
Fairfest Media Ltd. Vs ITE Group Plc

GA No. 3174 of 2014 and CS No. 329 of 2014

Court: Calcutta High Court

Date of Decision: Jan. 8, 2015

Acts Referred:

Specific Relief Act, 1963 - Section 38(2), 40

Citation: (2015) 2 CHN 704

Hon'ble Judges: Soumen Sen, J.

Bench: Single Bench

Advocate: Ratnanko Banerjee, Senior Advocate, Lopita Banerjee and Aditya Kanodia, for the Appellant; S.N. Mukherjee, Sr. Adv., Debnath Ghosh, Diwakar Maheshwai, Anshumala Banerjee and Kumarjit Banerjee, Advocates for the Respondent

Final Decision: Disposed off

Judgement

Soumen Sen, J.

The protection of confidential information, a branch of law, evolved by judgments, is the core issue raised in this

proceeding.

2. The genesis of the problem appears to be the fallout of the mutual non-disclosure agreement (hereinafter referred to as ""NDA"") entered into in

anticipation of a joint venture agreement.

3. The petitioner was incorporated in 1988. The petitioner is in the business of organizing travel trade shows. The petitioner claims that the

petitioner was the first in India to promote travel trade show with direct interaction between the sellers and buyers in the travel industry. The

petitioner has over the years and at least for the last 20-25 years organized many travel trade shows all over the country and the name of the

petitioner has become synonymous with such travel trade shows.

4. In or about 5th March, 2013, the petitioner, through an electronic mail evinced its intention to enter into a joint venture agreement with the

petitioner. Pursuant to the said e-mail, discussions were held by a subsequent e-mail dated 15th March, 2013, the respondent No. 1 had

expressed its intention to enter into a non-disclosure agreement with the petitioner. On 15th March, 2013, a mutual non-disclosure agreement was

entered into between the respondent No. 1 and the petitioner.

5. The petitioner states that such agreement was entered into on the basis of the representations made by the respondent No. 1 that:-

i) The respondent No. 1 was genuinely interested in entering into a joint venture agreement or in taking over the petitioner in connection with the

business of travel and trade shows.

ii) There was no impediment on the part of the respondent No. 1 in entering into negotiations with the petitioner or in the matter of taking over the

petitioner or in the matter of entering into a joint venture agreement with the petitioner in connection with such travel trade show business.

iii) The minority holding of the respondent No. 1 in the respondent No. 2 would not in any manner have any bearing on the transactions between

the petitioner and the respondent No. 1 and the respondent No. 1 was acting for its own interest in the business of the petitioner.

6. The petitioner claims that on the basis of such representations, the petitioner has entered into the said NDA. It is contended that the confidential

information which the petitioner was to disclose under the agreement was of a nature which would not be available in public domain and was

exclusively available with the petitioner and related to the business, clients, customers, business practice and trade secrets of the petitioner and also

including commercial, technical, scientific, operational, administrative, financial and marketing information. The petitioner would not have under any

circumstances parted with such information to any third party except under the said NDA and only for the purpose of the proposed joint venture

or takeover of the petitioner itself. The said agreement was to remain valid for a period of six months after the date of signing. The recipient,

namely the respondent No. 1 was required to keep the information confidential and not disclose directly or indirectly the information for a period of

two years after the termination of the said agreement without the written consent of the petitioner.

7. Following the aforesaid agreement, the respondent No. 1, by an electronic mail dated 19th March, 2013, requested the petitioner to provide

confidential financial and marketing information. After receiving the aforesaid electronic mail, the petitioner expressed its concern about the

proposed travel show to be launched by the respondent No. 2 from 16th to 18th January, 2014 in arrangement with the respondent No. 1 and

sought clarification from the respondent No. 1. The petitioner was assured by the respondent No. 1 that the respondent No. 1 is genuinely

interested to acquire the petitioner or to enter into a joint venture with the petitioner and, therefore, any association with the respondent No. 2 shall

not affect the future course of action between the petitioner and the respondent No. 1.

8. The petitioner claims that relying on such representations and believing the same to be true, the petitioner had materially altered its position by

supplying confidential information relating to finance and marketing to the respondent No. 1 on 20th March, 2013. The information supply related

to matters concerning marketing strategy, customer base, costing and profitability to organization of travel trade show. It is stated the information is

of nature which was not available in the public domain and was exclusively available with the petitioner. The petitioner claims that such information

was duly received by the respondent No. 1 by its electronic mail dated 20th March, 2013 which was in reply to the earlier electronic mail of the

petitioner.

9. On 3rd April, 2013, the respondent No. 1, while acknowledging supply of confidential information, made an offer for acquisition of business of

the petitioner. Since the offer made was found to be low and did not truly and correctly reflect the value of the business of the petitioner, such offer

was declined. The petitioner, however, made a counter offer in respect of the proposed deal. The petitioner contends that thereafter several

negotiations were held, but the respondent No. 1, on some pretext or the other, delayed finalization of entering into an agreement with the

petitioner. The respondent No. 1 at different points of time stated different reasons for not acquiring the business of the petitioner. It is, however,

stated that during the period of such negotiations held between the parties from 18th March, 2013 until 18th April, 2013, the respondent No. 1

had never represented that it could not acquire the business of the petitioner. Confidential information, which was given by the petitioner on 20th

March, 2013, was given only on the representation that business of the petitioner would be ultimately acquired. It is claimed that during the course

of negotiations, certain other strategic information was also given by the petitioner to the respondent No. 1.

10. On 5th July, 2013, the respondent No. 1 informed the petitioner that the respondent No. 1 had acquired about 28% shares in the respondent

No. 2. In the said mail, the respondent No. 1 stated that it was interested in integrating with the respondent No. 2 and was considering a

partnership with the respondent No. 2. However, by a subsequent electronic mail dated 15th August, 2013, the respondent No. 1 represented

that it was interested to go ahead with the proposed acquisition or joint venture with the petitioner. It is stated that the apprehension of the

petitioner as regards the association of the respondent No. 1 with the respondent No. 2 was reduced by such electronic mail wherein the

respondent No. 1 represented and assured its intention to go ahead with the transaction. Since a substantial period of time had already elapsed and

the respondent No. 1 did not complete the proposed transaction for takeover of the petitioner or in entering into a joint venture, the petitioner sent

an electronic mail on 1st April, 2014 and made enquiries from the respondent No. 1 in this regard. In reply, the respondent No. 1 by e-mail dated

2nd April, 2014, stated that because of certain existing agreement with the respondent No. 2 preventing it from entering into separate agreement

with the petitioner without the approval of the respondent No. 2 and the fact that the respondent No. 2 has refused to give consent for entering into

any merger or arrangement with the petitioner, it was not possible for the respondent No. 1 to enter into such joint venture agreement with the

petitioner.

11. The petitioner contends that the petitioner has been induced by the representations made by the respondent that it would enter into a joint

venture agreement with the petitioner and would not part away with any confidential information supplied to the respondent No. 1 from time to

time, which information has been used by the respondent No. 1 to further its own business interest along with the business interest of the

respondent No. 2. The petitioner, in view thereof, called upon the respondent No. 1 by emails dated 2nd April, 2014 and 3rd April, 2014 to

immediately suspend launching any travel show as it was similar to the one conducted by the petitioner. It is stated that it was obvious that the

respondent No. 1 had obtained certain confidential information on the basis of false representation that it wanted to acquire the petitioner or to

enter into the agreement with the petitioner for takeover. The petitioner, in paragraph 25 of the petition, has given particulars of fraud alleged to

have been perpetrated by the respondent Nos. 1 and 2.

12. Mr. Ratnanko Banerjee, Senior Advocate appearing with Ms. Lopita Banerjee, Advocate on behalf of the petitioner, refers to the e-mails

exchanged by and between the parties and submitted that it was on a specific representation being made by the respondent No. 1 that it was

genuinely interested in creating an event in the Indian travel market and exploring the possibility to launch joint venture or acquire the existing

business of the petitioner that the petitioner had agreed to share and, in fact, had shared confidential informations of the nature disclosed in the e-

mail dated 19th March, 2013 and subsequently other informations which are confidential in nature, in good faith and such confidential informations

are now being used and/or parted with and shared with the respondent No. 2. It is submitted that in view of Clause 1 and Clause 14 of the NDA,

the respondent No. 1 could not have parted with the information supplied to it by the petitioner to the respondent No. 2. It is submitted that in

entering into a partnership with the respondent No. 2 and in organizing the travel show at Mumbai on 15th, 16th and 17th January, 2015, it is

obvious that the confidential information supplied by the petitioner to the respondent No. 1 were shared and the said respondents are trying to

make an unlawful gain by utilizing such information. It is submitted that the respondent No. 1 is one of the co-sponsors as would appear from the

brochure published by the said respondent in relation to the said trade fair. It is submitted that it was incumbent upon the respondent No. 1 to

disclose to the petitioner at the time of negotiation and before entering into the said NDA that the respondent No. 1 is not free to enter into such

agreement of joint venture or acquisition of interest of the petitioner without the consent of the respondent No. 2. This is very material sine the

information supplied by the petitioner to the respondent No. 1 was shared in good faith and on a belief that there is a genuine intent for acquisition

and such information shall be used only for the purpose of the said acquisition and not as a competitive information. The learned Counsel submits

that the objection as to the jurisdiction of this Court as raised by the respondent No. 1 in its affidavit in opposition is untenable since the English law

recognizes that such an action is possible and the jurisdictional clause on which reference is made does not prevent the petitioner from instituting an

action in this Court against the respondent No. 1. It is stated that the English courts have time and again held that unless such proceeding is found

to be vexatious or oppressive, the plaintiff would be entitled to institute the suit in the non-contractual forum. Learned Counsel has referred to the

decision in Deutsche Bank AG and another v. Highland Crusader Offshore Partners LP and others reported at [2010] 1 WLR Paragraphs 105 to

107, which states:-

105. The starting point for considering the effect of a non-exclusive jurisdiction clause must be the wording of the clause. In terms of contract law,

I cannot see how a party could ordinarily be said to be in breach of a contract containing a non-exclusive jurisdiction clause merely by pursuing

proceedings in an alternative jurisdiction. It is conceivable that a jurisdiction clause which is not fully exclusive may nevertheless be drafted in such a

way as to have the effect of barring parallel proceedings in certain circumstances, but that is a matter of individual contractual interpretation.

Looking at the matter in general terms, I agree with Raphael's suggestion in the Anti-Suit Injunction, para 9.12 that

"where a non-exclusive jurisdiction clause does not clearly indicate whether prior or subsequent parallel proceedings in a non-selected forum are

permitted or prohibited, the best interpretation will usually be that, by contracting for non-exclusive jurisdiction, the parties have anticipated and

accepted the possibility of some parallel proceedings, and as a result, only foreign proceedings which are vexatious and oppressive for some

reason independent of the mere presence of the non-exclusive clause will be restrained by injunction."

106. Consistently with that approach, when it comes to the question whether the interests of justice require that an anti-suit injunction should be

granted, I do not consider that it would be right to start with a general presumption that parallel proceedings in a non-selected forum are to be

regarded as vexatious or oppressive and that there is a burden on the party responsible for prosecuting them to make out a strong case to justify

them on grounds of matters unforeseeable at the time of the contract or other exceptional circumstances. My reasons are based on principle,

practice and authority.

107. In principle, there are a number of reasons why I do not think that it would be right to adopt such a presumption. First, it is equivalent or at

least comes close to treating a non-exclusive clause as an exclusive jurisdiction clause once proceedings are commenced under it, whereas there is

an important difference. An exclusive jurisdiction clause creates a contractual right not to be sued elsewhere, although the court has a discretion

whether to enforce it (and may refuse as in *Donohue v Armco Inc* [2002] 1 All ER 749). In the case of a non-exclusive clause,

either party is prima facie entitled to bring proceedings in a court of a competent jurisdiction. Duplication of litigation through parallel proceedings is

undesirable, but it is an inherent risk where the parties use a non-exclusive jurisdiction clause.

13. The learned senior Counsel has referred to e-mails dated 20th March, 2013, 3rd April, 2013, 2nd April, 2013, 2nd April, 2014 and 24th

April, 2014 and submitted that the contents of the said e-mails would show that the respondent No. 1 has received informations which are

confidential in nature and the said respondent No. 1 has confirmed that the details of the discussions held in connection with the said NDA would

remain confidential and no commercial information was shared with the respondent No. 2. The respondent No. 1 has never claimed that the

informations supplied by the petitioner were in the public domain or available otherwise. It is submitted that the stand taken by the said respondent

No. 1 that such informations are in public domain is dishonest and clearly establishes that such informations were shared with the respondent No. 2

in connection with the proposed travel show at Mumbai. It is submitted that when the NDA was entered into neither the respondent No. 2 nor the

respondent No. 1 was not in competition with the plaintiff in organizing similar travel trade show. Even when offer was made by the respondent

No. 1 on April 3, 2013, the respondent No. 2 or the respondent No. 1 were not in competition with the plaintiff. It is only on April 2, 2014, the

respondent No. 1 had revealed that it would need the required consent and approval of the respondent No. 2 to further proceed for any

agreement with the said NDA. On 24th April, 2014, the respondent No. 1 admits that the respondent No. 2 is going to launch a travel trade show

which would be in direct competition with the plaintiff and, therefore, the alleged anti-compete Clause between the respondent No. 1 and

respondent No. 2 would not permit the respondent No. 1 to associate further with the plaintiff. It is, thus, submitted that it is now obvious that

proposed travel trade show launched by the respondent No. 1 and respondent No. 2 jointly is in competition with the plaintiff and is the kind and

like of travel trade show organized by the plaintiff. The learned Counsel has also criticized the stand taken by the respondent No. 1 in relation to

the respondent No. 2. It is submitted that in Paragraph 2(p) of its affidavit the respondent No. 1 has alleged that it is only a free lance agent and the

respondent No. 2 is the organizer of the travel trade show. The respondent No. 1 has no control over the conduct or promotion of such show.

Moreover, the defendant No. 1 has contended in the e-mails dated 24th April, 2014 that the respondent No. 2 has proceeded to launch their

travel trade show without the respondent No. 1's agreement. The respondent No. 1 is only a minority partner of the respondent No. 2, whereas

the brochure of the travel trade show at pages 75, 76 and 78 of the Petition and Paragraphs 24 to 30 of the Affidavit-in-reply to respondent No.

1's affidavit would clearly show that the respondent No. 1 is a lead organizer of such travel trade show. It is submitted that the respondent No. 1

and the respondent No. 2 are also passing off the mark used by the plaintiff to advertise its travel trade show (in the form of globe with silhouettes)

for advertising its own travel trade show. The attention of the Court is drawn to the brochure and particularly Pages 76 and 77 for the plaintiff's

mark and the brochure published by the respondent No. 1 and respondent No. 2. It is submitted that the evidence on record would clearly

establish that the respondent No. 1 in collusion with the respondent No. 2 has received confidential information from the plaintiff with regard to the

exhibition business and have used such information to launch their travel trade show.

14. It is submitted that the Court may take into consideration the following factors constituting a prima facie case to grant an injunction:-

i) Admitted supply of confidential information by the plaintiff to the respondent No. 1.

ii) Respondent No. 1 promising not to supply such confidential information to the respondent No. 2.

iii) Respondent No. 1 and respondent No. 2 together are organizing the travel trade show which is in competition with the plaintiff after the plaintiff

passed on such confidential information.

iv) The respondent No. 1 and the respondent No. 2 are using the same globe mark for launching their travel trade show.

v) The respondent No. 1 and respondent No. 2 are organizing the travel trade show in January just before the plaintiff would organize its travel

trade show.

vi) The respondent No. 1 and respondent No. 2 are using the same venue as the plaintiff in Bombay to organize travel trade show.

vii) The respondent No. 1 and respondent No. 2 have enticed away the same media partner of the plaintiff, namely, ""TRAVTALK"" for their travel

trade show.

viii) Similar programmes are being used by the respondent No. 1 and respondent No. 2 as has been used by the plaintiff in their travel trade show.

ix) The contrary stand of the respondent No. 1 in e-mails, affidavit and the actual brochure.

x) Respondent No. 1's denial of its association with respondent No. 2 in organizing the travel trade show.

15. It is submitted that the plaintiff has not only made out a strong prima facie case, the balance of convenience is also in favour of the plaintiff as

the travel trade show has not yet been held and in the event the said show is allowed to be held by using the confidential information obtained by

the plaintiff other than the plaintiff would suffer irreparable injury. It is argued that by reason of the stand taken by the respondent No. 1 in its

affidavit, namely, Paragraph 2(p) that it is a free lance agent with regard to the travel trade show being organized by the respondent No. 2, the

respondent No. 1 cannot resist an order of injunction against the respondent No. 1 from organizing such travel trade show.

16. It is argued that the plaintiff has made a claim for losses and damages suffered by the plaintiff as a result of breach of the agreement by use of

confidential information by the respondent No. 1 and respondent No. 2. The losses and damages have been quantified as a loss of business. This

loss and damage is in addition to the relief for injunction. The plaintiff is entitled to claim such reliefs under Clause 9 of the NDA and also by

Section 40 of the Specific Relief Act.

17. The learned senior Counsel has referred to the decision of the Hon"ble Supreme Court in Srinivas Ram Kumar Vs. Mahabir Prasad and

Others, , Chancery Bench decision of the State of Delaware in Martin Marietta Materials, INC., Vs. Vulcan Materials Company dated 4th May,

2012 the decision of the Supreme Court of the State of Delaware dated 10th July, 2012 (corrected on 12th July, 2012) affirming the decision of

the Court of Chancery and the decision of the Queen"s Bench Division in Personal Management Solutions Limited, Personal Group Benefits

Limited Vs. Brakes Bros. Limited, Gee 7 Group Limited, Gee 7 Wealth Management Limited, Mark Eaton reported at (2014) EWHC 3495

(QB) for the proposition that the Courts will be more willing ""to give a remedy to protect people from being taken advantage of by those they have

trusted with confidential information"".

18. The plaintiff has relied upon a decision of the Bombay High Court in Urmi Juvekar Chiang Vs. Global Broadcast News Limited and Network

18 Fincap Private Limited, for the proposition that the breach of confidence is a broader right and that a person who has obtained information in

confidence is not allowed to use it as a spring board for activities detrimental to the person who made the confidential communication.

19. Mr. S.N. Mukherjee, the learned senior Counsel appearing on behalf of the respondent No. 1 and the respondent No. 3 submits that he

would like to address this Court on the merits of the controversy having reserved his right to deal with the jurisdictional issue at the time of trial. I

consider the said submission to be fair and, accordingly, invited the learned senior Counsel to address the Court on merits reserving the right to

raise the jurisdictional issue at the trial.

20. Mr. Mukherjee submits that a bare reading of the petition would show that the allegations made against the respondent No. 1 and respondent

No. 3 are vague. The petition does not disclose the nature and particulars of the confidential information alleged to have been supplied by the

plaintiff to the said respondents. The allegations against the respondent No. 1 and the respondent No. 2 are grave in nature, that is, the allegation of

fraud has been made without disclosing the confidential information which was given. The plaintiff has failed to make out a prima facie case that any

such information has been used in breach of the NDA. It is incumbent upon the plaintiff at this interlocutory stage to disclose the nature of the

confidential information. It is argued that such disclosure is necessary since allegation of fraud is made against the defendant No. 1 and the

defendant No. 2 which is grave in nature. For any order of injunction to be effective, the Court must know what the confidential information is, that

is being used, otherwise any order would remain vague, requiring the determination of what confidential information was given and used to be

postponed for decision in a contempt proceedings which is not desirable and the respondent No. 1 must know what this information is that is being

relied upon by the plaintiff so that it can adequately put forward its defence including the defence that such information when given by the plaintiff to

the respondent No. 1 was in the public domain and subsequently is in the public domain. It is submitted that Clauses 4.1 and 4.2 of the NDA

permits the respondent No. 1 to take such defence.

21. The learned senior Counsel has referred to Ocular Sciences Ltd. and Anr. Vs. Aspect Vision Care Ltd. and Ors. reported at (1997) R.P.C.

289 at Pages 359 and 360 and CMI-Centers for Medical Innovation GmbH and Another Vs. Phytopharm Plc reported at (1999) F.S.R. 235 at

paragraphs 25, 26 and 45 for the proposition that it is obligatory on the part of the plaintiff to succeed in a breach of confidence action that he

need to and had to identify clearly what was the information he was relying on.

22. It is submitted that as far as the respondent No. 3 is concerned, there is no agreement between the plaintiff and the respondent No. 3 and as

such, no complaint can be made against the respondent No. 3 for breach of agreement. The respondent No. 1 has all throughout asserted in its

several e-mails that there has not been disclosure of any confidential information passed by the plaintiff to the respondent No. 1. The plaintiff has

also not been able to produce any evidence to show any information that is confidential in nature and have been used by the respondent No. 1 or

the respondent No. 2 or the respondent No. 3 in relation to the proposed travel trade show. The documents disclosed by the plaintiff seem to

suggest that all that was disclosed to the respondent No. 1 was financial information relating to the plaintiff. It is not the use of any financial

information which is, however, complained of in the Plaint and Petition. It is submitted that the business model of the plaintiff, namely, B2B and

B2C has been adopted by the respondent Nos. 1 and 2. However, no disclosure has been made as to the information relating to such business

model which was given in confidence to the plaintiff. On the contrary, the disclosure made by the respondent No. 1 itself show both direct

consumers/client and the business stakeholders in the travel business have attended travel shows of the respondent No. 1. It is submitted that the

impression sought to be created by the plaintiff that information was obtained surreptitiously by the respondent No. 1 is baseless since in the

communication of 5th March, 2013 that is prior to NDA it was disclosed to the plaintiff that the respondent No. 1 had a stake in the respondent

No. 2. In fact, the plaintiff was aware of the exact relationship and recognized the respondent No. 1 and the respondent No. 2 to be partners

which would be borne out from e-mails of the plaintiff dated 20th March, 2013, 3rd April, 2013, 29th March, 2014 and 1st April, 2014. The

contents of the said e-mails would clearly establish that prior to disclosure of any alleged confidential information to respondent No. 1, the plaintiff

was aware that the respondent No. 2 is an associate of the respondent No. 1. It is submitted that the respondent No. 1 could not have even

discussed the contents of the NDA in terms of Clause 15 of the NDA is not tenable since the plaintiff would have to assume that in pursuing its

transaction with the plaintiff, the respondent No. 1 would also have to act with utmost good faith towards the respondent No. 2.

23. The learned senior Counsel has placed reliance upon the decision of the Hon"ble Supreme Court in Needle Industries (India) Ltd. and Ors.

Vs. Needle Industries Newey (India) Holding Ltd. and Ors. reported at 1981 (3) SC 333 paragraphs 47 and Dean Vs. Macdowell reported at 8

Chancery Division 345 at Pages 350 and 351 for the proposition that the respondent No. 1 being a stakeholder in respondent No. 2 is required to

act in utmost good faith and there is to the extent a fiduciary relation between the parties. Therefore, before acquisition of the plaintiff, the

respondent No. 1 would have to obtain permission of the respondent No. 2. In dealing with the submission with regard to the unauthorized use of

logo it is submitted that no case has been made out of infringement of any trademark or passing off of any trademark or infringement of copyright in

any artistic work and, accordingly, no relief can be granted. It is submitted that an interim relief can only be made in aid of the final relief. As final

relief has not been claimed, the plaintiff would not be entitled to claim any relief in this regard. In any event, no order of injunction can be passed as

damages have been quantified by the plaintiff.

24. Mr. Mukherjee has referred to the e-mail dated 3rd April, 2013 in which the plaintiff has quantified as INR 3,000 lakhs as the value of its 50%

stock of the plaintiff and claimed Rs. 50 crores as the loss of business. The learned senior Counsel has referred to an unreported judgment of this

Court being Suit No. 290 of 1994 dated 26th June, 1995 (The Industrial Gases Ltd. and Anr. Vs. The Kamrup Industrial Gases Ltd. and Anr.)

and the decision of the Appeal Court confirming the same reported at 1996 (2) CLT 483 (HC) affirming the said decision for the proposition that

a suit for perpetual injunction would not lie unless there exists no standard for ascertaining the actual damage caused or likely to be caused. This is

not to say that a plaintiff cannot claim damages in lieu or in addition to such injunction. But where the plaintiff himself assesses the amount, the

Court may rely upon such statement at least at the interlocutory stage to hold that the injury, if any, caused to the plaintiff can be compensated by

damages and that itself would be a sufficient ground for denying the grant of injunction to the plaintiff.

25. The learned senior Counsel has distinguished the decision in Delaware (supra) in submitting that in the said decisions it was admitted that

confidential information had been imparted and there was an express bar of using such confidential information for a hostile takeover. JDA and

NDA in that agreement specifically provided that in case of breach of agreement, i.e., using of confidential information of hostile takeover,

monetary relief could not be claimed, but a party would be entitled to both injunction and specific relief. It was the law in the State of Delaware

that if an agreement makes such provision, it meant that a case of irretrievable injury had been made out and in case of breach any confidentiality

agreement injunction would follow. In the instant case, the plaintiff has failed to adduce any evidence to show what was the confidential

information, how it was used and the manner of its use in organizing the travel trade show. The agreement itself does not bar a claim for damages, it

only provides that in a situation where damages would not be an adequate remedy equitable relief may be pursued. It is also not the law in India

that the provisions of Specific Relief Act can be overridden by agreement and in particular, Section 38(2) of the Specific Relief Act which applies

the provisions of Part-II of the Specific Relief Act. Therefore, where damages is an adequate relief, no injunction should be granted. It is argued

that this is more so as in these proceedings the claim for damages has proceeded on the basis that by reason of the travel trade show, the plaintiff

has lost its entire business and, therefore, is entitled to the value of the entire business being computed and assessed at Rs. 50 crores.

26. The decision in Personal Management (supra) specifically recognizes that specific performance of a confidentiality agreement is a discretionary

remedy and it is not to be granted if damages are an adequate remedy. It is submitted that the Court was declined to pass any interim order by

taking into consideration the fact that the plaintiff has failed to make out any case for passing off or infringement. The plaintiff has failed to disclose

the confidential information alleged to have been supplied or has been used for travel trade show. There is no uniqueness about B2B and B2C

model in travel trade show and the information supplied by the plaintiff is in public domain. However, at the conclusion Mr. Mukherjee on

instruction produced before this Court a communication dated 22nd December, 2014 in which the respondent No. 2 has agreed to discontinue the

usage of image presently used on the cover page of its brochure for 2015 IITT event, i.e., the image with the seven wonders of the world around

the circle.

27. Mr. Moloy Kr. Ghosh, the learned Counsel appearing on behalf of the respondent No. 2 submits that the plaint does not disclose any cause of

action against the respondent No. 2. It is submitted that the plaintiff was aware after March, 2013 that the respondent No. 2 would be launching

Travel Show in Mumbai from 16th to 18th January, 2014 in an arrangement with the respondent No. 1. The respondent No. 1 informed the

plaintiff in its e-mail dated 29th March, 2014, inter alia, that the respondent No. 2 had set upon a Travel Industry launch and the respondent No. 1

had assisted the respondent No. 2 as much as possible and one of the directors of the respondent No. 1 attended the said event. The respondent

No. 2 had successfully launched a Travel Show in Mumbai from 16th to 18th January, 2014. The plaintiff has filed the instant suit on 2nd

September, 2014. The plaintiff alleged in Paragraph 32 at page 25 of the Petition that the plaintiff has further come to learn from Volume I Issue 12

of Wanderlust, a business Travel Magazine published on 4th September, 2014 that the respondent Nos. 1 and 2 in furtherance of the breach of

confidential information are jointly purporting to organize a Travel Trade Show on and from 15th January, 2015 to 17th January, 2015 in Mumbai

Exhibition Centre. The allegations made in Paragraphs 32 to 47 of the instant application are based on the advertisement published in the business

travel magazine on 4th September, 2014, i.e., two days after 2nd September, 2014 on which date the plaintiff filed the plaint in the present suit

was verified. The allegations made in Paragraph 32 onwards of the application are beyond the scope of the suit. The information pertaining to

Travel Show are already in various books/journals and websites and alleged claim of the plaintiff regarding its alleged exclusive right to such

information does not have any basis whatsoever. The respondent No. 2 has relied upon print out downloaded from the website of the plaintiff

regarding lay out floor plan of the venue of the Travel Exhibition/Travel Trade Show to be held by the plaintiff on 4th January, 2015 to 6th January,

2015 at Mumbai Exhibition and Convention Centre (Hall-I) Mumbai and the participation package of the plaintiff, inter alia, relating to its Travel

Exhibition/Travel Trade Show to be held on 4th February, 2015 to 6th February, 2015 at Mumbai.

28. It is submitted that none of the alleged confidential information as mentioned in the e-mail dated 19th March, 2013 is actually a confidential

information and the plaintiff is not entitled to claim any relief. The emails of the respondent No. 1 dated 2nd April, 2014 and 24th April, 2014

clearly show that no commercial information or any confidential information provided by the plaintiff has been shared by the respondent No. 1 with

the respondent No. 2.

29. There is no specific legislation in India to protect trade secrets and confidential information. Nevertheless, Indian Courts have upheld trade

secret protection on basis of principles of equity, and at times, upon a common law action of breach of confidence, which is in effect amounts a

breach of contractual obligation. The remedies available to the owner of trade secrets is to obtain an injunction preventing the licensee from

disclosing the trade secret, return of all confidential and proprietary information and compensation for any losses suffered due to disclosure of trade

secrets.

30. In India, a person can be contractually bound not to disclose any information that is revealed to him/her in confidence. The Indian courts have

upheld a restrictive clause in a technology transfer agreement, which imposes negative covenants on licensee not to disclose or use the information

received under the agreement for any purpose other than that agreed in the said agreement.

31. The e-mails exchanged between the plaintiff and the respondent No. 1 would show that the respondent No. 1 was interested in creating an

event for the Indian travel market and were assessing whether respondent No. 1 should decide to launch joint venture or acquiring an existing

business. In furtherance of that object, NDA was entered into. The plaintiff knew at the time of entering into the said NDA that the respondent No.

1 has some interest in the respondent No. 2. The communications that had taken place between the parties are primarily for joint venture or

acquisition. The NDA was entered into in anticipation of a future agreement or arrangement. The NDA records that the plaintiff would be required

to disclose certain information relating to the transaction so that an evaluation might be made of the transaction. The term ""transaction"" has not been

defined in the NDA. The disclosures made in the e-mail dated 19th March, 2013 apparently shows that the respondent No. 1 was trying to

evaluate the worth of the plaintiff. On 20th March, 2013, the plaintiff shared certain informations which the plaintiff claims to be confidential. The

plaintiff cautioned the respondent No. 1 that such information shall not be shared with the partner of the respondent No. 1, namely, respondent

No. 2 or any of their representatives and such information is shared in good faith with the genuine intent for acquisition and such information should

be used only for the purpose of the said acquisition and not as competitive information. The nature of the e-mail suggests that certain informations

were furnished by the plaintiff to the respondent No. 1 which could be used as a competitive information. The respondent No. 1 also does not

deny that the information supplied by the plaintiff to the respondent No. 1 in the said e-mail and/or in subsequent disclosure are not confidential in

nature. The defendant No. 1 also admits that such informations are commercial in nature and would not be shared with any one including the

respondent No. 2.

32. The adjective ""confidential"" means anything spoken or given in confidence. It is a very private matter. It is suggestive of intimacy and

contemplates entrustment with another secret affairs. (The New Collins Concise Dictionary)

33. Some of the facts relevant for determination whether a given body of information is confidential, the extent to which the information is known

outside the business of the owner, the value of the information to him and the competitors and the ease or difficulty with which the information

could be properly acquired or duplicated by others. If a person is proved to have used confidential information directly or indirectly obtained from

the plaintiff without the consent expressed or implied of the plaintiff, he would be guilty of an infringement of the plaintiff's rights. The essence of

this branch of law whatever the origin it may be, is that a person who has obtained information in confidence is not allowed to use it as a spring

board for activities detrimental to the person who made the confidential communication. Protection to confidential information proceeds and

depends on the principle of equity that he who has received information in confidence shall not take unfair advantage of it. The confidant must not

make use of it to the prejudice of him who gave it without obtaining his consent. It is well-settled that information imparted in confidence would be

protected. If ideas and informations were acquired by a person in such circumstances that it would be a breach of good faith to publish them and

he has no just cause or excuse for doing so, the Court shall grant injunction against him. (Law of Copyright and Industrial Designs, P. Narayanan,

4th Edition)

34. In Personal Management (supra) the development of law of confidential information was narrated. The history of law which protects

confidential information was reviewed by Lord Griffiths in the famous Attorney General Vs. Guardian Newspapers Ltd. (No. 2) (1990) IAC 109,

who said that it was judge-made law, reflecting the willingness of the judges "to give a remedy to protect people from being taken advantage of by

those they have trusted with confidential information." The exposition of law by Griffiths in relation to confidential information as referred to in

Personal Management (supra) is stated below:-

Although the terms of a contract may impose a duty of confidence the right to seek a remedy was not dependent on contract: it existed as an

equitable remedy.

165. Lord Griffiths said that the duty of confidence is, as a general rule, also imposed on a third party who is in possession of information which he

knows is subject to an obligation of confidence: (see Prince Albert v. Strange (1849) 1 Mac. and G. 25, and Duchess of Argyll v. Duke of Argyll

(1967) Ch. 302.

If this was not the law the right would be of little practical value..." (ibid.)

166. Moreover,

When trade secrets are betrayed by a confidant to a third party it is usually the third party who is to exploit the information and it is the activity of

the third party that must be stopped in order to protect the owner of the trade secret." (ibid.)

167. Lord Griffiths said that the task of the judge is to balance,

....the public interest in upholding the right to confidence, which is based on the moral principles of loyalty and fair dealing, against some other

public interest that will be served by the publication of the confidential material.

...

I have no doubt, however, that in the case of a private claim to confidence, if the three elements of quality of confidence, obligation of confidence

and detriment or potential detriment are established, the burden will lie upon the defendant to establish that some other overriding public interest

should displace the plaintiff's right to have his confidential information protected."" (ibid.)

168. In the same case, Lord Goff, at p.28, said that he had resisted the temptation to ""embark upon an exegesis of the law relating to breach of

confidence"" but he went on to make the following observations.

A duty of confidence arises when confidential information comes to the knowledge of a person (the confidant) in circumstances where he has

notice, or is held to have agreed, that the information is confidential, with the effect that it would be just in all the circumstances that he should be

precluded from disclosing the information to others....I of course understand knowledge to include circumstances where the confidant has

deliberately closed his eyes to the obvious. The existence of this broad general principle reflects the fact that there is such a public interest in the

maintenance of confidences, that the law will provide remedies for their protection. I realise that, in the vast majority of cases, in particular those

concerned with trade secrets, the duty of confidence will arise from a transaction or relationship between the parties - often a contract, in which

even the duty may arise by reason of either an express or an implied term of that contract. It is in such cases as these that the expressions

"confider" and "confidant" are perhaps most aptly employed. But it is well settled that a duty of confidence may arise in equity independently of

such cases....

169. Lord Goff then said that there were three qualifications to the general principle:

(1) The principle of confidentiality only applies to information to the extent that it is confidential. In particular, once it had entered the public

domain, as a general rule, the principle of confidentiality could have no application to it.

(2) The duty of confidence applies neither to useless information, nor to trivia.

(3) Although the basis of the law's protection of confidence is that there is a public interest that confidences should be preserved and protected by

the law, nevertheless that public interest may be outweighed by some other countervailing public interest which favours disclosure. It was this third

"limiting principle" which may require a court to carry out a balancing operation, weighing the public interest in maintaining confidence against a

countervailing public interest favouring disclosure.

35. Determining whether information is confidential is dependent upon several factors. In *Saltman Engineering Co. v. Campbell Engineering Co.*

Ltd. reported at 1963 (3) All ER 413 the Court of Appeal held that the ""confidential"" information: ""must not be something which is public property

and public knowledge. On the other hand, it is perfectly possible to have a confidential document, be it a formula, a plan, a sketch, or something of

that kind, which is the result of work done by the maker on materials which may be available for the use of anybody; but what makes it confidential

is the fact that the maker of the document has used his brain and thus produced a result which can only be produced by somebody who goes

through the same process".

36. The existence of irreparable harm is an essential consideration for a court in determining whether to award an injunction. Plaintiff would

commonly claim that when confidential information is disseminated or trade secrets are lost, so too will be its competitive advantage. It will have

gone through an extended period when its product or services are not longer unique in the marketplace. Such a situation may not be compensable

by an award of damages.

37. The dissemination and/or sharing of any confidential information is liable to cause harm which does not involve proof of actual harm or special

damage. In *Martin Marietta (supra)* it was stated that "contractual stipulations as to irreparable harm alone suffice to establish that element for the

purpose of issuing.....injunctive relief.

38. The "contractual stipulation" in Clause 9 of the NDA contemplates that in case of breach of the said clause award or damage would not be an

adequate remedy and the disclosure (plaintiff) shall be entitled to seek injunctive or other equitable relief in relation to any such breach. Prevention

of harm before it may happen is an obvious reason for litigation (*Personal Management (supra)*).

39. In *Saltman Case (supra)* it was held that the maintenance of secrecy, according to the circumstances in any given case, either rests on the

principles of equity, that is to say the application by the court of the need for conscientiousness in the course of conduct, or by the common law

action for breach of confidence, which is in effect a breach of contract.

40. Equity may afford remedy where the disclosure was in course of negotiations that never produced contract (*Seagar Vs. Copydex; 1967 (2)*)

All ER 415, *Lac Monarch Vs. International Corona; (1990) F.S.R. 441*). In such a situation, where injunctive or other equitable relief is sought in

the exclusive jurisdiction, the plaintiff need not show legal remedies to be inadequate. Equitable remedies are, however, susceptible of adjustment

to the particular case in a way. The law does not envisage by, for example, the imposition of terms on a successful plaintiff and equity has its own

scheme of defences, for example, unclear hands and delay, which may defeat equity. Under a system of free competition, it is to the advantage of a

trader to obtain as much information as possible concerning the business of his rivals and to let him know as little as possible of his own. The

information could be a trade secret or a business secret. It may relate to financial arrangement, the customer list of a trader and some of the

informations in this regard would be of a highly confidential nature as being potentially damaging if a competitor obtained such information and

utilized the same to the detriment of the giver of the information. Business information such as cost and pricing, projected capital investments,

inventory marketing strategies and customer's list may qualify as his trade secrets. The Court need to find out if the germ of the idea shared by the

plaintiff with the respondent No. 1 was the spring board which enabled the respondent No. 2 to organize the trade fair with the assistance to the

respondent No. 1.

41. Mr. Mukherjee, the learned Senior Counsel appearing on behalf of the Respondent Nos. 1 and 3 submitted that the rules relating to furnishing

of particulars in pleadings apply to breach of confidence actions as they apply to all other proceedings. In Ocular Sciences Ltd. (supra) it was

stated that the Courts would be careful to ensure that the plaintiff gives full and proper particulars of all the confidential information on which he

intends to rely in the proceedings failing which the Court may infer that the purpose of the litigation is harassment rather than the protection of the

plaintiff's rights and may strike out the action as an abuse of process. When the allegations are of a grave character against both the respondents,

charging the respondent No. 1 in improperly divulging trade secretes and the respondent No. 2 improperly procuring such informations and using

the same in relation to its proposed travel show, the requirement of furnishing particulars of the nature of the confidential information divulged is

essential. There cannot be any doubt that if the plaintiff imputes conduct of a gravely improper character, it calls for clear particularization. The

normal approach of the Court as one could find from the decided cases is that if a plaintiff wishes to seek relief against the respondent for misuse of

confidential information, it is his duty to ensure that the respondent knows what information is in issue. This is not only for the reasons set out by

Edmund Davies L.J. in John Zink but for at least two other reasons. First, the plaintiff usually seeks an injunction to restrain the respondent from

using its confidential information. Unless the confidential information is properly identified, an injunction in such terms is of uncertain scope and may

be difficult to enforce. Secondly, the respondent must know what he has to meet. He may wish to show that the items of information relied on by

the plaintiff are matters of public knowledge. His ability to defend himself will be compromised if the plaintiff can rely on matters of which no

proper warning was given. This principle was reiterated in Ocular Sciences Ltd. (supra).

42. In CMI-Centres (supra) Lord Justice Laddie stated that in order to succeed in a breach of confidence action, the plaintiff is required to

address four matters at least, namely:-

(1) He has to identify clearly what was the information he was relying on;

(2) He has to show that it was handed over in circumstances of confidence;

(3) He has to show that it was information of the type which could be treated as confidential; and

(4) He has to show that it was used without his licence or there was a threat to use it.

43. As regards item (1) he has to be precise even in interlocutory proceedings. The defendant is entitled to be told what it was he who was

accused of misusing. As regards items 2 to 4 he has to show at the interlocutory stage that he had at least a seriously arguable case in relation to

each of them.

44. In Paragraph 16 of the petition, it is stated by the plaintiff that the petitioner has supplied confidential information relating to finance and

marketing to the respondent No. 1 on March 20, 2013. The information supplied relating to matters concerning marketing strategy, customer base,

costing and profitability to an organization of travel trade shows. The information is of nature which was not available in the public domain and was

exclusively available with the petitioner. In dealing with the said paragraph, the respondent No. 1 made bald denial. The essence of the defence

appears to be that no information was supplied by the petitioner regarding finance and marketing on March 20, 2013 or any other date and that

any information supplied by the petitioner in relation to marketing strategy or strategy of profitability are available in public domain and it cannot be

said that they are exclusive to the petitioner.

45. There cannot be any doubt that the cause of this litigation is the refusal of the part of the respondent No. 1 to enter into a JDA with the plaintiff.

The defendant No. 2 may not have as much presence as that of the plaintiff in relation to the travel trade show but the reputation and the goodwill

of the respondent No. 1 worldwide in organizing trade and travel shows cannot be doubted. The respondent No. 1 has explicitly stated in the e-

mail dated 5th March, 2013 that it was intended to acquire any existing business or to have a joint venture with an Indian Company. It does not

appear from the materials-on-record that the respondent No. 1 was an active collaborator in the earlier travel trade show organized in Mumbai.

However, having regard the disclosures made by the defendant No. 1 with regard to interest of respondent No. 2, the plaintiff was aware of the

existence of a relationship between the respondent No. 1 and respondent No. 2 and the fact that the respondent No. 2 is also engaged in similar

business. The plaintiff did not pray for any injunction restraining the respondent No. 2 from holding its travel fair in January, 2014. By that time the

validity period of NDA for six months had expired. Except for exchange of e-mails, no formal agreement was executed. The plaintiff does not show

that the respondent No. 2 has organized the said travel fair with the information supplied by the plaintiff to the respondent No. 1. The plaintiff does

not allege that the respondent No. 1 has shared any confidential information with the respondent No. 2 in relation to the travel trade show held in

Mumbai in January, 2014. In 2014, the e-mails exchanged between the plaintiff and the respondent No. 1 would show that the plaintiff was

expressing its unhappiness about the conduct of the respondent No. 1 in not executing an agreement with the plaintiff. In January, 2014, the

respondent No. 2 made a travel industry launch and the respondent No. 1 appears to have assisted the said respondent No. 2 in launching the said

show. The experience of the respondent No. 1 in the travel trade show and/or similar kind of show cannot be doubted. However, at the same time

it cannot be said that the information supplied by the plaintiff to the respondent No. 1 are not confidential in nature which could have been used by

a competitor. The respondent No. 1 did not deny the said fact. Initially, the respondent No. 1 submitted that they were in no way connected with

the proposed travel show to be held in Mumbai in January, 2015. However, it reveals that they are one of the co-sponsorers of the events. In fact,

event was organized jointly by the respondent No. 1 and the respondent No. 2. In fact, the brochure published by the respondent Nos. 1 and 2

also depicts the logo used by the plaintiffs for the last several years. The respondent No. 1 and respondent No. 2 has failed to explain the use of

the said logo. If the respondent No. 1 is correct in his contention that his name has been misprinted or it is a fair organized by the respondent No. 2

in that event the name of the respondent No. 1 could not have appeared so prominently in the brochure along with the respondent No. 2. The

plaintiff in this proceeding cannot be asked to disclose the nature of the informations more than what has been stated at Paragraph 16 as such

disclosures in detail would make such informations public and would no more remain as confidential or secret. Such informations on the basis of

the own admission of the respondent No. 1 are confidential. The Court is required to assess the confidentiality of such informations on the basis of

the materials on record. There cannot be any doubt that informations have been shared by the plaintiff with the respondent No. 1 in confidence and

under the circumstances which established confidentiality, that is to say, the plaintiff has reposed faith and trust on the respondent No. 1 in sharing

such information with the respondent No. 1 relating to acquisition of business. However, the factor which is against the plaintiff is that the plaintiff in

spite of knowing fully well that the respondent No. 1 is a stake holder in the respondent No. 2 did not prevent the respondent No. 2 in launching

such travel show in Mumbai in the year January, 2014 although circumstances might create a reasonable and genuine apprehension in the mind of

the plaintiff that the respondent No. 1 could have been shared or divulged to the respondent No. 2 such confidential informations having regard to

the nature of relationship between the respondent No. 1 and the respondent No. 2. The respondent No. 1 could have parted with the said

information with the respondent No. 2 and more so since during the initial period of six months under the NDA that expired in September, 2013

no agreement as contemplated under NDA has been reached or executed. In such circumstances holding of travel fair individually by the

respondent No. 2 with its own resources cannot be stopped. In balancing the equities and the comparative hardship, I pass the following order:-

a) The image presently used on the cover page of the brochure for 2015 IITT event, i.e., the image with the seven wonders of the world around

the circle should be removed.

b) The name of the respondent No. 1 shall not be mentioned in any brochure and publicity materials as joint organizer for the travel show, i.e.

2015 IITT event.

c) Injunction restraining the defendant No. 1 to share any information concerning marketing strategy and customer base received from the plaintiff

till September 30, 2015.

d) On fulfillment of the aforesaid conditions, the respondent No. 2 shall be permitted to hold the travel show.

46. This interlocutory application is, accordingly, disposed of.

47. Urgent xerox certified copy of this judgment, if applied for, be given to the parties on usual undertaking.