IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 3rd DAY OF JUNE, 2021

PRESENT

THE HON'BLE MR.ABHAY S. OKA, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE SACHIN SHANKAR MAGADUM

COMAP NO.37 OF 2020

BETWEEN:

1. Kenrise Media Pvt. Ltd.,
A Company incorporated under
the Companies Act, 2013,
Having its registered offices
at: #849, 11th Main, 2nd Cross,
HAL 2nd Stage, Indiranagar,
Bengaluru – 560008,
Represented herein by its authorized
signatory Mr. Rohin Dharmakumar.

2. Mr. Rohin Dharmakumar,
Son of Mr. Valal Sekharan Dharmakumar,
Aged:43 years,
Chief Executive Officer of Kenrise Media Pvt Ltd.,
Having his offices at: #849, 11th Main,
2nd Cross, HAL 2nd Stage,
Indiranagar, Bengaluru – 560 008.

3. Ms. Seema Singh,
Daughter of Mr. Kabindra P Singh,
Aged:49 years,
Having her offices at:#849, 11th Main,
2nd Cross, HAL 2nd Stage,
Indiranagar, Bengaluru – 560 008.

4. Mr. Sumanth Raghavendra,
Son of Mr. H.N. Raghavendra,
Aged:46 years,
Having his offices at:#849,
11th Main, 2nd Cross, HAL 2nd Stage,
Indiranagar, Bengaluru – 560 008.

. . . Appellants

(By Shri Pradeep Nayak, Advocate)

AND:

1. Mr. Ashish K. Mishra,
Son of Mr. Ashok Kumar Mishra
Aged:35 years,
Residing at 3B, Shakti Unicus,
Plot F1, Deonar Pada Road,
Inside Duttaguru Society,
Gate No.5, Mumbai – 400 088.

2. Ms. Harveen Ahluwalia
Daughter of Mr. Baijit Singh Walia,
Aged:26 years,
Residing at:210A, 2nd Floor,
Leela Ram Market,
South Extension – II,
New Delhi – 110 049.

3. Mr. Padip Kumar Saha
Son of: Not known
Aged:35 years,
R/at:187-D, Siddhartha Extension,
Pocket – C, South Delhi – 110 014.

4. Mr. Pranav Srinivasan,
Son of Mr. Srivilasan Madhavan,
Aged:27 years,
Residing at:72B, Third Floor,
Nil Block, Malviya Nagar,
New Delhi – 110 017.

5. Slowform Media PTE Limited,
A Company incorporated under
the laws of Singapore, Having
its registered office at:68 Circular Road,
#02-01, Singapore 049422,
Represented by its authorized signatory.

6. Slowform Media Private Limited,
A Company incorporated under the Companies Act, 2013,
Having its registered office at:E-210, 2nd Floor,
H-16, MHADA Building, SION Transit Camp Road,
Pratiksha Nagar,
Mumbai – 400 022,
Represented by its authorized signatory.

7. Ms. Priya Bubna,
Wife of Mr. Ashish K Mishra
Aged:35 years,
Residing at:3B, Shakti Unicus, Plot F1,
Deonar Pada Road,
Inside Duttaguru Society,
Gate No.5, Mumbai – 400 088.

. . . Respondents

(By Shri M. Dhyan Chinnappa, Senior Advocate
for Shri Gerald Manoharan, Advocate for R1,
Shri Ameet Dutta, Advocate for
Shri Vikarm Unni, Advocate for R2 to R7)

This Commercial Appeal (COMAP) is filed under Section 13 (1A) of the Commercial Courts, Commercial Division and Commercial Appellate Division of the High Courts Act, 2015 read with Order XLIII Rule 1 (r) of the CPC, 1908, praying to (1) Set aside the common order dated 22nd October 2020, dismissing I.A.Nos.2/2019, 3/2019 and 4/2019, in Com.O.S.No.362/2019, passed by the learned LXXXIII Additional City Civil and Sessions Judge (Commercial Court) (CCH-84), Bengaluru, produced

herewith at Annexure-A, and consequently allow I.A.No.2/2019, I.A.No.3/2019 and I.A.No.4/2019 in Com.O.S.No.362/2019; (2) Grant costs of these proceedings to the Appellant and (iii) Grant such other and further reliefs.

This appeal having been heard and reserved for Judgment, coming on for pronouncement of Judgment, this day, ***Chief Justice*** delivered the following:

JUDGMENT

By this appeal under sub-section (1A) of Section 13 of the Commercial Courts Act, 2015 read with Rule 1(r) of Order XLIII of the Code of Civil Procedure, 1908 (for short 'the CPC'), the appellants who are the original plaintiffs have taken an exception to the Judgment and order dated 22nd October, 2020 passed by the learned LXXXIII Additional City Civil and Sessions Judge (CCH-84) at Bengaluru in the commercial original suit No.362/2019. By the said Judgment and order, Interlocutory Applications (IA) II, III, and IV filed by the appellants under Rules 1 and 2 of Order XXXIX of CPC, for grant of temporary injunction have been rejected.

2. There are mainly four agreements, which are subject matter of Commercial Original Suit No.362 of 2019. The first one is an Exit Agreement dated 31st July, 2019, the second

agreement is the Executive Employment Agreement dated 1st April 2018, the third agreement is the Shareholders Agreement executed on 12th January, 2018 and the fourth agreement is the Share Subscription Agreement executed on 12th January, 2018. These agreements have been executed by and between the first appellant company and the first respondent. There are separate agreements of employment executed between the first appellant and second to fourth respondents.

3. The first appellant Kenrise Media Pvt Ltd., is a private limited company incorporated under the provisions of the Companies Act, 2013. The second appellant is a founder and the Chief Executive Officer of the first appellant and the third appellant is also a founder and the Editor-in-Chief of the Online News Platform of the first appellant. It is stated that the fourth appellant is also a founder of the first appellant company.

4. The first appellant runs and operates an online news platform known as "The Ken" which is accessible and available to the public at www.the-ken.com. It is also available by way of mobile application on android and IOS operating systems. It is claimed that "The Ken" is an online publication which publishes

news stories pertaining to the technology, start-ups, developments in the healthcare sector and on other topics. The "The Ken" publishes only one story every weekday. It is claimed that as a result of limited number of stories published by the first appellant, a lot of time, energy and editorial supervision is required on publication of each story. It is claimed that the news stories published by the first appellant are well researched, product of independent skill and labour as well as entirely unique. It is contended that "The Ken" which was launched in the year 2016 has generated a significant and unquestionable values amongst its readers. It is claimed that "The Ken" is well respected by various business leaders, policy makers, professionals, organizations etc.

5. It is stated in the plaint that the first respondent (original first defendant) was a co-founder of the first appellant along with the second to fourth appellants. According to the case of the appellants, the second respondent (second defendant) was employed as a staff writer with the first appellant from 19th March, 2018 to 12th July, 2019. It is further alleged that the third respondent (3rd defendant) was employed by the first appellant as

a staff writer between 7th February, 2019 and 6th August, 2019. Similarly, the fourth respondent (4th defendant) was employed as a staff writer by the first appellant from 13th August, 2018 to 24th July, 2019.

6. It is claimed in the plaint that the news platform of "The Ken" is a radical departure from the business model adopted by the traditional news media. The first appellant does not carry or publish any advertisements on its website and it makes available its news stories to the public on a subscription based model. The readers who are interested in reading and having access to the news articles published by the first appellant have to subscribe to the first appellants' portal. The first appellant has various plans such as free plan where a reader who does not pay only receives four news articles per month without subscription. Another plan is a quarterly paid subscription plan and there is an annual subscription plan as well. Upon payment of subscription fees, the readers have guaranteed to access to the news stories published, archives of the portal of the first appellant consisting of more than 846 articles.

7. It is claimed that the first appellant was able to compile the information pertaining to its customers, subscribers and business vendors. It is claimed that the first appellant was able to analyze its financial revenue and forecast its projected growth on such basis. This is how, the internal functioning of the first appellant resulted in generation of compilation of various categories of confidential information that was proprietary to it. It is alleged that such information was confidential and exclusive product of the first appellant which had a strict protocol for internal sharing of such information and for protection against unwarranted disclosure of the same. It is claimed that on 12th January, 2018, a Share Subscription Agreement (for short 'SSA') and Shareholder's Agreement (for short 'SA') were executed to which the appellants and the first respondent are the parties. The said agreements record the investment made by the first respondent in the first appellant company. In the said agreements, various representations and warranties offered to the investors were set out and the first appellant and its promoters including the second to fourth appellants and the first respondent were required to indemnify the investors for any damages or loss occasioned to them. Under the SA, the mutual rights and obligations of the

shareholders *vis-à-vis* each other as well as the first appellant were set out. One of the important clauses therein was that the second to fourth appellants as well as the first respondent agreed and acknowledged not to compete with the first appellant or solicit its employees, customers or vendors from leaving the first appellant for a period of thirty six months from the date of ceasing to be either an employee of the first appellant or shareholders of the first appellant. This is provided in clause 16 of the SA. Clause No.23 of the said agreement provides for protection of the confidential information belonging to the first appellant. Clause 24 of Schedule-IV of the said agreement defines confidential information.

8. An Executive Employment Agreement (for short 'EEA') was executed between first respondent and the first appellant on 1st April, 2018. Similar separate EEAs were executed between the first appellant and second to fourth appellants. As far as the EEA entered into between the first appellant and first respondent is concerned, it was provided therein that the first respondent will continue to be employed with the first appellant for a minimum period of four years from the date of the agreement. Clause (6)

thereof required that all the works carried out by the first respondent are the exclusive works of the first appellant during his employment. It was provided that the first respondent shall not associate himself with any competing business. The first respondent had agreed and acknowledged that he would not divulge or commercially exploit in any manner the confidential information of the first appellant. Under clause (11), it was specifically provided that the first respondent had agreed that any breach of terms of the employment agreement by him would result into irreparable loss and injury to the first appellant and would entitle the first appellant to seek liquidated damages to the extent of rupees fifty lakhs.

9. As the second to fourth respondents were regular employees of the first appellant as 'staff writers', the Employment Agreements were executed by the first respondent with each of them on 27th February, 2018, 7th February, 2019 and 12th July, 2018 respectively. It is provided in the said employment agreements that the second to fourth respondents would protect the confidential information belonging to the first appellant. There is also a clause in the said agreements under which,

second to fourth respondents were prevented from soliciting the services, business, know-how and the association customers, employees, business associates and vendors of the first appellant. The agreements provide that all the works done by the second to fourth respondents will be exclusive works belonging to the first appellant.

10. It is alleged in the plaint that the first respondent created an unprofessional work environment. Instead of terminating the services of the first respondent, for facilitating cordial relationship and with a view to ensure a productive work environment, the appellants were committed to facilitate a clean exit for the first respondent. It is alleged that there were negotiations between the appellant and the first respondent regarding the terms and conditions of the exit of the first respondent. It is alleged that the first respondent delayed the same beyond 12th July, 2019, as he wanted to ensure that he is entitled to the benefits under SA and SSA. Eventually, the exit agreement was arrived at between the appellant and the first respondent on 31st July, 2019. The terms and condition of the said exit agreement which came into force with effect from 31st July, 2019 have been set out in the plaint.

11. It is pointed out that the second, third and fourth respondents resigned from their employment with the first appellant. The manner in which they tendered resignations is also set out in the plaint. There are other factual assertions made in the plaint setting out the sequence of events and the alleged breaches committed by the second to fourth respondents. It is alleged that the time of the resignations tendered by the second to fourth respondents is very significant, as, during the said period, negotiations for exit of the first respondent were in progress. It is pointed out that it was the first respondent who announced the resignations of the second to fourth respondents on the Twitter platform even before the same were submitted. The specific allegation in the plaint is that the first to fourth respondents have actively colluded with each other and while exiting the first appellant, they took with them the confidential information and business know-how of the first appellant. It is alleged that the said respondents made an unauthorized use of such information for setting up of a new venture by name “The Morning Context” which is similar to the first appellant’s news platform “The Ken”. It is alleged that the respondents, in their

pre-planned exit from the first appellant have committed premeditated conspiracy to defraud the first appellant by expropriating its confidential information. It is pointed out that the new news portal by the name "The Morning Context" was launched on 23rd September, 2019 and on the website of the said portal, it was disclosed that the second to fourth respondents are its founders. It is pointed out in the plaint that the said website and domain names were registered as early as on 12th June, 2019. It is pointed out that on 25th September, 2019, the first respondent made an announcement that he would be joining "The Morning Context" as its Chief Editor which would indicate that steps for setting up of "The Morning Context" were taken as early as on March 2019 itself, that is five months prior to the exit of the first respondent from the first appellants "The Ken". It is alleged that said "The Morning Context" portal was operating on the same business model as that of the first appellant. It is pointed out that out of nine writers associated with new venture i.e., "The Morning Context" as published on the website of the new venture of the first to fourth respondents, five writers were already associated with the first appellant.

12. At this stage, we must note here that the sixth respondent (Slowform Media Pvt. Ltd) is a private limited company which is running the portal "The Morning Context" and the seventh respondent is the wife of the first respondent. It is pointed out that the fifth respondent (Slowform Media PTE Ltd) is a company constituted in Singapore under the laws of Singapore on 24th July, 2019 of which, the seventh respondent who is the wife of the first respondent is shown as its Director. It is alleged that in fact, there were only two shareholders of that company at a time namely, the second and seventh respondents. It is alleged that initial directors of the sixth respondent company were the second and fourth respondents.

13. In paragraph 46 of the plaint it is alleged that the first respondent had illegally disseminated confidential information belonging to the first appellant with a view to commercially exploit the said information. Reliance is placed on the email dated 27th March, 2019 addressed by the first respondent from his professional company email account (ashish@the-ken.com) to his personal email id (kmishra.ashish@gmail.com) a copy of which was forwarded to his wife's email id

(priyabubna2@gmail.com). The said email bears the subject "important" and also contains an attachment titled "Daily Total". The said attachment is an excel spreadsheet which contains details of every news story published by the first appellant, the amount of revenue generated by each story, the sources of subscribers, the choice of subscription plans and the payment methods used. It is alleged that the "Daily Total" contained details of all the corporate customers of the first appellant with revenue figures as well as the details of the patrons who were supporting the first appellant. It is alleged that the contents of the said attachment are at the very heart of the first appellant's operation and management and that disclosure of such information would provide a blueprint for any other organization which is attempting to set up a similar subscription-lead business. It is stated that the first respondent had shared the said document with his wife with an intention of further dissemination. Another email was sent by the first respondent to his wife, the seventh respondent, offering advice to her (seventh respondent) on setting up of a subscription based news platform and the said advice is based on his experience and learnings with the first appellant. It is alleged that first and seventh respondents were

conspiring from April, 2019 to set up “The Morning Context”. Various other alleged incidents of disclosure of the confidential information by the first respondent have been set out in the plaint.

14. It is stated that a screenshot of an archived post dated 30th August, 2019 lists the first respondent as an author of ‘The Morning Context’. On 30th September, 2019, the first respondent made an announcement on his twitter account regarding his first article published on “The Morning Context” portal in which he has stated that the said story took months to complete, which means that the said article was written by the first respondent before his exit from the first appellant. It is stated that the first respondent had committed breaches of various clauses of the aforesaid agreements and revealed the confidential information exclusively belonging to the first appellant which has been wholly expropriated by him by diverting it into the competitive entities of the first appellant, in violation of the terms of the agreement. The details of the breaches made by the first to fourth respondents are set out in the plaint. It is alleged that the fifth and sixth respondents have illegally received and continued to make use and exploit such confidential and proprietary information of the

first appellant. It is also alleged that rapid resignation of second to fourth respondents within a short period coincided with the exit of the first respondent. It is alleged that the second to fourth respondents did not honour the contractual obligations in their respective employment agreements and they colluded with the first respondent.

15. At this stage, it is necessary to refer to the prayers made by the first appellant in the plaint which read thus:

> "(A) Of Declaration, declaring the defendant No.1 to be in breach of his contractual obligations owed to Plaintiff No.1 in terms of Exit Agreement (executed on 31.07.2019), Executive Employment Agreement (executed on 01.04.2018), Share Holders Agreement (executed on 12.01.2018) and the Share Subscription Agreement (executed on 12.01.2018;
>
> (B) Of Declaration, declaring the Defendant No. 2, 3 and 4 to be in breach of their respective Employment Agreements with Plaintiff No.1;
>
> (C) Of Mandatory Injunction, restraining the Defendant No.1 from competing (whether directly or indirectly) with Plaintiff No.1 by engaging in and/or conducting any business that is similar to that of the Plaintiff

No.1, in terms of clause 2.4 of Exit Agreement and clause 16 of SHA;

(D) Of Mandatory injunction, restraining the Defendants (including their members, employees, affiliates, representatives, agents and any other persons acting under or through them) from utilizing, disclosing or commercially exploiting the confidential information of the Plaintiff – including its unique analytical methods, client and customer lists and contact information, pricing and other client data, trade secrets, inventions, processes, formulas, source and object codes, know-how, designs and techniques and other data and literary work generated by the Plaintiff;

(E) Of Mandatory Injunction, restraining the Defendants (including their members, office bearers, affiliates, representatives, followers, agents and any other persons acting under their instructions) from soliciting the services and/or business of employees, customers, vendors and business associates of Plaintiff No.1;

(F) Directing the Defendant No.1 to return a sum of Rs.30,00,000/- to Plaintiff No.2, 3 and 4 (along with permissible interest under Interest Act, 1979) from 31 July 2019 until the eventual repayment;

(G) Of Damages, directing the Defendant No.1 to pay a sum of Rs.50,00,000/- towards liquidated damages owed to the Plaintiff;

(H) Of Damages, directing the Defendant No. 5 and 6 to pay a sum of Rs.50,00,000/-, jointly and severally as damages owned to Plaintiff No.1;

(I) Directing the Defendant No. 5 and 6 to pay a sum of Rs.1,00,00,000/- joint and severally to Plaintiff No.1, for the unauthorized use of Plaintiff No.1's confidential information".

16. IA-II was filed by the appellants seeking temporary injunction restraining the first to seventh respondents from utilizing, disclosing or commercially exploiting the confidential information of the first appellant. IA-III was filed by the appellants praying for temporary injunction restraining the respondents from soliciting the services and/or business of employees, customers, vendors and business associates of the first appellant. IA-IV has been filed by the appellants seeking temporary injunction restraining the first respondent from engaging or conducting any business that is similar to that of the first appellant, in violation of the terms of the Share Holders

Agreement dated 12th January, 2018 and Exit Agreement dated 31st July, 2019.

17. Separate statement of objections were filed to the said IA's by the first, second, third, fourth, fifth and sixth respondents. Various allegations made in the plaint have been denied and several preliminary objections have been raised in the statement of objections.

GIST OF SUBMISSIONS OF THE APPELLANTS:

18. The learned counsel appearing for the appellants has taken us through the pleadings and various contentions raised in the plaint. He submitted that the first appellant had successfully created first and the only subscription based business of a news platform in India. For that purpose, it had to develop a range of unique and proprietary business plans and strategies to ensure success. The management and internal functioning of the first appellant resulted in the generation and compilation of various categories of confidential information that was proprietary to it which is a direct and exclusive product of its independent labour, skill and hard work. Reliance was placed on the confidentiality

obligations on the part of the first respondent in the matter of SHA, employment agreement and exit agreement. The confidentiality obligations have been set out in clause-9 of the employment agreements of the second to fourth respondents. The learned counsel urged that the first to fourth respondents continued to be bound by their confidentiality obligations even after their association with the first appellant came to an end. He pointed out that the fifth to seventh respondents, though not parties to the agreements, also owe an obligation under common law to the first appellant not to disclose and commercially exploit the confidential information of the first appellant. He relied upon a decision of this Court in the case of ***V.V. Sivaram and others – vs- Foseco India Limited, Pune***[1]***.***

19. The learned counsel appearing for the appellants addressed on the issue of the nature of confidential information. He pointed out that the first appellant had compiled information pertaining to its customers, subscribers and business vendors. The said information was collected to enable the first appellant to analyze its financial revenue generated out of its stories and forecast its projected growth. The said compilation of the

[1] 2005 SCC OnLine Kar 595

information was stored on excel sheet (Daily Total). We may note here that the print out of said excel sheet is produced before the Court in a sealed cover and a redacted version is produced along with the plaint. He pointed out that the nature of the confidential details incorporated in the excel sheet which contains sensitive information about the revenue generated by each story, the sources of its subscribers, payment methods used and the details of all the corporate customers with the revenue figures and details of all the patrons who are supporting the first appellant's news platform. The excel sheet contains all the information relating to the business of the first appellant right from the year 2016. It is submitted by the learned counsel appearing for the appellants that the information is not only sensitive but it will also provide a blueprint for any other organization that is attempting to carry on the same business. The information stored can be used to discern the type of stories that generate high revenue, the category and names of the companies and potential customers who are interested about it etc. Reliance was placed on a decision of the Apex Court in the case of ***Eastern Book Company and others –vs- D.B. Modak and another***[2]. The

[2] (2008) 1 SCC 1

learned counsel appearing for the appellants also pressed into service the decision of this Court in the case of ***M/S. Pearson India Education Service Private Limited –vs- M/S. New Rubric Solutions LLP***[3].

20. The learned counsel for the appellants submitted that the said document was made available only to the founders of the first appellant and an access was given on clear understanding that the confidential information contained therein would be protected and the founders would guard the same against any unwarranted or unauthorized disclosure. He submitted that even the first respondent in his pleadings has categorically admitted that the information about the said document was important for him to use it in the negotiations for his exit. He pointed out that even the seventh respondent admitted of having received the said excel sheet (Daily Total). He urged that the transfer of the said document by the first respondent outside organization of the first appellant clearly amounts to breach of contractual obligations to maintain confidentiality. He urged that the document was transferred to the seventh respondent to use the same as a springboard in setting up of a similar portal

[3] ILR 2016 KAR 2766

namely, 'The Morning Context' which is run by the fifth and sixth respondents. Reliance was placed by the counsel for the appellants on a decision of this Court in the case of ***Imphase Power Technologies Private Limited –vs- ABB India Limited***[4]**.**

21. He pointed out that the first respondent, in his capacity as a founder of the first appellant, obtained the confidential information and data about female founders of startup business who have raised funding from external investors from an external consultant and thereafter, instead of sharing the said information with second to fourth appellants, the first respondent shared the same solely with the second respondent alone on the ground that the second respondent did not have access to such information. It is pointed out that on 23rd May, 2019, one Ms. Roshni Nair, an employee of the first appellant, circulated a proposal for a news article in the form of email and the same was received by the first respondent and by second to fourth appellants. The proposal was approved by the appellants. Thereafter, on 31st July 2019, said Ms. Roshni Nair resigned from her position with the first appellant. Thereafter, she joined 'The Morning Context' in which, a similar article under the title "How WikiMedia India went

[4] 2016 SCC OnLine Kar 6931.

Bust" was published on 'The Morning Context' platform on 4th November, 2019. The learned counsel submitted that the second to fourth respondents have admitted of having downloaded confidential information belonging to the first appellant into their official work laptops and thereafter, forwarded the same to their personal email id's and thereafter they make use of the said information for their personal use.

22. The learned counsel appearing for the appellants invited our attention **to** clause-16 of SHA under which, the first respondent agreed that he would not solicit or influence or attempt to influence any clients or customers to direct their purchase of products or services to himself or to any competitor of the first appellant. His submission is that under said clause, he agreed not to damage the business relationship of the first appellant with its customers or clients. He had also agreed not to solicit or influence any persons engaged in employment with the first appellant to terminate his or her employment with the first appellant. Further, the first respondent was under an obligation not to make any attempt to employ or assist anyone else to employ any persons engaged in the employment with the first

appellant. By inviting our attention to the clause 2.5 of the exit agreement, he submitted that the aforesaid clauses continue to operate even after the exit of the first respondent. He submitted that from 31st July, 2019 (from the date on which the first respondent exited the first appellant), he had agreed not to solicit and influence the customers and employees of the first appellant for a period of thirty six months. He submitted that in the respective employment agreements of second to fourth appellants, they were under an obligation not to solicit or influence any persons engaged in employment with the first appellant to terminate his/her employment.

23. The learned counsel urged that the first to fourth respondents have decided to surreptitiously set up the fifth and sixth respondents and indulged in inter se solicitation for leaving the employment of the first appellant. His submission is that the resignation of second to fourth respondents was announced by the first respondent on his twitter account even prior to their official resignations. He submitted that admittedly, the first respondent diverted the job applications sent by Ms. Anahita Mukherji to his personal email id and he did not share the same

with the second to fourth appellants. His submission is that now, the same person is working in 'The Morning Context'. He would submit that non-solicitation clauses are not hit by Section 27 of the Contract Act.

24. He submitted that though the first respondent officially joined 'The Morning Context' on 26th September, 2019, in his tweet dated 23rd September, 2019, he has confirmed that one Ms. Priya Nagvekar had assisted in design and formatting the website of 'The Morning Context'. He pointed out that very fact that on 30th September 2019, the first respondent made announcement regarding his first article to be published in 'The Morning Context' would indicate that he was working on the said article during the course of his employment with the first appellant.

25. The learned counsel appearing for the appellants further submitted that on 21st July, 2019, the seventh respondent, who is the wife of the first respondent, incorporated in the fifth respondent. However, after the second respondent left the first appellant and took over as the Director of the fifth respondent, she stepped down as the director and shareholder of the said company. However, the seventh respondent again rejoined the

fifth respondent as a Director and she was appointed to the Board of Directors of the sixth respondent, after institution of the present suit. Thus, it is clear that the fifth respondent has been incorporated by the seventh respondent at the behest of the first respondent and the seventh respondent walked out of the sixth respondent immediately after second to fourth respondents resigned from the first appellant. Hence, the learned counsel appearing for the appellants urged that this was a fit case where all the three interlocutory applications (IA-II, III, and IV) ought to have been allowed by the Commercial Court.

GIST OF THE SUBMISSIONS OF THE RESPONDENTS:

26. The learned Senior Counsel appearing for the first respondent also made detailed submissions. He invited our attention to the various findings recorded by the learned trial Judge. He submitted that it is false to say that the first appellant was successful in creating the first subscription based business news platform in India. He submitted that there is no material to substantiate the said contention and he gave example of several such existing news platforms in the world and submitted that they are the similar models as that of the first appellant and that the model of the first appellant is not at all unique. He submitted that

it is not pointed out by the appellants as to what confidential aspects of the first appellant's alleged unique business model were revealed by the first respondent to the detriment of the appellants. The documents on which the appellants are relying upon are either available on the public domain or are within the first respondent's personal knowledge from his years of professional experience.

27. He submitted that as held by the Delhi High Court, in the case of ***M/S. Stellar information Technology Private Limited – vs- Mr. Rakesh Kumar and others***[5], the information which is already available in the public domain cannot be considered as a confidential information and no injunction for use of such information can be issued. inviting our attention to the document No.41(Daily Total), he pointed out how the information contained therein is available on the first appellant's website especially, the names of reflected in sheet numbers 1 and 2. In fact, the first appellant's web portal, as it was previously, was reflecting the names of the first appellant's company's patrons. He pointed out that sheet number 3 of the excel sheet was only an accounting document which does not contains any creative or unique

[5] (2016) 234 DLT 114 = 2016 SCC OnLine Del 4812

arrangement of data. He submitted that in any case, the first respondent being the managing editor and co-founder of the first appellant had an access to the said data. He submitted that the details of the shares held by the sponsors of the first appellant can be easily procured from the public domain. He pointed out that the sixth respondent has not approached a single corporate client listed in "The Daily Total". He submitted that the seventh respondent who is the wife of the first respondent is a Chartered Accountant. He stated that the first respondent shared the revenue patterns of growth of the first appellant with the seventh respondent, as she was guiding the first appellant for negotiating the value of shares of the first respondent in the first appellant.

28. He submitted that the particulars reflected in the excel sheets (the Daily Total) are empty figures not beneficial to any individual media industry. He submitted that the document No.42 is an email communication dated 10th April, 2019 addressed to the seventh respondent by the first respondent which does not contain any confidential information of the first appellant. The said email merely advises the seventh respondent how to go about with setting up and operating a

network. He submitted that the seventh respondent had intended to start a blog on pregnancy where to be parents and the parents would be educated on parenthood. His submission is that the contents of the email have been misinterpreted by the appellants as the said email does not even mention the word 'subscription based news platform'.

29. Referring to the document No.43, the learned counsel appearing for the first respondent urged that the said email dated 30th July, 2019 only contains the details received by the first respondent on behalf of 2nd respondent from an external agency called 'Venture Intelligence'. He submitted that the first respondent, in his personal capacity, has shared and provided the said information to the second respondent to enable her to write an article. He submitted that the information or data provided by the Venture Intelligence was readily available to anyone.

30. As regards the document No.45, he submitted that Ms. Anahita Mukherji was never an employee of the first appellant. As regards the document No.49, he contended that the said document is only a pitch for an article of Ms. Roshni Nair's which

was sent to the appellants. He submitted that eventually, the article was published by Ms. Roshni Nair on 'The Morning Context'. Though the appellants have tried to allege an infringement of their copyright, they have not impleaded the author of the said article as a party to the suit. He urged that none of the documents relied upon by the appellants contain any confidential information exclusively belonging to the first appellant. Moreover, the appellants have failed to prove that they have suffered an injury and are adversely affected by the alleged use of the said information by any of the respondents.

31. While addressing the Court on the prayers made for injunction against soliciting the first appellant's employees and customers, the learned counsel appearing for the first respondent relied upon the provisions of Section 27 of the Indian Contract Act, 1872 (for short, 'the Contract Act'). He submitted that no service covenant can be extended after the termination of service by the appellant. Relying upon a decision of the Apex Court in the case of ***Superintendence Company of India (P) Ltd –vs- Krishan Murgai***[6]***,*** he submitted that unlike an agreement which is of a goodwill of business type of contract, post service terminal

[6] (1981) 2 SCC 246

restrictive covenants are void as per Section 27 of the Contract Act. He pointed out that by email, the second respondent forwarded his resignation on 28th June, 2019 to the first appellant which indicates that the resignation was on account of conduct of the appellants. In fact, it is based on the decision taken by the appellants themselves. He pointed out that the third respondent was asked to go out by the first appellant's company when the second appellant made a phone call to the first appellant on 11th June, 2019. There was a heated exchange of emails between fourth respondent and the appellants prior to his quitting. He submitted that the first respondent made an announcement on his twitter account on 27th June, 2019 endorsing the abilities and talent of the third and fourth respondents, with a view to create an alternative opportunity to both the respondents. He submitted that 'The Morning Context' was launched on 23rd September, 2019 and the resignations were tendered by second to fourth respondents during June and July, 2019 respectively.

32. As regards Ms. Roshni Nair and Ms. Anahita Mukherjee, the learned Senior Counsel submitted that both of them were not at all employees of the first appellant.

33. As regards injunction sought against the first respondent from competing against the first appellant, he submitted that clause 2.4 of the Exit Agreement not only aims at binding the 1st respondent from pursuing his career for an arbitrarily long duration of three years, but it also seeks to restrict him from doing business in any part of the world. He submitted that the said clause is illegal. He would also submit that the first respondent has not participated in the establishment of competing business and he is merely an employee of the sixth respondent and he is working in the capacity of a content writer. He submitted that the appellants are relying on the contents of a twitter posting dated 5th December, 2019 by the first respondent to attribute conspiracy. He submitted that the decision of the Delhi High Court in the case of ***Affle Holdings Pte Ltd., -vs- Saurabh Singh and others***[7] will not help the appellants. He submitted that an amount of Rs.30,00,000/- paid to the first respondent was solely as a consideration towards the purchase of his 907 shares in the first appellant and this amount does not include the consideration for the first respondent's obligation not to compete. Lastly, he submitted that a prima facie case is not established by the

[7] 2015 SCC OnLine Del 6765

appellants. In any case, the very fact that the monitory relief of a decree in the sum of Rs.80,00,000/- is claimed by the appellants towards damages shows that the loss allegedly caused to the appellants can be always compensated in terms of money.

34. The learned counsel appearing for the second to seventh respondents submitted that the materials on record show that second respondent was forced to resign. As regards the third respondent, it was submitted that he did not resign but he was effectively terminated. He submitted that in fact, a situation was created under which, the fourth respondent was pushed against the wall to leave the first appellant. In fact, as regards fourth respondent, the second appellant himself informed him that the notice period of thirty days has been waived. It was submitted that there is nothing placed on record to show that there was any solicitation of the second to fourth respondents by the first respondent. He submitted that there is no privity of contract between the appellants and fifth to seventh respondents. It was submitted that the post employment negative covenants are unenforceable under law and, therefore, clause 11 of non-compete and non-solicitation in the employment agreements of

the second to fourth respondents will not survive after their employment with the first appellant came to an end. He placed reliance on a decision of the Apex Court in the case of ***Percept D'Mark (India) Pvt. Ltd –vs- Zaheer Khan and another***[8]**.**

35. It was submitted that the term 'profession' is absent in the proviso to Section 27 of the Contract Act and, therefore, notwithstanding sale of good-will, a professional can continue his profession anywhere as per his choice. It was submitted that the first respondent is a professional journalist employed by the fifth respondent and he does not have any equity holding in fifth and sixth respondents. Reliance was placed on a decision of the Delhi High Court in the case of ***Arvinder Singh and Another – vs- Lal Pathlabs Pvt Ltd and others***[9]. Reliance was also placed on the decision of the Delhi High Court in the case of ***Independent News Service Pvt. Ltd –vs- Sucherita Kukreti***[10]**.**

36. Reliance was placed upon various illustrations such as 'Business Standard', 'Wall Street Journal' etc to show that the

---

[8] (2006) 4 SCC 227
[9] 2015 SCC OnLine Del 8337= (2015) 149 DRJ 88
[10] 2019 SCC OnLine Del 6756

business model of the first appellant is not a unique model as claimed by the appellants.

37. It was submitted that there are no allegations made against the third and fourth respondents with regard to receipt, dissemination, transmission, disclosure, breach or misuse of the alleged confidential information of the first appellant. He submitted that the allegation that the first respondent, in a clandestine manner forwarded the Netflix invitation to the second respondent is meaningless, as the second respondent himself directly received the said invitation from the Netflix. As regards article of the second respondent dated 23rd October, 2019 titled 'Watershed Year for Women Let Startup in India', it was submitted that the data used or shared with the second respondent does not belong to the appellant but it was shared by Venture Intelligence which is a third party and it was not a confidential data received by the first respondent from the first appellant. He submitted that the first appellant cannot claim copyright in respect of Ms. Roshni Nair's article. He submitted that no copyright is attributable or claimed on a proposal, idea, topic or context. It was submitted that the information which

claimed to be a confidential by the appellants is not at all confidential information. It was submitted that there is no conspiracy or collusion about the exit of the second to fourth respondents from the appellants, as their exit was based on totally different circumstances. Lastly, it was submitted that in view of the fact that the damages have been claimed against all the respondents, any loss which may have been caused to the appellants can be compensated in terms of money.

38. The learned counsel appearing for the appellants submitted that there is sufficient material on record to show that the first respondent was the brain behind incorporation of the fifth and sixth respondents. He submitted that considering the nature of the business, an inference can be drawn that the sale of the shares of the founder (first respondent) would amount to the sale of founder's good-will in the business of the first appellant. Therefore, it was submitted that the proviso to Section 27 of the Contract Act is not applicable.

CONSIDERATION OF SUBMISSIONS:

39. We have given careful consideration to the submissions. We have carefully perused the pleadings and the documents on

record. We have also considered several decisions relied upon by rival parties. The first question which will have to be considered is about the breach of confidentiality. For the purposes of deciding the said question, we will have to consider the issue what constitutes a confidential information. A leading decision of the British Court on this aspect is in the case of ***Coco –vs- A.N. Clark (Engineers) Limited***[11] which is relevant for our consideration. The High Court of Justice – Chancery Division was dealing a case where interlocutory injunction was sought against the defendants from misusing information communicated to them in confidence for the purposes of the joint venture. In the said decision, his Lordship Justice Megarry dealt with what are the elements of confidential information. The relevant portion of the said decision reads thus:

> "In my Judgment, three elements are normally required if, apart from contract, a case of breach of confidence is to succeed. **First, the information itself, in the words of Lord Greene, M.R. in the Saltman case on page 215, must "have the necessary quality of confidence about it". Secondly, that information must have been**

[11] (1968) F.S.R. 415

imparted in circumstances importing an obligation of confidence. Thirdly, there must be an unauthorized use of that information to the detriment of the party communicating it. I must briefly examine each of these requirements in turn.

First, the information must be of a confidential nature. As Lord Greene said in the Saltman case at page 215 **"something which is public property and public knowledge" cannot *per se* provide any foundation for proceedings for breach of confidence. However, confidential the circumstances of communication, there can be no breach of confidence in revealing to others something which is already common knowledge. But this must not be taken too far. Something that has been constructed solely from materials in the public domain may possess the necessary quality of confidentiality: for something new and confidential may have been brought into being by the application of the skill and ingenuity of the human brain**. Novelty depends on the thing itself, and not upon the quality of its constituent parts. Indeed, often the more striking the novelty, the more commonplace its components, Mr. Mowbray demurs to the concept that some degree of originality is requisite. **But whether it is described as originality or novelty or ingenuity or otherwise, I**

think there must be some product of the human brain which suffices to confer a confidential nature upon the information: and, expressed in those terms, I think that Mr. Mowbray accepts the concept.

The difficulty comes, as Lord Denning, M.R. pointed out in the Seager case on page 931, when the information used is partly public and partly private; for then the recipient must somehow segregate the two and, although free to use the former, must take no advantage of the communication of the latter. To this subject I must in due course return. I must also return to a further point, namely, that where confidential information is communicated in circumstances of confidence the obligation thus created endures, perhaps in a modified form, even after all the information has been published or is ascertainable by the public; for the recipient must not use the communication as a spring-board (see the Seager case, page 931 and 933). I should add that, as shown by Cranleigh Precision Engineering Ltd. V. Bryant (1965) 1 W.L.R. 1293, (1966) R.P.C. 81; the mere simplicity of an idea does not prevent it being confidential (see pages 1309 and 1310). Indeed, the simpler an idea, the more likely it is to need protection.

The second requirement is that the information must have been communicated in circumstances importing an obligation of confidence. However secret and confidential the information, there can be no binding obligation of confidence if that information is blurted out in public or is communicated in other circumstances which negative any duty of holding it confidential. From the authorities cited to me, I have not been able to derive any very precise idea of what test is to be applied in determining whether the circumstances import an obligation of confidence. In the Argyll case at page 330, Ungoed-Thomas, J. concluded his discussion of the circumstances in which the publication of marital communications should be restrained as being confidential by saying "If this was a well-developed jurisdiction doubtless there would be guides and tests to aid in exercising it". In the absence of such guides or tests he then in effect concluded that part of the communications there in question would on any reasonable test emerge as confidential. It may be that that hard-worked creature, the reasonable man, may be pressed into service once more; for I do not see why he should not labour in equity as well as at law. It seems to me that if the circumstances are such that any reasonable man standing in the shoes of the recipient of the information would have realized that upon reasonable grounds the information was being

given to him in confidence, then this should suffice to impose upon him the equitable obligation of confidence. In particular, where information of commercial or industrial value is given on a business-like basis and with some avowed common object in mind, such as a joint venture or the manufacture of articles by one party for the other, I would regard the recipient as carrying a heavy burden if he seeks to repel a contention that he was bound by an obligation of confidence: see the Saltman case at page 216. On that footing, for reasons that will appear, I do not think I need explore this head further. **I merely add that I doubt whether equity would intervene unless the circumstances are of sufficient gravity; equity ought not to be invoked merely to protect trivial tittle-tattle, however confidential**.

Thirdly, there must be an unauthorized use of the information to the detriment of the person communicating it. Some of the statements of principle in the cases omit any mention of detriment; others include it. At first sight, it seems that detriment ought to be present if equity is to be induced to intervene; but I can conceive of cases where a plaintiff might have substantial motives for seeking the aid of equity and yet suffer nothing which could fairly be

> **called detriment to him, as when the confidential information shows him in a favourable light but gravely injures some relation or friend of his whom he wishes to protect**. The point does not arise for decision in this case, for detriment to the plaintiff plainly exists. I need therefore say no more than that although for the purposes of this case I have stated the proposition in the stricter form, I wish to keep open the possibility of the true proposition being that in the wider form".
>
> (emphasis added)

40. The learned Single Judge of Delhi High Court, in the case of ***Diljeet Titus, Advocate --vs- Alfred A. Adebare and others***[12] quoted the observations made in the aforesaid decision of the British Court in the case of ***Coco*** (supra) with approval in paragraph-30 in his Judgment. Thus, information cannot be termed as a confidential information merely because it is claimed by a party. As observed in the case of ***Coco*** (supra), the information must "have the necessary quality of confidence about it". If the information is a public property and is in public knowledge and such information is shared, it cannot be said it will lead to a breach of confidence. Secondly, that information must

[12] 2006 SCC OnLine Del 551 = (2006) 130 DLT 330

have been imparted in circumstances importing an obligation of confidence. In a given case, the obligation of confidence need not be express but it can be implied. Thirdly, there must be an unauthorized use of that information to the detriment of the aggrieved party or to the detriment of a third party whom the aggrieved party wishes to protect. It is in this context, we have to appreciate the factual aspects of the case on hand.

41. The main contention of the appellants is that the information contained in the document (Excel sheets) styled as "Daily Total" contains confidential information. The print out of the said document has been placed on record in a sealed envelope. It is, therefore, necessary for this Court to firstly consider whether the said document styled as "Daily Total" contains any confidential information. We have perused the said document styled as "Daily Total" (document No.41). Firstly, it contains the names of patrons of the first appellant. Another sheet contain the names of the corporate subscribers. Thereafter, the remaining sheets contain the names of the articles published on the first appellant's news platform, the names of its authors, the number of subscriptions generated (renewal and

new) by the said articles and whether subscriptions were annual or quarterly. The details of the revenue have been also incorporated in it. Our attention is invited to a printout of web portal of the first appellant a copy of which is on page 678 in Volume-II of paper book. It shows the names of some of the patrons of the first appellant. Our attention is also invited to a copy of Restated Shareholder's Agreement dated 23rd January, 2018 which is on page 234 of volume-II of the paper book. The names of existing and new investors along with their PAN numbers and addresses have been mentioned in Schedule-II to the said agreement. In parts-C and D of Schedule-III to the said agreement, the share holding details of the first appellant on the execution date and effective date have been incorporated. Parts C and D give the names of all the shareholders, the details of number of equity or preference shares held by them and percentage of their share holding. Therefore, *prima facie*, the names of the promoters and the names of the patrons were readily available and the same were never intended to be kept confidential. We must note here that the details such as the names of the existing and the new investors as well as the names of the shareholders and shareholding pattern are available in the

Restated Share Holder's Agreement. Therefore, these details cannot be said to be confidential at all. Now the question is whether the other contents of the excel sheet i.e sheet No.3 contains confidential document/information.

42. As narrated earlier, excel sheet No.3 contains the details regarding the articles published on 'The Ken', the names of the authors, the number of subscriptions generated etc. As argued by the learned counsel appearing for the first respondent, the sheet No.3 is not a creative or unique arrangement of data so as to qualify for being called as works of the appellant under the Copyright Act, 1957. There is nothing novel or creative about it. In any case, the first respondent being the Managing Editor of the Ken and as a co-founder, he was aware of all the details mentioned in sheet No.3. Moreover, the names of the articles and the authors thereof are readily available on the website of the first appellant itself. Under such circumstances, it is very difficult to arrive at a *prima facie* conclusion that the said excel sheets (Document No.41) contain any confidential information. Moreover, the appellants have not even *prima facie* demonstrated that any loss was caused to them due to the alleged act of the

first respondent of revealing alleged confidential information in the excel sheets (Daily Total). It is not pleaded that any detriment was caused to any third party whose interest the first appellant was interested in protecting. In any case, it is not pleaded and proved as to how the information was useful to any other media house or media industry.

43. Moreover, there is no material placed on record by the appellants to *prima facie* establish that the model of online platform of the first appellant is unique. The respondents have given instances of several news platforms based on subscription such as The Wall Street Journal, Business Standard, The Economic Times Prime, Bloomberg Quint etc. The appellants have not shown how their model is unique.

44. The document No.42 is an email sent by the first respondent to seventh respondent. As stated earlier, seventh respondent is the wife of the first respondent. The said email contains advice to her on how to go about and setup and operate a blog on pregnancy where to be parents and the parents were to be educated on parenthood. It is apparent from the said document that it does not refer to setting up of a 'subscription

based news platform'. Apart from that, the appellants have not pointed out which confidential information was supplied by the said email sent by the first respondent to seventh respondent over which, the first appellant had a control.

45. We have perused the document No.43. It contains email from Venture Intelligence addressed to the first respondent forwarding a copy of research previously done of women founded start ups. This was forwarded by the first respondent to the second respondent by email. It is not spelt out what right the first appellant can claim over the said information received from Venture Intelligence. It is not the case of the appellant that the first respondent had received the said information from 'Venture Intelligence' which was a confidential information.

46. The document No.45 is an email sent by Ms. Anahita Mukherji to the first respondent. The subject of email is "A framework for what I could cover for "The Ken". She has set out contours of what she could cover. At no point of time, said Ms. Anahita Mukherji was working with the first appellant. Even she is not an employee of the 'The Morning Context'. It is not established that the first respondent has committed any breach of

any agreement. The document No.49 is an email of one Ms. Roshni Nair which is a pitch of a story proposed to be written by her. It is in a particular format. It cannot be termed as a confidential information of the first appellant. Added to that, said Ms. Roshni Nair who was the author of an article is not a party to the suit at all.

47. The breach of confidentiality is also alleged against the other respondents. The appellants are relying upon the allegation that the first respondent, in a clandestine manner, forwarded the Netflix invitation to the second respondent. The second respondent has relied upon a separate invitation directly received by him on 15th July, 2019 for the Netflix event dated 24th July, 2019 Hence, there cannot be any breach of confidentiality by sending invitation to the second respondent. As pointed out earlier, the first respondent shared with the second respondent the data received from Venture Intelligence. The second respondent's article dated 23rd October, 2019 titled as 'Watershed Year for Women Let Startup in India' appears to be based on the data supplied by the Venture Intelligence and not the data available with the first appellant.

48. An article of Ms. Roshni Nair was published by the fifth respondent on 4th November, 2019. When the said article was published, the contract of service between the first appellant and said Ms. Roshni Nair was not in existence, as the said contract came to an end on 31st July, 2019 by virtue of her resignation. Ms. Roshni Nair is the owner of the said work in the form of an article. But she has not been made as party to the suit.

49. Before going into the next contention, it is necessary for us to make a reference to Section 27 of the Contract Act, which reads thus:

> "**27. Agreement in restraint of trade, void.** - Every agreement by which any one is restrained from exercising a lawful profession, trade or business of any kind, is to that extent void.
>
> Exception 1.- **Saving of agreement not to carry on business of which goodwill is sold.** - One who sells the goodwill of a business may agree with the buyer to refrain from carrying on a similar business, within specified local limits, so long as the buyer, or any person deriving title to the goodwill from him, carries on a like business therein, provided

that such limits appear to the Court reasonable, regard being hard to the nature of the business".

50. The issue of interpretation of Section 27 of the Contract Act came up for consideration before the Apex Court in the case of ***Superintendence Company of India*** (supra). A Bench of three Hon'ble Judges decided the said case. The main Judgment was delivered by Justice V.D. Tulzapurkar for himself and for Justice N.L. Untwalia. A concurring judgment was delivered by Justice A.P. Sen. In paragraphs 32 to 35 of the said decision, the Apex Court held thus:

> **"32. The agreement in question is not a "good will of business" type of contract and, therefore, does not fall within the exception. If the agreement on the part of the respondent puts a restraint even though partial, it was void, and, therefore, the contract must be treated as one which cannot be enforced.**
>
> **33.** It is, however, argued that the test of the validity of a restraint, whether general or partial, is dependent on its reasonableness. It is pointed out that the distinction drawn by Lord Maclesfield in *Mitchel* v. *Reynolds* (1711) 1 PWms 181 : 24 ER 347 between general and partial restraint, was

removed by the House of Lords in *Nordenfelt* v. *Maxim Nordenfelt Guns & Ammunition Co.* LR 1894 AC 535 : (1891-94) All ER Rep 1 According to the judgment of Lord Macnaghten in *Nordenfelt case* [LR 1894 AC 535 : (1891-94) All ER Rep 1] , the validity in either case was reasonableness with reference to particular circumstances. It is urged that all covenants in restraint of trade partial as well as general are prima facie void and they cannot be enforced, according to the test laid down by Lord Macnaghten in *Nordenfelt case* [LR 1894 AC 535 : (1891-94) All ER Rep 1] and accepted by the House of Lords in *Mason* v. *Provident Clothing and Supply Co. Ltd.* [LR 1913 AC 724 : 1911-13 All ER Rep 400 : 109 LT 449] unless the test of reasonableness is testified. It is also urged that while an employer is not entitled to protect himself against competition per se on the part of an employee after the employment has ceased, he is entitled to protection of his proprietary interest viz. his trade secrets, if any, and a business connection.

34. The test of reasonableness which now governs the common law doctrine of restraint of trade has been stated in CHITTY ON CONTRACTS, 23rd Edn., Vol. I, p. 867:

> "While all restraints of trade to which the doctrine applied are prima facie unenforceable, all, whether partial or total, are enforceable, if reasonable."

> **35.** A contract in restraint of trade is one by which a party restricts his future liberty to carry on his trade, business or profession in such manner and with such persons as he chooses. A contract of this class is prima facie void, but it becomes binding upon proof that the restriction is justifiable in the circumstances as being reasonable from the point of view of the parties themselves and also of the community".
>
> (emphasis added)

51. In the case of ***Percept D'Mark*** (supra), the Apex Court again dealt with the issue of interpretation of Section 27 of the Contract Act. In paragraph-56 of the said Judgment, the Apex Court held thus:

> "**56.** The legal position with regard to post-contractual covenants or restrictions has been consistent, unchanging and completely settled in our country. **The legal position clearly crystallised in our country is that while construing the provisions of Section 27 of the Contract Act, neither the test of reasonableness nor the**

principle of restraint being partial is applicable, unless it falls within express exception engrafted in Section 27".

(Emphasis added)

52. Under section 27 of the Contract Act, an agreement which contains a restraint clause, restraining a person from exercising a lawful profession, trade or business of any kind is void. There is one exception to the said rule. The exception is in a case where a good-will of a business is sold. Only in such a case, an agreement to restrain such person from carrying on a similar business can be enforced.

53. In the instant case, as can be seen from the documents produced, a sum of rupees thirty lakhs received by the first respondent from the appellant is the value of 907 shares held by the first respondent in the first appellant's company. We have carefully perused the agreement of Record and Release dated 26th July, 2019 (Exit Agreement) executed by and between the first appellant and the first respondent. It is very clear from clause 2.1 (a) (i) of the said agreement that a sum of Rs.30,00,000/- (rupees thirty lakhs only) was paid to the first respondent as the value of 907 his existing share holding. The

first respondent has been described as existing promoter in the said agreement. The entire clause 2.1 is reproduced hereunder for a ready reference which reads thus:

"**2.1 Treatment of Exiting Promoter Shares**

(a) As on the effective date, the exiting promoter shall have transferred the exiting promoter shares to the following persons for an aggregate purchase consideration of Rs.30,00,000/- (Rupees thirty lakhs only) as follows:

(i) 907 (Nine Hundred and Seven) Exiting Promoter Shares to the following promoters for the amount (in aggregate for the Exiting Promoter Shares being transferred) as set out below:

Promoter	Exiting Promoter Shares to be transferred	Amount to be paid to Exiting Promoter for transfer (in Rs)
Mr. Rohin Dharmakumar	303	10,02,205.00
Ms. Seema Singh	302	998,897.50
Mr.Sumanth Reghavendra	302	998,897.50
Total	907	Rs.30,00,000

(b) The Exiting Promoter agrees and undertakes to cooperate with the Promoters, undertake all procedures as may be required and execute any

documentation that may be required to complete the aforesaid transfer of the Exiting Promoter Shares as per the terms of this Agreement.

(c) The Exiting Promoter represents and warrants that:

(i) He is the sole and exclusive owner of the Exiting Promoter Shares and has not divested or transferred his title or interest therein or granted beneficial ownership rights in or to the Exiting Promoter Shares to any person;

(ii) He is entitled to transfer all rights, title and interest in the Exiting Promoter Shares as per provisions of this Agreement and

(iii) The Exiting Promoter Shares shall be transferred free from all claims, charges, liens, encumbrances, options, rights of pre-emption or equities and rights attached thereto.

(d) Upon the completion of the transfer of Exiting Promoter Shares in accordance with the provisions hereof, the Exiting Promoter shall cease to be a party to the SHA, and shall cease to be considered to be a 'Promoter' or 'Shareholder' under the SHA or SSA, and shall not after the completion of the Exit be considered a 'Promoter' of the Company for any purpose".

(emphasis added)

54. Thus, the shares of the first appellant were transferred to the second to fourth appellants for a specific price. Under the same agreement and in particular, under clause 3.1, it is specifically mentioned that a sum of Rs.2,62,500 (Two Lakhs Sixty Two Thousand and Five Hundred) was paid to the first respondent by the first appellant, in full and final settlement of all salary and other compensation in lieu of the existing employment of the first respondent with the first appeliant and the services rendered by him to the first appellant. Hence, the said Agreement deed not provide for payment of any amount towards goodwill. It is very difficult to draw an inference that any amount was paid towards goodwill to the first respondent. Therefore, any clause in any of the agreements executed by the first respondent which restrains him from exercising a lawful profession as an author or editor, trade or business, will be void in view of Section 27 of the Contract Act. Such clauses were not enforceable. Therefore, by acting as an employee/editor of “The Morning Context”, it cannot be said that the first respondent has committed any breach of contractual obligations.

55. Clause 2.4 of the said agreement provides for a non-compete covenants. Sub-clause (a) and (b) of clause 2.4 which are relevant read thus:

> "**2.4 Exiting Promoter Non-Compete Covenants:**
>
> (a) The Exiting Promoter covenants and agrees that that with effect from the Effective Date till the expiry of thirty-six (36) months therefrom the Exiting Promoter shall not, directly or indirectly (i) promote or commence any business or enterprise which is engaged in business or activity that is the same or is substantially similar to the Business or (ii) invest in the share capital or contribution of, or hold any shareholding, partnership, directorship, or any similar or equivalent interest in, any Person or business or enterprise which is engaged in a business or activity that is the same or is substantially similar to the Business, in each case, in any part of the world.
>
> **(b)** The Exiting Promoter agrees and acknowledges that the restrictions contained in this Clause 2.4 are considered reasonable for the legitimate protection of the business and goodwill of the Company and the investment of the Investors and are to be construed in keeping with the role he has played as a promoter of the Company and the access to business and proprietary information that this role has given him

access to. However, in the event that such restrictions shall be found to be void, but would be valid if some part thereof was deleted or the scope, period or area of application were reduced, the above restrictions shall apply with the deletion of such words or such reduction of scope, period or area of application as may be required to make the restrictions contained in this Clause 2.4 valid and effective."

56. Though the first respondent's wife who is a chartered accountant may have been involved in establishing fifth and sixth respondents companies, there is no *prima facie* material placed on record that the first respondent was involved in any manner with the promotion and commencement of the business of "The Morning Context". It is not the case made out that the first respondent was holding shares in the fifth and sixth respondents.

57. Clause 2.5 of the same agreement contains Non-Solicitation Covenants. Sub-clauses (a) to (d) of clause 2.5 which are relevant read thus:

"2.5 Exiting Promoter Non-Solicitation Covenants

(a) The Exiting Promoter covenants and agrees that with effect from the Effective Date till the expiry of thirty-

six (36) months therefrom the Exiting Promoter shall not, directly or indirectly, in any capacity, whether through partnership or as a shareholder, joint venture partner, collaborator, consultant or agent or in any other manner whatsoever, whether for profit or others;

(i) Attempt or persuade any Person, which is a client/customer/business associate of the Company to cease doing business or to reduce the amount of business which any such client/customer has customarily done or might propose doing with the Company and/or its subsidiary(ies) or damage in any way the business relationship that the Company has with any customer/client/business associate;

(ii) Solicit or attempt to influence any Person, employed or engaged by the Company to terminate or otherwise cease such employment with the Company or any other person including a competitor; and/or

(iii) Employ or attempt to employ or assist anyone else to employ or otherwise associate any person who is in the employment of the Company or associated with the Company, or was in the employment of the Company or otherwise associated with the Company at any time during the preceding 12 (twelve) months."

(b) The exiting Promoter agrees and acknowledges that the restrictions contained in this Clause 2.5 are considered reasonable for the legitimate protection of

the business and goodwill of the Company and the investment of the Investors and are to be construed in keeping with the role he has played as a promoter of the Company and the access to business and proprietary information that this role has given him access to. However, in the event that such restrictions shall be found to be void, but would be valid if some part thereof was deleted or the scope, period or area of application were reduced, the above restrictions shall apply with the deletion of such words or such reduction of scope, period or area of application as may be required to make the restrictions contained in this Clause 2.6 valid and effective.

(c) For the purpose of this Clause 2.5 (*Exiting Promoter Non-Solicitation Covenant),* the term 'Company' shall include its subsidiary(ies), if any.

(d) The Exiting Promoter acknowledges and agrees that any breach of the provisions of this Clause 2.5 may not be capable of being compensated in monetary damages and that the Company/Investors would be entitled to pursue any and all legal remedies available to it, including without limitation, specific performance or injunctive relief, to ensure protection of the interests of the Investors and the Company."

There is not even a *prima facie* material on record to show that there is any breach committed by the first respondent of non-solicitation covenants contained in clause 2.5 of the exit agreement.

58. There is an allegation in the plaint that the first to fourth respondents have colluded with each other and after departing with the first appellant, they joined 5th respondent. As noted earlier, the exit agreement is on 26th July, 2019. The second respondent resigned by sending email dated 28th June, 2019. The information about the resignation of the second respondent was published by the first respondent on his twitter platform on 30th June, 2019. The resignation of the second respondent became effective on 12th July, 2019. The third respondent resigned by email dated 8th July, 2019 effective from 6th August, 2019. The information about the resignation of the third respondent was published by the first respondent on twitter platform on 26th June, 2019. The fourth respondent resigned with effect from 24th July, 2019 by sending email dated 25th June, 2019. The information of his resignation was published by the first respondent on twitter platform on 26th June, 2019. When

the second to fourth respondents joined the fifth respondent ('The Morning Context'), the first respondent had no connection with the first appellant. At the time when the second to fourth respondents had tendered their resignations, the first respondent was not concerned with the 'The Morning Context'. The seventh respondent who is the wife of the first respondent is a Chartered Accountant and she was a founder director of the fifth respondent. She was a founder Director of fifth respondent in her own right. Therefore, even assuming that the first respondent had prior knowledge about the decision of the second to fourth respondents of resigning from their employment with the first appellant, it is very difficult to understand which clause of the agreement executed by the first respondent has been breached.

59. Now coming to the employment agreements of the second to fourth respondents with the first appellant, we find that the same are more or less identical. Clause-8 is regarding intellectual property, clause-9 is about confidential information, clause-10 is about the company assets and clause-11 is about non-competence and non-solicitation. Clause-19 provides that termination of the employment agreement shall not affect those

provisions of the agreement that by their nature or intended to survive such termination including without the limitation of the provisions of clause-8, 9, 10, 12, 13, 15, 16, 18, 20 and 21. Clause-11 thereof also provides that the second to fourth respondents shall not seek employment with a company whose business competes with the first appellant's business. Apart from the fact that clause-19 does not specifically record that clause-11 will survive after termination of the employment agreement and the fact that Section-27 will be applicable, it is very difficult to come to a *prima facie* conclusion that 'The Morning Context' is a competitor of the news platform of the first appellant. There is not even a *prima facie* material placed on record for holding that "The Morning Context" was a competitor of the first appellant's news platform. Moreover, it is not established that any information which is a confidential information of the first appellant was received by the first to fourth respondents and that the same was used by them which caused detriment or prejudice to the first appellant or any other persons to whom the first appellant intended to protect.

60. On careful evaluation of the pleadings, submissions made across the Bar and the materials placed on record, it is not possible for this Court to conclude that a *prima facie* case is made out by the appellants for grant of an order of temporary injunction.

61. As regards balance of convenience and irreparable loss caused to the appellants, it is necessary for this Court to make a reference to the prayer clauses (F), (G), (H) and (I) of the plaint. The said prayer clauses contains the following prayers:

> "(i) A decree, directing the first respondent (defendant No.1) to refund a sum of Rs.30,00,000/- to the appellants Nos.2, 3 and 4 (along with permissible interest under Interest Act, 1979) from 31st July 2019 until the eventual repayment;
>
> (ii) A decree against the first respondent, directing him to pay a sum of Rs.50,00,000/- towards liquidated damages owed to the appellant/Plaintiff;
>
> (iii) A decree, directing the fifth and sixth respondents to pay a sum of Rs.50,00,000/- jointly and severally to the first appellant as damages owed to the appellant No.1;
>
> (iv) A decree, directing the fifth and sixth respondents to pay a sum of Rs.1,00,00,000/- joint and severally to

the first appellant/Plaintiff No.1, for the unauthorized use of first appellant's confidential information."

The prayers made as above clearly indicate that the alleged loss which may be caused to the appellants due to the alleged breaches of restrictive covenants of various agreements by the respondents can be always compensated in terms of money. Hence, *prima facie,* the appellants have failed to substantiate that the balance of convenience lies in their favour and irreparable loss will be caused to them if temporary injunction as prayed is not granted.

62. After having gone through the impugned Judgment and order, there may be some substance in the contention urged by the learned counsel appearing for the appellants that the documents and the submissions have not been fully considered by the trial Court. However, we have re-examined the entire case pleaded by the appellants and have recorded the findings as above. The impugned Judgment and order is a discretionary order. The ultimate conclusion drawn in the same cannot be faulted with.

63. In view of the above discussion and for the foregoing reasons, we find that the impugned Judgment and order dated

22nd October, 2020, passed by the learned LXXXIII additional City Civil and Sessions Judge (CCH-84) at Bengaluru in the commercial original suit No.362/2019, rejecting the interlocutory applications (IAs) II, III, and IV filed by the appellants under Rules 1 and 2 of Order XXXIX of CPC, for grant of temporary injunction does not warrant interference at the hands of this Court.

64. Accordingly, we pass the following:

ORDER

(i) The appeal is accordingly dismissed with no order as to the costs;

(ii) We make it clear that the findings recorded in this Judgment are only tentative and *prima facie* findings for limited purposes of dealing with the issue of grant of interim relief and the learned Judge of the Commercial Court shall decide the suit on merits, uninfluenced by any of the observations made in this judgment as well as in the impugned judgment and order.

Sd/-
CHIEF JUSTICE

Sd/-
JUDGE

VR