of Appeals, Tenth Circuit in Rivendell Forest Products Ltd. v. Georgia

Pacific Corporation and Timothy L. Cornwell, 31 USPQ 2d 1472 and Kodekay Electronics Inc. v. Mechanex Corp., 486 F. 2d 449 (10th

Cir. 1973) and held that something which is known outside the business or to those inside the business i.e. the employees and for guarding

which no steps have been taken and for developing which no effort or money has been extended, cannot be a trade secret. Accordingly, it

was held that information relating to Ã¢â‚¬Ëœstrategic business plansÃ¢â‚¬â„¢, Ã¢â‚¬Ëœproduct mixÃ¢â‚¬â„¢, Ã¢â‚¬Ëœsquare footage of constructionÃ¢â‚¬â„¢,

Ã¢â‚¬Ëœcapital expenditureÃ¢â‚¬â„¢ or Ã¢â‚¬Ëœrevenue budgetsÃ¢â‚¬â„¢ could not be claimed to be of any confidential nature which no other competitor

would know. Relying on Star India Private Limited supra it was held that a salesman leaving a company and heart surgeon leaving a

hospital cannot be prevented from negotiating with the customers or performing a surgery on the premise that they acquired the skill by

experience and those skills can be carried with the employee. It was yet further held that though the defendant in that case, on amassing

information and knowledge with regard to the plaintiff's plan of operation, could not be injuncted from disclosing those plans to the

competitor if he carried them in his head and the competitor in the market, could not be taken to be driven by the defendant's disclosure

alone.

47. This Court, even in Stellar Information Technology Private Ltd. v. Rakesh Kumar, (2016) 234 DLT 114 held that the names of the

customers seeking data recovery services of the plaintiff in that case were well known and in public domain and the defendants could not

be restrained from approaching the customers only on the allegation that the defendants are aware of the names of the plaintiff's customers.

It was reasoned that the plaintiff, in the name of confidentiality, was seeking a restraint on trade. FAO(OS) (Com.) No. 104/2016 preferred

thereagainst was dismissed on 11th November, 2016.Ã¢â‚¬â€‹

(emphasis supplied)

44. A reading of the above reproduced paragraphs would reveal that not every customer/client list would qualify as confidential information or trade

secret unless the confidentiality about it is of economic/business/commercial value. It is held that in any employment, every employee would get to

know some information without any special effort. All such persons cannot be said to be in knowledge of trade secrets or confidential information and

every knowledge of such facts cannot be labeled as trade secret or confidential information. If an employee on account of his employment has

gathered some business knowledge/acumen or ways of dealing with clients, the same would not be termed as confidential information, disclosure of

which would harm the plaintiff. Unless there is some material on record to show that the defendant had come to know of any confidential information

/ trade secret concerning the plaintiff and its business, no injunction can be granted, more so when such trade secret / confidential information have not

even been spelt out. The learned Single Judge, referring to the decision in American Express Bank (supra) has observed that a competitor even after

knowing which particular entity/an individual/person is currently in business with, can approach such individual/person to canvas about itself, and it is

for the customer to decide which business/entity to choose. Creating a database of clients/customers and then claiming confidentiality on it does not

create a monopoly over such customers. That apart, even if a person has amassed knowledge with regard to the plaintiffÃ¢â‚¬â„¢s plan of operation, he

could not be injuncted from disclosing such plans to the competitor, if he has carried such plans in his head and even the competitor could not be said

to be driven by such disclosure alone. I agree with the aforesaid conclusion arrived at by the Coordinate Bench of this Court.

45. One of the pleas of Ms. Raman was that in view of Section 27 of the Contract Act, Clause 11 of the NDA is void. It was the case of Ms. Raman

that this Clause mentioned in the agreement was executed only by some of the defendants and not all. In any case, such a stipulation in the NDA

which restricts the post employment opportunities shall be barred by Section 27 of the Act as held in Percept DÃ¢â‚¬â„¢Mark (India) Pvt. Ltd. (supra)

wherein the Supreme Court refused to enforce such post employment restriction on the ground that the same is barred by Section 27 of the Act. The

said Clause attempts to restrict activities with any existing client relationship or potential client relationship or to attempt to solicit, divert, or take away,

any client prospect / client of the plaintiff. So, in effect, the clause puts a restriction on some of the defendants to carry out the activities referred to

above. Such a stipulation is void.

46. In a recent opinion, in Modicare Ltd. (supra) a Coordinate Bench of this Court while considering a similar issue has in paragraphs 24, 29 to 34 and

36 to 41 held as under:

Ã¢â‚¬Å“24. I thus hold the claim of the plaintiff for permanent injunction to prevent the defendants from unlawfully interfering with the business

of the plaintiff by enticing the customers and consultants of the plaintiff to breach their contract with the plaintiff, to be premised on

contract only and not on tort.

xxx xxx xxx

29. Section 27 of the Contract Act makes void i.e. unenforceable, every agreement by which anyone is restrained from exercising a lawful

profession, trade or business of any kind. Thus, even if the defendants or any of them, under their agreement with the plaintiff, had

undertaken not to carry on or be involved in any capacity in any business competing with the business of the plaintiff, even after leaving

employment with/association of the plaintiff, the said agreement, owing to Section 27 supra, would be void and unenforceable and the

plaintiff on the basis thereof could not have restrained any of the defendants from carrying on any business or vocation, even if the one

which the defendant had agreed not to carry on. I find it incongruous that the law, on the one hand would disable a plaintiff from enforcing

a contract where the defendant had voluntarily agreed not to do something, by going to the extent of declaring such contract void, but on

the other hand, enable the same plaintiff to the same relief under the law of tort. To hold so, would make the law look like an ass.

30. Section 27, in Taprogge Gesellschaft MBH v. IAEC India Ltd. AIR 1988 Bom 157, Sharp Business System v. The Commissioner of

Income Tax 2012 SCC OnLine Del 5639, and Pepsi Foods Ltd. supra has been held to have been enacted as a matter of public policy of

India, and does not create any personal right, which can be waived. If it is the public policy of India that there can be no restraint on any

one exercising a lawful profession, trade or business, not even when such person has voluntarily agreed not to, it belies logic that such

public policy would not apply when the mischief sought to be prevented is sought to be practiced invoking law of torts. It is not as if

different reliefs are being claimed, in enforcement of contract on the one hand and invoking the law of torts on the other hand. The reliefs

are the same. In my opinion, what is not contractually enforceable is also not enforceable invoking law of torts.

31. Inspite of specific query, whether there is equivalent in UK, of Section 27 of the Contract Act, no response has come. I find Supreme

Court in Gujarat Bottling Co. Ltd. supra to have held that while under the common law in England, restraints of trade, whether general or

partial, may be good if they are reasonable or reasonably necessary with reference to public policy or for protection of interest of

covenantee, in India, agreements in restraint of trade are governed by Section 27 and the question of reasonableness of restraint is outside

the purview of Section 27. This explains, the law of tort of unlawful interference in business, in UK. However the same, in my view, has no

place in India, at least in the context of present facts. I find the Supreme Court, in Superintendence Company of India (P) Ltd. supra, to

have also held that principles of English Law cannot be imported once the Parliament has codified the said principles in the Contract Act; it

is the language of the statute which alone has to be considered to ascertain its true meaning and scope.

32. Section 27, contained in a legislation of the year 1872, on promulgation of the Constitution of India in the year 1950, conferring the

right to practice any profession or to carry on any occupation, trade or business, the status of a Fundamental Right, under Article 19(1)(g)

thereof, today has a different connotation. Article 19(6) only clarifies that nothing contained in Clause (g) shall affect the operation of any

existing law or prevent the State from making any law, imposing in the interest of general public, reasonable restrictions on the exercise of

right conferred by the said clause. Thus, restrictions, in the interest of general public and if reasonable, to the Fundamental Right to

practice any profession or to carry on any occupation, trade or business, can be imposed only by law. The law of tort of unreasonable

interference in carrying on business, in view of Section 27 of the Contract Act in force since 1872, was not the existing law within the

meaning of Article 19(6) of the Constitution.

33. I have in Independent News Service Pvt. Ltd. v. Sucherita Kukreti (2019) 257 DLT 426, in the context of Section 27 of the Contract Act

held the right saved thereby to be a facet of Article 21 of the Constitution of India. The judgment of the Division Bench of Allahabad High

Court of the year 1930, after the right sought to be curtailed has been conferred the status of a Fundament Right and a facet of Article 21

of the Constitution of India, does not persuade me to hold that such Fundament Right of the defendants can be subject to the law of tort of

enticement to ommit breach of contract or of unlawful interference with business.

34. After the coming into force of the Constitution of India, the restriction if any on the fundamental right to carry on any trade or business

or to practice any profession can be imposed only by making a law i.e. a law prohibiting unlawful interference in business and enticing

another to commit breach of existing contractual obligations, and the constitutionality of which law if challenged would be tested on the

anvil of Article 19(6) of the Constitution of India.

xxx xxx xxx

36. Else, I find a Full Bench of the High Court of Hyderabad to have in Holloor Gopal Rao v. War Nasi Shiv Ramiah AIR 1953 Hyd 1 held

that a suit for establishing exclusive right to Ã¢â‚¬Ëœpurohitgiriâ€™ in a village, axiomatically prohibiting others from acting as purohits, could

no longer continue after coming into force on 26th January, 1950 of the Constitution of India. It was held that any order declaring the

exclusive right of the plaintiff would amount to laying a restraint upon others to carry on the same profession in the village.

37. In fact, during the hearing on both days, I have also been asking the senior counsel for the plaintiff, that even if the argument of the

senior counsel for the plaintiff were to be accepted, where should the Court draw the line, between what constitutes enticement to commit

breach of contract and unlawful interference in business on the one hand and competition on the other hand. Any new entrant in the

market, to be able to create a niche for itself, in spite of the existing players, has to compete with the existing players, by approaching the

same customers and the same cache of employees who over the years have acquired expertise in that particular field. When launching the

same product/service, the new entrant to the business cannot possibly create a new set of customers for that product or service. Thus, the

consumers to be approached by the new entrant would be the same who were earlier having contractual relationships with the existing

players. Similarly, a new entrant cannot possibly compete if does not have the requisite expertise/finesse, required for launching a

particular product or service and to be able to provide the same class or quality of service, has to necessarily have with it, hands which

have been making the subject product and/or providing the said service in the past, may be under contract with the existing players. In my

view, it is practically impossible to draw a line between such persons, on their own approaching the new entrant, and the new entrant

approaching them. The process is quite complex and no precise rules can be made with respect thereto. The Courts would not lay down the

law in the name of being a matter of evidence, in respect of matters which are incapable of determination by Courts.

38. Attention of the senior counsel for the plaintiff has also been drawn to the widespread business of headhunters and employment

brokers, who sometimes are approached by employees/customers and sometimes by the new entrant and also sometimes on their own make

the two meet. I have enquired from the senior counsel for the plaintiff, whether it will make any difference, that the new entrant in the

market approaches a headhunter for hiring employees with the specialty and instead of the new entrant, it is the headhunter who

approaches employees having contracts with existing players. It is virtually impossible, even if evidence were permitted to be led to draw a

line, as to what caused the employee to breach an existing contract of employment and enter into a new contract i.e. whether it was on own

violation or on being enticed by the new entrant in the market.

39. No line which can be drawn in this respect has been suggested.

40. A new entrant obviously has to offer better terms to employees having expertise and having contract with other players, to woo them to

itself. I have wondered, whether offering such better terms would amount to the tort of enticement to commit breach of contract and

unlawful interference with the business of an existing player. Again no clarity has emerged.

41. I thus hold that a claim founded on unlawful interference with business or of enticement to commit a breach of contract with the plaintiff

is not enforceable in a court of law, neither contractually nor invoking the law of tort. Such a claim is thus not required to be put to trial.Ã¢â‚¬â€‹

47. A perusal of the above would show that the Court has opined that the right saved by Section 27 of the Contract Act is a facet of Article 21 of the

Constitution, and such right of the defendants cannot be defeated by stating, they are enticing the clients or interfering with the business. It is held any

new entrant in the market, to be able to create a name and niche for itself, will have to compete with the existing prayers by approaching the same

customers and the same cache of employees who have gained knowledge and experience in the field concerned. No line can be drawn between such

employees/customers approaching the new entrant and the new entrant approaching them. It would be virtually impossible to determine what caused

the breach of the existing contract between an employee and his employer, for him to enter into a new contract with the competitor, i.e., whether it

was on his own volition or on being enticed by the new entrant. Ultimately, it was held that a claim founded on unlawful interference with business or

breach of contract with the plaintiff would not be enforceable in a Court of law.

48. I am of the view the issue which arises for consideration in the application under Order XXXIX Rule 4 CPC is squarely covered by the above

judgment, inasmuch as the ground of unlawful interference with the business or breach of contract with plaintiff is not enforceable and the injunction

sought by the plaintiff as granted by this Court on April 04, 2022 is liable to be vacated.

49. Now coming to the judgments relied upon by Mr. Mehta, insofar as the judgment in Oravel Stays Pvt. Ltd. (supra) is concerned, the suit therein

was filed for injunction against the defendant No.1 and its officers including defendant Nos.2 and 3 for deliberately, unlawfully and wrongfully causing

interference with the plaintiffÃ¢â‚¬â„¢s business. I find that despite notice, the defendants were not represented and were proceeded ex-parte.

50. The facts in that suit are that the plaintiff by way of an agreement was permitted by the hotelier/service provider to have full control over pricing

and any booking brought in by the hotel. The agreement also gave the plaintiff full authority to determine and publish room tariffs on its website and/or

mobile application as per dynamic pricing module. Through the agreement, the service provider/hotelier agreed to abide by the standard quality of

rooms and promised services to its guests. The agreement also allowed both the parties to address issues arising under the contract and to amicably

resolve the same. The defendant No. 1 was a federation claiming to represent the interest of the hoteliers based in Kota, Rajasthan who were also

associated with various online booking portals including the plaintiff. It was the case of the plaintiff in the suit that the hotel owners who entered into

the agreement with the plaintiff had connived with defendant No.1 and were not accepting bookings made through the plaintiffÃ¢â‚¬â„¢s online

platform/mobile application, thereby failing to abide by the contract and amicably resolve the issues. The hoteliers had neither terminated the

agreement nor had they sought any modification of the terms. Defendant No.1 and its officers were emboldening and persuading the hoteliers to

boycott the plaintiff and refuse to honor the bookings made through the plaintiffs' portal. It was their case that the defendant No.1 was also colluding

with other associations and encouraging them to come forward to protest against the plaintiff to fulfill their unwarranted, illegal demands thereby

bringing plaintiffs business to complete halt.

51. The Court was of the view that on the basis of the documents enclosed with the plaint along with the necessary certificate, the plaintiff had clearly

made out a case for grant of injunction in terms of prayer (a) and (c) as the defendants had not only caused considerable loss to the plaintiff's business

but also caused inconvenience to public at large and prejudice in the mind of the consumers. Accordingly, the prayers in terms of prayer (a) and (c)

was granted.

52. This Court is of the view that the judgment being ex-parte has no applicability on the facts of the present case, more so in view of my findings in

paragraphs 37 to 47 above.

53. The defendant company and other defendants cannot be restrained from carrying out the activities / trade similar to the one being carried out by

the plaintiff.

54. Insofar as the judgment in the case of Niranjan Shankar Golikari (supra) is concerned, the said judgment was considered by the Coordinate Bench

of this Court in Navigators Logistics Ltd. (supra) and in paragraph 53 had held as under:

Ã¢â‚¬Å“53. A two Judge Bench of the Supreme Court, as far back as in Niranjan Shankar Golikari v. Century Spinning & Manufacturing Co.

Ltd., AIR 1967 SC 1098 was concerned with a suit for injunction to restrain the employee, who had agreed to serve the employer for a fixed

period, from during the said period, even after ceasing to be the employee of the plaintiff, joining employment of a competitor of the

plaintiff. It was unanimously held that considerations against restrictive covenants are different in cases where the restriction is to apply

during the period after the termination of the contract, than those in cases where it is to operate during the period of contract of

employment. In the facts of that case, it was found that the employee was privy to the special process invented/adopted by the plaintiff and

of which the employee was trained and had acquired knowledge. The employee who had left employment prior to the contracted period was

thus restrained from joining employment of a competitor for the remaining period for which he had contracted with the plaintiff in that

case.Ã¢â‚¬â€‹

It is clear from the above that this Court held it was in the facts of that case that the Supreme Court restrained the employees who were trained and

acquired knowledge be restrained from joining the competitors. The judgment is clearly distinguishable.

55. Similarly, insofar as the judgment in the case of Anindya Mukherjee (supra) relied upon by Mr. Mehta to counter the submission of Ms. Raman

that customer list does not constitute confidential information and that the maker of the documents has used his brain and that the data is not available

in public domain and is available with the plaintiff company, is not appealing and is misplaced, as nothing has been placed on record for this Court to

consider and ascertain whether such information is available in the public domain or not.

56. Suffice to state, in Navigators Logistics Ltd. (supra) the Coordinate Bench of this Court in paragraph 30 has held as under:

Ã¢â‚¬Å“30. I have in Tech Plus Media Private Ltd., relied upon by the counsel for the defendants and against which no appeal is found to have

been preferred, in the context of a list of names and address of visitors to the new portals of the plaintiff in that case or the comments of

such visitors, held that the plaintiff could not be said to be the author or composer or having contribution in the same. Burlington Home

Shopping Pvt. Ltd. and Diljeet Titus, Advocate supra were noticed but it was further held (i) that both the said judgments are of a date prior

to the pronouncement of the Supreme Court in Eastern Book Company v. D.B. Modak, (2008) 1 SCC 1, laying down (i) that to claim

copyright in a compilation, the author must produce the material with exercise of his skill and judgment which may not be creativity in the

sense that it is novel or non-obvious but at the same time it is not a product merely of labour and capital; and, (ii) that the exercise of skill

and judgment required to produce the work must not be so trivial that it could be characterized as a purely mechanical exercise.

Accordingly, it was held that copy edited judgments would not satisfy the copyright merely by establishing amount of skill, labour and

capital put in the inputs of the copy edited judgments as the original or innovative thoughts for the creativity are completely excluded.

Notice in Tech Plus Media Private Ltd. was also taken of Emergent Genetics India Pvt. Ltd. v. Shailendra Shivam, 2011 (47) PTC 494.

Reliance in Tech Plus Media Private Ltd. was also placed on Dr. Reckeweg & Co. GMBH v. Adven Biotech Private Ltd., 2008 (38) PTC 308

(Del), wherein, dealing with the issue of copyright in a compilation in a brochure, of nomenclature of drugs, the listing of the medicines in a

particular fashion, the description and the curative effect, the principle of law enunciated by the Supreme Court in Eastern Book Company

supra was applied. It was held that no copyright subsists therein in the absence of employment of any skill judgment and labour in

compilation thereof. It was further held that without specifically averring as to the manner/technique/criteria employed in such

sequencing/collection and the originality in the same, the plaintiff could not succeed in its claim. It was yet further held that the compilation

in that case was a derivative work in the sense of being a collection of sequencing of already existing information and did not satisfy the

standard of creativity required to qualify as a work in which copyright subsists. It was explained that the standard of creativity required in

such derivative work is higher than the standard required in cases of primary works. Resultantly, the plaint in Tech Plus Media Private Ltd.

was rejected.Ã¢â‚¬â€‹

(emphasis supplied)

57. I agree with the conclusion of the Court that a client list cannot be construed as confidential information to claim any right. The judgment relied

upon has no applicability.

58. Similarly, the reliance placed by Mr. Mehta on the judgment in Vogueserv International Pvt. Ltd. (supra) is also misplaced in view of the clear

conclusion of the Coordinate Bench of this Court in Navigators Logistics Ltd. (supra) with which I concur.

59. Insofar as the judgment in the case of K.K. Modi Investment & Financial Services Pvt. Ltd. (supra) is concerned, the same was relied upon by

Mr. Mehta to contend that the defendant company can also be made privy to the contract as it is merely a corporate cloak being used by the

defendants to circumvent the contract. In other words, it is his plea that the sole intent of the defendant Nos.1 to 4 was only extract the knowledge

and experience gained by the employees of the plaintiff company and to develop an identical system for Gold Loan Sourcing. This plea is not at all

appealing. There is nothing on record to show that the defendants have approached the plaintiffÃ¢â‚¬â„¢s customers or they are using any propriety

information of the plaintiff. The defendants also cannot be prevented from using the experience and knowledge gained by them during the course of

their employment with the plaintiff.

60. That apart, the nature of functions being discharged by the defendant Nos.2 to 20 does not appear to be technical in nature. In other words, they

were not involved in technical operation which they would have removed or copied through a technical process. In any case, the prima facie the

plaintiff has not been able to establish or indicate any propriety right on the above data / information which is said to being used by the defendants.

Though, an argument is taken that the restriction to carry business based on confidential information, the alleged confidentiality is for a limited time and

the same is enforceable is also not acceptable. There is nothing in the wording of Section 27 to suggest so.

61. Suffice to state, a contract in restriction of trade is void unless a particular contract can be distinguished and brought within the Exception 1 to

Section 27 of the Contract Act, to show that there is no scope for the prohibition.

62. Insofar as the reliance placed by Mr. Mehta on the judgment in M/s Gujarat Bottling Company Ltd. & Ors. (supra) is concerned, I agree with the

submission made by Ms. Raman that the said judgment shall not be applicable in the facts of this case, inasmuch as in paragraph 42 therein, it was

stated that the position in England was that a breach of negative covenant would warrant injunction. However, the position in India is different as here;

an injunction to enforce a negative covenant would be refused if it would indirectly compel the employee either to idleness or to serve the employer, as

has been noted by this Court in paragraph 31 of Modicare Ltd. (supra).

63. A plea was also raised by Mr. Mehta in support of his submission that the interim order granted by this Court in favour of the plaintiff on April 04,

2022 should not be vacated as no false / misleading statements have been pointed out by the defendant company in the present case. The said

submission is totally misplaced. It is erroneous to say that only if false / misleading statements have been made by the party to get an interim order,

shall the same be vacated. It goes without saying that if the interim relief sought by a party is contrary to the settled position of law, even if the same

has been granted, it can be vacated. It is one such case herein, as is clear from my conclusion above that the plaintiff has not made out any case for

continuance of the interim order granted on April 04, 2022. Though in support of his submission, Mr. Mehta has relied upon an order in the case of

Bank of Baroda v. Union Bank of India and Ors., CM APPL. 4514/2022, but no such order has been placed on record by the plaintiff to enable this

Court deal with the same.

64. I may also state that Mr. Mehta has placed on record the judgment of the Calcutta High Court in the case of Lindsay International Pvt. Ltd.

(supra). However it is not clear for what proposition of law/ argument the said judgment has been relied upon, as I find no reference to the said

judgment in the plaint, application or written submissions.

65. In the end, I must state that Mr. Mehta has contested the applicability of all the judgments so relied upon by Ms. Raman. In view of my above

conclusion, the judgments relied upon by Ms. Raman have applicability to the facts of this case. Hence, the contention needs to be rejected.

66. The reliance placed by Ms. Raman on Pepsi Foods Ltd. (supra), Superintendence Co. of India (supra) and EV Motors India Pvt. Ltd. (supra),

may not be gone into, in view of my discussion above, both on facts and in law.

67. In view of my above discussion, this Court is of the view that the application filed by the defendant No.1 (and argued by Ms. Raman who

appeared for some other defendants) being I.A. 6453/2022 needs to be accepted. The interim order dated April 04, 2022 is liable to be vacated. The

application filed by the plaintiff being I.A. 5188/2022 is dismissed. It is ordered accordingly.

68. List the pending applications for hearing on December 12, 2022.