

Homag India Private Ltd vs Mr Ulfath Ali Khan on 10 October, 2012

Author: N.Ananda

Bench: N.Ananda

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IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 10TH DAY OF OCTOBER 2012

BEFORE

THE HON'BLE MR.JUSTICE N.ANANDA

M.F.A.No.1682/2010 C/W M.F.A.No.1683/2010 (CPC)

BETWEEN:

Homag India Private Ltd.,
A Company incorporated under
The Companies Act, 1956
Having its Registered Office at
#88, Industrial Suburb, II Stage
Tumkur Road, Bangalore - 560 022
Rep. by its authorised signatory
Mr. S.Vaidyanathan
S/o V.Shivaramakrishnan
R/at 274, 7th Main Road
39th 'A' Cross, 6th 'A' Block
Jayanagar, Bangalore - 560 041. ... Appellant Common

(By Sri Srinivas Raghavan, Advocate for M/s.Indus Law,
Advocates)

AND:

1. Mr Ulfath Ali Khan
S/o Mr.B.E.Abdul Gaffar Khan
Aged about 41-42 Years
862, Coconut Garden Street
T.Dasarahalli
Bangalore - 560 057.
2. IMA AG Asia Pacific PTE. Ltd.,
A Company incorporated under
the laws of Singapore

Having its registered office at

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No.2, Kalang Pudding Road
#05-16, Mactech Industrial Building
Singapore - 349307
Rep. by its Managing Director
Mr.Bukhard Sydow.

... Respondents common

(By Sri Prabhugouda B.Tumbgi, Advocate for Sri M.T.Nanaiah,
Advocate for R1; Sri T.S.Amar Kumar, Advocate for M/s. Lawyers
Inc., Advocates for C/R2)

These appeals are filed under section 104 r/w order 43
Rule 1(r) CPC, against the order dated 09.12.2009, passed on
IA.No.1 & 2 in O.S.No.4418/2009, on the file of XVIII Additional
City Civil Judge (CCH-10), Bangalore and etc.

These appeals having been heard and reserved for
judgment on 03.10.2012, coming on for pronouncement this day,
the court delivered the following:-

JUDGMENT

The appellant in these two appeals is common. The appellant is plaintiff in O.S.No.4418/2009 (hereinafter referred to as 'plaintiff'). The respondents herein are defendants 1 & 2 in O.S.No.4418/2009 (hereinafter referred to as 'defendants 1 & 2'). The plaintiff had sought for an order of temporary injunction against defendants 1 & 2. The learned trial Judge dismissed the application for grant of an order of temporary injunction against II-defendant and granted an order of temporary injunction against I-defendant to obey the terms of contract had with plaintiff till disposal of suit or for one year i.e., till April 2010, whichever is earlier.

2. The plaintiff has filed these two appeals, inter alia contending that learned trial Judge should have granted an order of temporary injunction against defendants 1 & 2 till disposal of suit.

3. I have heard Sri V.Srinivas Raghavan, learned counsel for plaintiff, Sri Prabhugowda B.Tumbgi, learned counsel for I-defendant and Sri T.S.Amar Kumar, learned counsel for II-defendant.

4. In brief, averments of plaint and application necessary for disposal of these two appeals are stated thus:-

The plaintiff is a private limited company registered under the Companies Act, 1956. It was incorporated in the year 2004. The plaintiff's company is an Indian subsidiary belonging to Homag Group, which originated in Germany and now has several subsidiaries across the world, including in India, Singapore, Australia, Japan, Brazil, etc. The Homag Group and plaintiff company are the world's leading suppliers of machines, cells and factory installations for the panel processing furniture, structural

element and timber frame house construction industries. The plaintiff has entered into trading and service activities. The product range of the group focuses on machines, cells and factory installations designed for efficient, versatile processing of wood based panel materials. The plaintiff's company has a separate department set up for research and development, where huge amounts of funds are spent for the purpose of discovering and inventing new processes for manufacture of light weight panels, like honey comb structures, high speed machines for manufacture of flooring, for special technologies in transport chains using magnetic levitation and so on.

5. The I-defendant joined services of plaintiff as a Senior Service Engineer on 16.10.2006 with a compensation package of Rs.3,60,000/- per annum and incentives under appointment letter dated 12.10.2006. In the course of employment, I-defendant had access to confidential information of plaintiff's business.

6. After joining services of plaintiff's company, I- defendant was given two promotions. On 25.03.2009, I- defendant submitted his resignation. At that time, I- defendant was holding the post of "Product Manager-Sawing"

with an annual remuneration of Rs.5,50,000/-.

7. The I-defendant was in a highly responsible post and he had access to highly confidential and commercially sensitive information pertaining to plaintiff's business, products and operations. The I-defendant had access to plaintiff's entire customer data base in India, details of contracts entered into with customers, details of methodologies and processes in relation to the products supplied to various customers. The I-defendant was also aware that aforesaid confidential information is not available in public domain. The I-defendant was fully aware that if this data was made publicly available, it would act as a springboard for any other company to launch itself in Indian market. The I-defendant had submitted his resignation on 25.03.2009 and requested plaintiff to relieve him from employment and that he had received a better employment. On 24.04.2009, I-defendant was relieved from service of plaintiff. However, on 22.04.2009, officials of plaintiff's company discovered that I-defendant had sent several e-mails from official e-mail address containing confidential information to II-defendant. These e-mails contained customer details including added updated commissioned reports, status of pending offers and other technical details of plaintiff's products. Upon enquiry with I- defendant, he confessed to have taken aforesaid data. The I-defendant showed to plaintiff his appointment letter with II- defendant. On perusal of appointment letter, plaintiff was shocked to realize that I-defendant had been hired by II- defendant for the purpose of working in its behalf in Indian market. The agreement clearly stated that I-defendant approached II-defendant and offered to provide services in the field of market entry as well as services in India. As per the terms of contract between I-defendant and II-defendant, former to assist latter in sales in direct competition with plaintiff's business and I-defendant would be appointed as Director of Indian subsidiary. The plaintiff also realized that I-defendant had taken employment with II-defendant even prior to submission of resignation to plaintiff's company. The I-defendant had signed contract of employment with II-defendant on 18.03.2009. The I-defendant submitted resignation on 25.03.2009 and got relieved on 24.04.2009. The I-defendant committed

breach of terms of employment by working for II-defendant, who was a competitor of plaintiff's business. This was done when services of I- defendant with plaintiff was still subsisting.

8. The II-defendant having enticed I-defendant with a lucrative offer to appoint I-defendant as the Director of Indian subsidiary had got confidential information relating to plaintiff's business. The I-defendant was in contract with II- defendant from August 2008. The II-defendant wants to use confidential information so far furnished by I-defendant as a springboard to set up its operations in India.

9. The plaintiff has sought for following reliefs:-

I. A judgment and decree of permanent injunction restraining the defendants, their agents, servants, contractors or anybody claiming under them from carrying on business in India or carrying on business with, dealing or in any manner transacting with any of the customers of the plaintiff by utilizing confidential information whether in the form of technical data, correspondence and information pertaining to, manufacturing process, marketing plans, offers, pricing, customer list, software, specifications, engineering methods and know-how, consumer grievances, customer solutions, service logs, service history and service feedback pertaining to clients or method of resolving area specific problems.

II. A judgment and decree of permanent injunction restraining the Defendants from utilizing or disclosing confidential information whether in the form of technical data, correspondence and information pertaining to, manufacturing process, marketing plans, offers, pricing, customer list, software, specifications, engineering methods and know-how, consumer grievances, customer solutions, service logs, service history and service feedback pertaining to clients or method of resolving area specific problems. III. A judgment and decree of permanent injunction restraining the 1st defendant from working, dealing with or functioning in any manner or capacity, or carry on business, either with the 2nd defendant or anybody else or independently, in any area or field competing with the Plaintiff's business and restraining the 2nd defendant or its subsidiaries or associated companies from employing or in any manner dealing with or being associated with the 1st defendant and IV. Grant costs."

10. The plaintiff had filed an application under Order 39 Rules 1 & 2 r/w 151 CPC, reading as hereunder:

"For the reasons stated in the accompanying affidavit, it is humbly prayed that this Hon'ble court be pleased to grant an order of temporary injunction restraining the defendants, their agents, servants, contractors or anybody claiming under them from carrying on business in India or carrying on business with, dealing or in any manner transacting with any of the customers of the plaintiff by utilising confidential information whether in the form of technical data, correspondence and information pertaining to manufacturing process, marketing plans, offers, pricing, customer list,

software, specifications, engineering methods and know-how, consumer grievances, customer solutions, service logs, service history and service feedback pertaining to clients or method of resolving area specific problems in addition to, pending disposal of the suit on merits, in the interest of justice and equity.

It is further prayed that an exparte ad- interim order of temporary injunction in the above terms may kindly be granted, as the delay involved if notices are issued would render the suit nugatory."

11. In brief, averments of written statement and statement of objections filed by first defendant are as follows:-

The first defendant has admitted that he joined the services of plaintiff as a Senior Service Engineer on 16.10.2006 with a compensation package of Rs.3,60,000/-

per annum and incentives. The first defendant has admitted letter of appointment dated 12.10.2006 and terms of appointment contained therein.

As per terms 12 and 13 of letter of appointment, first defendant was expected to maintain confidentiality of the information of plaintiff's business, both during the course of employment and also thereafter and he was not expected to take up employment with any competitor of plaintiff or to start on his own accord, anything in competition with the plaintiff's business for a period of one year after termination of his employment that he had to maintain confidentiality about the information pertaining to plaintiff's business.

12. The first defendant has admitted that he had tendered resignation on 25.03.2009, at the time of tendering his resignation, he was holding the post of "Product Manager- Sawing" with annual remuneration of Rs.5,50,000/-. The first defendant has denied that he had transferred from companies Email ID to his personal Email ID, confidential information of the business of plaintiff, customers list etc. The first defendant has contended that in the normal course of employment such Emails were being transferred from the company Email ID to his personal Email ID. The first defendant, from the beginning for business purpose was using these Emails at customer places for trouble shooting whenever needed. The first defendant resigned from his employment on 25.03.2009 and he was relieved on 24.04.2009. The first defendant has denied that he had transferred the confidential information of plaintiff's business from companies Email ID to his personal Email ID with an intention to help the second defendant for the purpose of working with the second defendant and enable the second defendant to establish it's subsidiary in India as competitor to plaintiff.

13. The first defendant has denied that he had entered into contract of employment with the second defendant. The first defendant has contended that letter dated 24.04.2009 said to have been executed by him was under threat and coercion. The first defendant has contended that there is no cause of action against first defendant and the plaintiff has not made out prima-facie case to grant an order of temporary injunction against first defendant.

14. In brief, averments of written statement and objection filed by second defendant are as follows:-

The second defendant has denied that it had contacted first defendant and first defendant had worked for second defendant. The second defendant has denied averments of plaint relating to nature of business activities of plaintiff and the technologies evolved by plaintiff.

15. The second defendant has contended that companies like BIESSE (Italy) HOLZHER (Germany), SCM (Italy) and even the second defendant for many years have produced, sold and serviced the machines through feed corner rounding. The second defendant has denied the correspondence of defendants No.1 and 2 inter se and Emails exchanged defendants 1 and 2 inter se. The second defendant has denied that first defendant for and on behalf of second defendant had tried to establish contacts with several customers of plaintiff.

16. The second defendant has denied that first defendant has breached confidentiality by revealing confidential information of plaintiff's business to second defendant. The second defendant has denied that it was fully aware about first defendant being in possession of highly sensitive confidential information pertaining to plaintiff's business and second defendant had induced first defendant to leave services with plaintiff, employed first defendant and obtained confidential information relating to plaintiff's business from first defendant. The second defendant has contended that plaintiff has no right to sue against second defendant. The plaintiff is not entitled to an order of temporary injunction against second defendant.

17. The learned trial judge on hearing learned counsel for parties and referring to documents relied upon by parties has held that first defendant could be restrained by an order of temporary injunction to obey the terms of contract of employment with the plaintiff till disposal of the suit or for one year from the date of order, whichever is earlier.

18. The learned trial judge has held that there was no privity of contract between plaintiff and second defendant. As per terms and conditions of employment contract, first defendant after termination of his service with plaintiff was not expected to serve for any of the companies for a period of one year in India and suit would become infructuous after the month of April'2010, thus dismissed the application against second defendant.

19. The first defendant has not challenged the impugned order.

20. In the circumstances, points that would arise for consideration are:-

- 1) Whether the plaintiff has made out a prima-facie case for grant of temporary injunction against defendants No.1 and 2 pending disposal of the suit?
- 2) Whether balance of convenience lies in favour of plaintiff?

3) Whether plaintiff would suffer irreparable loss and injury in case if an order of temporary injunction is not granted?

4) Whether the impugned order is perverse, capricious and calls for interference?

21. The learned counsel for plaintiff and second defendant have taken me through the impugned order and various documents relied upon by them. They have also relied on several decisions.

22. Before advertng to submissions made by learned counsel for parties, it is necessary to state certain facts, which are not in dispute.

23. The first defendant was employed in plaintiff's company on 12.10.2006. Clause 12 and 13 of appointment order dated 12.10.2006 reads thus:

"12. You shall not, at any time either during or after leaving the services of the company, disclose or divulge or make public to anyone any confidential information relating to the affairs, transactions or dealings of the company.

13. In the event of your leaving the services of the Company for any reason whatsoever, you shall not be employed, offer consultation, start on your own accord, or involve in any manner in any activity same or similar in nature to the operations of the company for a period of one year from the date of your leaving the services of the company."

It is not in dispute that first defendant submitted his resignation to plaintiff on 25.03.2009. The first defendant was relieved with effect from 24.04.2009.

24. It is the case of plaintiff that first defendant while in service and also after submitting resignation on 25.03.2009 had transferred from the companies Email ID to his personal Email ID the confidential information relating to plaintiffs business such as technical data, information pertaining to manufacturing process, marketing plans, offers, pricing, customer list, software, specifications, engineering methods and know-how, consumer grievances, customer solutions, service logs, service history and service feedback pertaining to clients or method of resolving area specific problems.

25. It is the case of plaintiff that on 25.04.2009 first defendant submitted a letter to plaintiff reading as hereunder:

"I wish to state in the beginning that I am writing this affidavit of my own free will and I am under no compulsion or under any coercion to write this affidavit.

In 2008 during the Indiawood exhibition in Bangalore I was approached by the company IMA Klessmann GmbH represented by Mr.Marcus offering me a position in their company. It was originally agreed that I will be posted in Singapore for Sales

and Service of machines manufactured by IMA and Schelling. They offered me more than two times my remuneration with Homag and a large sales commission. I was therefore tempted to take their offer. I said 'Yes' but was shocked when I received the employment contract from them which said I will be posted in India. Mr.Marcus and Mr.Sydow told me that IMA will establish a subsidiary company in India and I will then be appointed as Director-Sales & Marketing in this company. Till the time the new company is formed I will work as employee of IMA.

During the course of these conversations regarding my appointment they persuaded me to take out as much of details as I can from Homag that may be useful later for business of IMA. Accordingly, I got lot of data transferred to my personal Yahoo account through my official Homag account. The data consisted of the entire address data base of Homag India, list of customers, list of offers and details, machinery installed and serviced and so on. I had transferred and stored all this data in my personal account.

I wish to state that I did this on being prompted to do so with higher remuneration, returns and all kind of inducements. I regret this action which would have caused unbelievable damages to Homag.

Written this day 25th of April 2009, in the presence of witnesses below."

It is the contention of first defendant that the above letter was obtained by plaintiff under duress and coercion.

26. In order to appreciate these rival contentions, it is necessary to refer to the Emails sent from the official Email ID of plaintiff to the personal Email ID of first defendant and also Email correspondence between first defendant and second defendant even before first defendant had submitted resignation. At this stage of the case, there are no reasons to suspect contents of these documents.

27. The plaintiff has made available the copy of agreement of employment entered into between the first defendant and second defendant on 18.03.2009, which reads thus:

"This Agreement is made on 18th of March 2009 by and between:

IMA AG ASIA PACIFIC PTE. LTD, a Company incorporated under the Laws of Singapore and having its registered office at No.2, Kallang Pudding Road, #05-16, Mactech Industrial Building, SINGAPORE-349 307 (hereinafter referred to as "the company"

AND Mr.ULFATH ALI KHAN, presently residing at 862, Coconut Garden Street, Dasarahalli Post, 560 057 Bangalore, Karnataka, India (hereinafter referred to as "Mr.KHAN"

WHEREAS, the Company is engaged in the business of machine sales and services to the furniture and wood processing industries;

AND WHEREAS Mr.Khan has approached the company and has offered to provide services in the field of market entry, sales and service for the company in India on the terms and conditions of the company.

AND WHEREAS the Company has agreed to appoint Mr.Khan to provide the services more fully described in Annexure-'A' on the following terms and conditions:

NOW THEREFORE, IN CONSIDERATION OF THE MUTUAL CONVENANTS AND UNDERTAKING HEREIN CONTAINED, THE PARTIES HERETO HEREBY AGREE AS FOLLOWS:

1. OBJECT Mr.Khan has approached the company and has offered to provide the services for the company to establish and structure a sales and service subsidiary for the Company in India and the Company has agree to appoint Mr.Khan to provide the services on the terms and conditions detailed out in Annexure-'A'.

2. EMPLOYMENT IN INDIAN ENTITY It is the intention of the company to set up a Private Limited Company in India. In the event of the company setting up a Private Limited Company in India and or any other entity in India (Indian Entity) then Mr.Khan shall be appointed as the Director of Sales and Service for the Indian Entity. The terms and conditions of such appointment and the designation of Mr.Khan shall be under a new contract during or after the employment contract attached hereafter in Annexure-A. It being clarified and agree between the parties that a new employment contract with the Indian Entity shall be executed and signed between the parties if an only if the company has set up an Indian Entity. In the event of the company setting up an Indian Entity, the new employment contract will be executed with such entity and Mr.Khan will not be entitled to negotiate any of the terms and conditions stated in the Employment Contract under Annexure-A."

28. On perusal of relevant terms of contents of Annexure-'A' referred to in the employment of contract, I find that second defendant had appointed the first defendant as an employee of second defendant on monthly salary of 2,750 SGD (Singapore Dollars). The second defendant had also offered commission of 0.25% of the net machine value on each deal.

Annexure-'A' also contains the confidentiality clauses, which are similar to the confidentiality clauses contained in the letter of appointment issued by plaintiff. From the letter of appointment (Annexure-A), it is clear that the second defendant had intention to set up a private limited company in India. It was the intention of II-defendant to appoint I- defendant as the Director of Sales and Service of its Indian entity. Regarding terms and conditions of such appointment and designation of first defendant, defendants 1 & 2 had agreed to enter into a new contract. It was agreed between defendants till such company is established, the first defendant would be an

employee of second defendant.

29. These documents would prima-facie establish that first defendant was prompted by second defendant and he was offered higher remuneration. The first defendant being tempted by the offer made by second defendant had committed breach of confidentiality and also transferred from the plaintiff's Email ID to his personal Yahoo account through his official Homag account the data consisting of list of customers, list of offers and details, machinery installed and serviced and so on. The e-mail correspondence defendants interse would indicate that I-defendant was in contact with II-defendant from 01.02.2008. There was email correspondence defendants interse during period between 26.05.2008 and 20.04.2009. This correspondence relates exchange of confidential business information of plaintiff. The I-defendant tendered resignation on 25.03.2009 after entering into agreement of employment with II-defendant on 18.03.2009.

It is true I-defendant had right to approach II- defendant seeking appointment on higher remuneration. Similarly II-defendant had right to appoint I-defendant. However, such an agreement should not have been on quid-pro-quo basis of I-defendant sharing with II-defendant, confidential information of plaintiff's business detrimental to interest of plaintiff.

30. The plaintiff has made out a prima-facie case of breach of confidentiality by first defendant. The learned trial judge on the premise that suit will be disposed of within one year has granted an order of temporary injunction for a period of one year from the date of order i.e., till April'2009. However, the suit is still pending. In view of breach of confidentiality committed by first defendant for being utilised by second defendant for its business activities, the trial court was justified in holding that plaintiff has made out a prima-facie case against first defendant. In the circumstances, the trial judge should have granted an order of temporary injunction against first defendant pending disposal of suit.

The next point for consideration is whether the learned trial judge was justified in refusing to grant an order of temporary injunction against II-defendant?

31. The learned counsel for plaintiff has made following submissions:-

I. The II-defendant had appointed I-defendant on 18.03.2009 to use I-defendant as a conduit to intrude into plaintiff's business in India. The agreement of employment (document No.9) would manifest the intention of II-defendant to set up a private limited company in India and appoint I-

defendant as its Director and utilise confidential information of plaintiff's business as a spring board for it's business activity which is similar to business activity of plaintiff's company.

II. The plaintiff has made out a prima facie case that there was contrivance between I-defendant and II-defendant by conduct of defendants and e-mails exchanged between defendants 1 and 2. The plaintiff has produced these documents to make out a prima facie case. The II-defendant in connivance with I-defendant has invaded legal rights of plaintiff to use confidential information

relating to plaintiff's business as a springboard to establish its business entity in India. The learned trial Judge has committed an error in refusing an order of temporary injunction against II-defendant on the ground that there was no privity of contract between plaintiff and I-defendant. The learned trial Judge has ignored that plaintiff has placed prima facie material to establish that II-defendant has invaded legal rights of plaintiff.

The learned counsel for plaintiff has relied on various decisions to contend that infringement of confidential information of plaintiff's business would entitle plaintiff to get an order of temporary injunction against both defendants.

32. The learned counsel for II-defendant has made following submissions:-

I. The reliefs sought for in plaint as also in the application under Order 39 Rules 1 & 2 CPC are vague. The application filed under Order 39 Rules 1 & 2 CPC lacks clarity.

II. If an order of temporary injunction is granted on vague assertions of plaintiff, plaintiff is likely to misuse the same to curb business activities of II-defendant. III. The products of plaintiff are not confidential. They are very much in public domain. The plaintiff cannot claim right of confidentiality, without making specific references. IV. The plaintiff has filed the instant suit with an intention to prevent II-defendant from establishing its business activities in India. It is not for plaintiff or for the court to decide whether II-defendant should establish its business in India.

V. The plaintiff has filed this suit on the premise that II-defendant is carrying on business similar to business of plaintiff and II-defendant would use confidential information from I-defendant as a springboard to establish its business entity in India. These apprehensions are founded on surmises and conjectures, without there being any material to establish that II-defendant has invaded legal rights of plaintiff.

VI. The plaintiff cannot enforce a negative covenant against the provisions of section 41(h) of Specific Relief Act.

33. In the discussion made supra, I have referred to averments of plaint application. The documents relied upon by plaintiff would provide prima facie proof of activities of defendants inter se. At this stage, there are no reasons to suspect the contents of these documents.

The II-defendant had employed I-defendant on 18.03.2009 whilst I-defendant was under the employment of plaintiff. The terms of employment would prima facie establish that II-defendant had induced I-defendant to commit breach of confidentiality. The I-defendant committed breach of confidentiality and violated the terms of contract of employment of I-defendant with plaintiff.

34. In a decision reported in (2012) 6 SCC 792 (in the case of Best Sellers Retail (India) Private Limited Vs. Aditya Birla Nuvo Limited & Others & connected matters), the Supreme Court has held:-

"25. It is not necessary for us to deal with the contentions of the learned counsel for the parties based on the provisions of Sections 14, 41 and 42 of the Specific Relief Act, 1963 because Section 37 of the said Act makes it clear that temporary injunctions are to be regulated by CPC and not by the provisions of the Specific Relief Act, 1963. In fact, the application for temporary injunction of Respondent 1 before the trial court is under the provisions of Order 39 Rules 1 and 2 read with Section 151 CPC."

35. In view of what has been held in the above decision, submission of learned counsel for II-defendant that plaintiff is trying to enforce a negative covenant against provisions of section 41(h) of the Specific Relief Act, 1963 cannot be accepted.

36. The learned counsel for II-defendant relying on a decision of High Court of Madras, reported in (2003) 3 MLJ 557 (in the case of Polaris Software Lab Limited rep. by its Company Secretary Vs. Suren Khiwadkar) would submit that plaintiff has sought for temporary injunction restraining defendants from divulging any confidential information. The plaintiff has not divulged nature of confidentiality. The confidential information that I-defendant had in his mind is purely subjective. Therefore, plaintiff is not entitled to an order of temporary injunction.

37. In the aforesaid judgment, plaintiff had sought for an order of temporary injunction in the following terms:-

- (1) restraining defendants from committing any act in breach of undertaking;
- (2) restraining the defendants from disclosing any confidential information;
- (3) Restraining them from giving out any adverse publicity to the media."

38. The Madras High Court having regard to nature of relief sought for has held that confidential information is purely subjective. The application for grant of an order of temporary injunction was devoid of clarity. If an order of temporary injunction is granted, the plaintiff is likely to misuse the order.

39. In a decision reported in AIR 1967 SC 1098 (in the case of Niranjana Shankar Golikari Vs. Century Spinning and Manufacturing Co. Ltd.), the Supreme Court has held that negative covenant in maintaining confidentiality of information and negative covenant during subsistence of contract are essential to fulfillment of contract.

40. Under Exception I to Section 27 of the Contract Act, post service restraint in maintaining confidentiality and also carrying on any other business for a limited period is permissible.

41. In a decision reported in AIR 1987 Delhi 372 (in the case of John Richard Brady and Others Vs. Chemical Process Equipments P. Ltd. and another), it is held:-

"22.in general rules of equity, there can be restraint of breach of confidence.

The Delhi High Court relying on a judgment reported in 1948 RFC 203 has held:-

"Secrecy The maintenance of secrecy which plays such a an important part in securing to the owner of an invention the uninterrupted proprietorship of marketable know-how, which thus remains at least a form of property, is enforceable at law. That statement may now be examined in the light of established rules making up the law of trade secrets. These rules may, according to the circumstances in any given case, either rest 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.

In considering these alternatives there are three sets of circumstances out of which proceedings, may arise:

- (a) Where an employee comes into possession of secret and confidential information in the normal course of his work, and either carelessly or deliberately passes that information to an unauthorized person;
- (b) Where an unauthorized person (such as a new employer) incites such an employee to provide him with such information as has been mentioned above; and
- (c) Where, under a license for the use of know-how, a licensee is in breach of a condition, either expressed in any agreement or implied from conduct, to maintain secrecy in respect of such know-how and fails to do so."

In the same judgment, it is held that if a defendant is proved to have used confidential information, obtained directly or indirectly, from a plaintiff, without the consent, express or implied, of the plaintiff, he will be guilty of infringement of plaintiff's rights.

In the case on hand, plaintiff has produced prima facie material to prove that II-defendant had induced I-defendant to gain confidential information of plaintiff business even when I-defendant was very much in services of plaintiff. There are reasons to believe that II-defendant had obtained confidential information in connivance with I-defendant. These facts are prima facie established by documents relied upon by plaintiff, in particular, letter of agreement and agreement of contract entered into between I-defendant and II-defendant on 18.03.2009 and e-mails exchanged between defendants 1 and 2. Therefore, plaintiff has prima facie established that II-defendant has infringed legal rights of plaintiff.

42. The learned counsel for II-defendant, referring to the contents of application filed under Order 39 Rules 1 & 2 CPC would submit that averments of application are general in nature. There is no specific reference to any product or technical know-how with reference to products dealt by plaintiff. The learned counsel would submit that products dealt by plaintiff such as Table Edgebander etc., are

within public domain. Therefore, there cannot be any confidentiality.

43. The learned counsel for II-defendant would submit that CNC machines said to be used by plaintiff are within public domain. The application of CNC machines is not only plaintiff's activities or II-defendant's activities, it is used in industrial activities by other companies.

44. The learned counsel for II-defendant would submit that CNC (Computerised Numerical Control) machine is used in all industrial activities for precision and also to save manual labour and time. The plaintiff cannot contend that CNC is a confidential information of plaintiff's business.

45. On consideration of averments of application filed under Order 39 Rules 1 & 2 CPC, I find that plaintiff has not made any specific reference, however in the plaint, plaintiff has stated nature of its business activities and range of products dealt by plaintiff.

46. The learned counsel for plaintiff has made available product range catalogue of plaintiff and submitted that an order of temporary injunction against II-defendant may be granted with reference to products stated in the catalogue.

47. After going through the contents of catalogue, I find that plaintiff has been dealing with Table Edgebander, Universal Edgebander, Through Feed Edgebander, Wide-Belt Sanding Machine, Manual Beam Saw, CNC Beam Saw, CNC Processing Centres, Double sided panel sizing and Edgebanding Machines etc. Though CNC machines adopted by plaintiff for its operations are available within public domain, yet plaintiff has given brand names to its products such as Optimat NKD 720, Optimat KTD 820, Ambition 1200, Ambition 1210/Ambition 1210F, Ambition 1220 C/Ambition 1220 FC, Ambition 1430 C/Ambition 1430 FC, Ambition 1440 FC/Ambition 1440 F2C, Ambition 1650 FC/Highflex 1650, Optimat SWT 124 RK, Optimat SWT 315 X, Optimat SWT 325 RL, Optimat SWT 335 QCH, HPM 120, HPP 180/38/38, HPP 230/31/31/HPP 250/31/31, HPL 430/38/22, Ambition 2260, Ambition 2262, Venture 20/22, Venture 316 M, KFL 326C, FPR 225/FPR 226, BAZ 322/40/K, BAZ 722, WoodCAD/CAM, NDS 102, Optimat BST 503, BHX 050 Optimat/BHX 055 Optimat, PTP 160 PLUS, Venture 2M and Vantage 100/480. Therefore, plaintiff has its brand names for several machines such as Table Edgebander, Universal Edgebander, Through Feed Edgebander, Wide-Belt Sanding Machine, Manual Beam Saw, CNC Beam Saw, CNC Processing Centres, Double sided panel sizing and Edgebanding Machines etc. In the circumstances, it cannot be held that technical data information to manufacturing process and know-how of these machines dealt by plaintiff are within public domain.

48. The learned counsel for II-defendant has submitted that plaintiff has not placed prima facie material to show that II-defendant has established its entity in India and it is carrying on business similar to plaintiff's business in India. Therefore, plaintiff merely on the basis of apprehensions cannot seek an order of temporary injunction.

49. The learned counsel for plaintiff, relying on a judgment of this court, reported in AIR 1976 KARNATAKA 53 (in the case of M.K.Dasappa Vs. G.Ramachandra) would submit that a temporary injunction should not be granted if there is no imminent danger to the plaintiff or to his building.

But the word "imminent" in the context need not be literally understood. If the plaintiff has to wait till the last moment, disastrous consequences might follow which the Court cannot prevent for want of time or procedural requirements. The word should be understood in the sense that the remedy sought by the plaintiff should not be premature.

50. The learned counsel for plaintiff would submit that plaintiff has made out a prima facie case that defendants 1 & 2 have gathered confidential business information of plaintiff to intrude to the business activities of plaintiff. Therefore, II-defendant cannot be heard to say that relief sought for by plaintiff is premature.

51. In the discussion made supra, I have referred to various documents relied upon by plaintiff. I have held that II-defendant had lured I-defendant to gather confidential information of plaintiff's business with an intention to make use of the same. In the circumstances, it is not necessary for plaintiff to establish that II-defendant has been using plaintiff's confidential business information to promote business of II-defendant.

52. It is true that plaintiff's application for grant of temporary injunction is not precise, however there is reference to plaintiff's business activities and various products dealt by plaintiff. In the circumstances, the grant of an order of temporary injunction with reference to specific names stated in the product catalogue of plaintiff for a limited period would avoid situation of grant of an order of temporary injunction on vague terms and this would also avoid likelihood of plaintiff misusing the order to curb the business activities of II-defendant. The learned trial judge has not referred to documents relied upon by plaintiff. The learned trial judge has failed to notice that breach of confidentiality and misuse of confidentiality are actionable rights. The learned trial judge has proceeded an erroneous assumption that in the absence of contract and breach of contract, the plaintiff had no actionable right against II- defendant. Therefore, the impugned order cannot be sustained.

53. In the result, I pass the following:-

ORDER The appeals are accepted. Defendants 1 & 2 are restrained by an order of temporary injunction from carrying on business in India or carrying on business with, dealing or in any manner transacting with any of customers of plaintiff by utilizing confidential information whether in the form of technical data, correspondence and information pertaining to, manufacturing process, marketing plans, offers, pricing, customer list, software, specifications, engineering methods and know-how, consumer grievances, customer solutions, service logs, service history and service feedback pertaining to clients or method of resolving area specific problems in relation to following namely :- Optimat NKD 720, Optimat KTD 820, Ambition 1200, Ambition 1210/Ambition 1210F, Ambition 1220 C/Ambition 1220 FC, Ambition 1430 C/Ambition 1430 FC, Ambition 1440 FC/Ambition 1440 F2C, Ambition 1650 FC/Highflex 1650, Optimat SWT 124 RK, Optimat SWT 315 X, Optimat SWT 325 RL, Optimat SWT 335 QCH, HPM 120, HPP 180/38/38, HPP 230/31/31/HPP 250/31/31, HPL 430/38/22, Ambition 2260, Ambition 2262,

Venture 20/22, Venture 316 M, KFL 326C, FPR 225/FPR 226, BAZ 322/40/K, BAZ 722, WoodCAD/CAM, NDS 102, Optimat BST 503, BHX 050 Optimat/BHX 055 Optimat, PTP 160 PLUS, Venture 2M and Vantage 100/480, pending disposal of suit.

Having regard to nature of restraint imposed in terms of this order, the trial court shall decide the suit on merits within a period of one year from today, for which both parties shall extend their co-operation. If plaintiff does not co-operate for disposal of suit within one year from today, plaintiff cannot seek for extension of order of temporary injunction. If defendants 1 & 2 fail to co-operate for disposal of suit within one year from today, plaintiff will be at liberty to seek for extension of order of temporary injunction for such period as may warranted by situation.

Sd/-

JUDGE SNN/Np