Plivo Communications Private Ltd vs Arvind Eshwarlal on 23 February, 2021

IN THE COURT OF THE V ADDL. CITY CIVIL JUDGE,

AT BENGALURU.
(CCH.No.13)

Present: Sri. C.D. KAROSHI, B.A., LL.M.
V ADDL.CITY CIVIL & SESSIONS JUDGE,
BENGALURU

Dated this the 23rd day of February, 2021.

A.A.302/2018

APPLICANT: Plivo Communications Private Ltd.,
A Private Company Limited by shares
Having its registered office at:
2nd Floor, Block B, East Wing,
77 Town Centre, Varthur Hobli,
Bengaluru East Taluk,
Bengaluru-37.

Rep. By its authorized representative
Mr. Venu Indurthi

(By. Sri.PN, Advocate.)

V/s

RESPONDENT: Arvind Eshwarlal,
R/at No.106,
Raheja Mansion,
13 Milton Street,
Cooke Town,
Bengaluru-05.

(By Sri. SB, advocate)

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ORDERS

The applicant has filed the present application under Section 9 of the Arbitration and Conciliation Act, 1996 along with interim application No.II to restrain the respondent and any person acting through him from utilizing or disclosing any of the confidential information of the applicant company along with cost of the proceedings.

2. The brief facts are as under:-

That, the applicant company is incorporated under the provisions of Companies Act, registered office of the company is at Bengaluru and it was initially registered under the name of 'Miglu Technologies Pvt. Ltd., and subsequently changed its name to 'Plivo Communications Pvt. Ltd., Further it is averred that the applicant's business is primarily in the communication sectors and it runs communications platforms that enable business to connect, engage and interact with their customers. Further the service offered by the applicant company simplifies the notorious complexity of telecom by offering simple and enterprise grade building blocks and its infrastructure handles billions of voice calls and messages ever year from the business around the world. Further the applicant company commenced the operations only in the year 2011 it has become a market leader in the industry and serves over 70,000 customers across various countries in the world due to its unique business

model and it has over 180 employees working across its offices in India, United States of America and Ireland.

Further it is averred that, the respondent is an employee of the applicant company joined as Associate Director-Customer Success on 27 November 2017, by way of an employment offer letter dated 16/10/2017. The terms of the offer, inter alia were that the respondent would be entitled to a maximum annual pay package of Rs.78,96,400/- of which Rs.49,40,000/- was the total fixed pay and the remaining was to be in terms of sale commission, which was directly linked to the performance of the respondent as this was in the nature of a commission on the sale made. The nature of business of the applicant company heavily involves dealing with information that is inherently confidential in nature, be it information or data pertaining to the several businesses for whom the applicant company was handling communications or its own proprietary information such as strategies, processes, databases etc. Upon joining the service of the applicant company the respondent was likely to come across or be privy to such confidential information and it was for this reason that one of the prerequisites under the offer of employment made to the respondent by the applicant company was the execution of a non disclosure and non compete agreement by the respondent as also recorded at Clause 10 of the

employment offer letter, accordingly the respondent and the applicant company entered in to non disclosure and non compete agreement dated 27/11/2017.

Further it is averred that, respondent's performance at the applicant company was below par and the respondent was not meeting any of his performance goals, as such on 18/05/2018 the respondent addressed an e-mail to the CEO of the applicant company making baseless and completely unsubstantiated allegations against the applicant company about its method of conducting business and also unreasonably demented that the applicant company notify its clients about these alleged breaches on the part of the applicant company and to publish the same on its status page and despite the vague allegations made by the respondent which appeared to have stemmed from the fact that he was disgruntled due to his own under performance work, the applicant company engaged a 3 rd party auditor to look in to the allegations made by him and he was also informed about the same orally by Mr. Venu Indurthi, the Vice President of Finance and Operations of the applicant company and also by way of e-mail dated 30/05/2018.

Further it is averred that, despite assurance given by the CEO that he was looking into these allegations and to take necessary action and to keep him updated about the same, but respondent on

30/05/2018 responded stating in essence that there was no need for verifying or validating the correctness of the allegations made and also arbitrarily threating to notify authorities and share evidence with them by 12 hours on 04/06/2018 if the applicant company did not heed to the unreasonable demands made in his e-mail dated 18/05/2018. The respondent in his e-mail dated 30/05/2018 makes references to the applicant company's customer data, its internal data, programs, processes and techniques which are all in the nature of confidential information and threatens to share the same by claiming that it is evidence by making baseless allegations which clearly demonstrated his mala fide intentions. Further it is averred that, as per the terms of NDA he is specifically barred from downloading or otherwise obtaining any information without the explicit consent of the applicant company, the mala fide

intentions of the respondent are further confirmed by the contents of his e-mail dated 19/05/2018 which was issued barely 13 hours after issuing the e-mail dated 18/05/2018 wherein he arbitrarily blamed the applicant company for his sub-par performance, thereafter he issued another e-mail dated 30/05/2018 threatening legal action against the company, apart from it the respondent also stated in his e-mail that he would be willing to settle with the applicant company for a payout of USD 500,000 which amounts to around INR 3.43 crores. As the

said e-mail communications contains references and sensitive information pertaining to the clients of the petitioner company these portions have been redacted. Further the applicant company after conducting a preliminary enquiry and satisfying itself that the allegations made by the respondent were unfounded and also after receiving the respondent's e-mail demanding INR 3.43 crores to settle, issued a notice of suspension dated 01/06/2018 to the respondent for his unethical conducts including without limitation, extortion and respondent was notified that an internal investigation was being carried out against him in respect of the alleged charges and requesting his co-operation and participation in the same.

Further it is averred that, respondent was also assured that he would be given an opportunity to express his position in the course of his investigation and he was served with the suspension notice on 01/06/2018 and was asked to return the laptop issued to him and respondent assured the applicant company that he had not sent any confidential information from the said laptop to his personal account or transferred it to any external device or taken a print out of the same, the said process was carried out in the presence of another employee by name Mr. Bhanu and the same was also recorded in writing and attested by him on 01/06/2018, despite the same, the respondent instead of choosing to

participate in the enquiry and presenting his case, he first got a legal notice dated 11/06/2018 issued to the applicant company denying the charges made in the notice of suspension and also stated in the said notice that the respondent was willing to engage in good faith negotiations in a mediation process to sort out the issues for which applicant company issued

reply notice dated 21/06/2018 inter alia that respondent had demanded sums of money under the threat of disclosing some made up charges and allegations against the applicant company and that the enquiry was underway. Thereafter respondent wrote another e-mail dated 07/07/2018 stating that his demand for USD 500,000 as a payout was misconstrued and said e-mail was issued in a clear attempt by the respondent to cover his tracks under the fear of being prosecuted for having committed the offence of extortion, pursuant to this the internal enquiry was commenced and the respondent's response on certain queries were recorded on 09/07/2018 and during investigation much to the shock and surprise of the applicant company and contrary to the earlier assurances given by him, the respondent blatantly admitted that he had taken confidential information from the applicant company in the form of e-mails, screen shots, PDFs prints, CDRs as he thought they were evidence, he refused to disclose the number of documents taken by him or the number of clients these documents pertained to,

he was asked to return the data and provide the applicant company access to the devices in which it was stored to analyse and destroy the data as per the binding terms of NDA, he merely stated that he refrained from commenting on the same for which on 18/07/2018 the respondent issued yet another e-mail to the applicant company making unfounded allegations and issued yet another ultimatum of five days to comply with his demands and despite he being well aware that the variable pay component of the respondent's remuneration is determined on a commission basis for the relevant period, therefore he would not be entitled to any part of his variable pay during his suspension period which he has raised the same as a grievance and respondent's action of taking confidential information the company without having any authorization is in itself is a clear breach of terms of the NDA, in addition his threat to disclose this information without the consent of the company and also his demand for settlement is not only in violation of the agreement but also in violation of the provisions of the Information Technology Act, 2000 as the certain informations available to the applicant company is of a highly sensitive and the respondent having signed the NDA, he was given access to confidential information belonging to the applicant company and any unauthorized leakage of confidential information belonging to the applicant

company could lead to catastrophic results and if any

information pertaining to the business model of he company are out in the public domain and accessed by its competitors in the market, there is every possibility that such information will be misused at the expenses of the applicant company and any disclosure of such information as has been threatened by the respondent would have disastrous effects on the applicant company as well as its customers business with every possibility that such information would fall in to the hands of their competitors in the market which not only have negative impact but would also expose to numerous lawsuits.

Further it is averred that respondent knowing fully of the sensitive nature of the information of the applicant company deals with and the effects of any leakage, keeping all these things in mind the respondent has illegally obtained confidential information and now blackmailing the applicant company which causes great hardship to the company and mere taking of this data and transferring it to his personal accounts would be clear and unequivocal breach of the terms of the NDA and there is a valid arbitration clause -12 in the agreement, as such the applicant company intends to initiate arbitral proceedings against the respondent for his blatant and admitted breaches of the Non disclosure and non compete, however the entire purpose of such proceedings will be defeated if the

respondent in the meantime makes the confidential information public which in turn affects the applicant company and its customers and suffer immensely and no amount of money can compensate such a breach, the respondent cannot be allowed to first steal the confidential information from the applicant company and then to hold them hostage with the threat of disclosing it at any point, as such there is paramount importance that the respondent be restrained from utilizing or disclosing any of the confidential information of the company and it has an excellent prima facie case to seek an injunction restraining the respondent from disclosing or making public any information belonging to the applicant company which has been obtained illegally for the purpose of extorting money, no hardship whatsoever will be caused to him and if the respondent is not

restrained from doing illegal acts the injury that will be caused to the applicant company will be of an irreparable nature. The applicant company has also filed criminal complaint against the respondent.

Further it is averred that, the cause of action to this application arose when the respondent joined the applicant company on 27/11/2017 and was pursuantly provided access to confidential information of the company between 27/11/2017 and 30/05/2018 when the respondent appears to have stolen the confidential information and transferred it to his personal Google cloud folder and

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when the respondent sought a settlement of around Rs.3.43 crores on 09/07/2018 when he admitted that he had taken the confidential information and on 18/08/2018 when the respondent issued yet another ultimatum to the applicant company, as such the cause of action is continuing one as respondent is in continuous possession of confidential information and may illegally disclose it at any point of time. On these grounds prayed for allowing the application.

3. It is contended in the objections filed by the respondent to I.A. No.II along with main petition that the application is not maintainable either in law or on facts and liable to be dismissed. The applicant has suppressed the material facts before the court and has come with unclean hands. Further contend that applicant is attempting to conceal the utter lack of data protection safeguards in its organization and also attempting to conceal instances of willful misrepresentation made to its customers which was amounted to cheating. The present application has been filed to prevent the respondent from disclosing the applicant's fraudulent, illegal and unethical business practices to its customers and the application is based on misconstrued construction of emails dated 18/05/2018, 19/05/2018 and 30/05/2018 as the respondent raised issues pertaining to the manner in which Plivo as a company was functioning, security lapses and breach

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and he was harassed for being a whistle blower and the allegations made by the respondent have not been denied till date by the applicant company. The respondent also brought to Plivo's notice that customers had complained of unauthorized traffic which resulted in billed for unauthorized traffic and

the senior executive had willfully misrepresented to its customers and also about 70% of the Plilvo's employees had access to voice calls and SMS records made using Plivo's platform as the same are used only for the purpose of making voice calls and sending text messages by the customers and the same are not to be shared or accessible to any unauthorized persons and the purpose limitation is limited to debugging and other service and maintenance related functions.

Further it is contended that, the developer support team along with most of the 120+ of Plivo's employees have unencrypted access to the customers authentication keys and only allow them to carry out debugging and other maintenance related services and the applicant company has failed to disclose its terms of use and privacy policy read together require the applicant and the customer to protect the confidentiality of the customer's authentication keys which includes authentication ID and token and applicant company has complete access to the authentication keys with no prescribed safeguards for maintaining of confidentiality on its part and has

refused to acknowledge that there may be instances of breach and unauthorized use of Plivo's platform which result in lax security practice, as such respondent has raised the above issues in his email dated 18/05/2018 in order to ensure that he was not personally a party to the fraud being continuously played by the applicant company on its customers and it is seeking to protect these unethical and illegal practices through the guise of the confidentiality clause, as such the interim orders of this Hon'ble Court in this arbitration application cannot perpetuate an illegality and hence deserves to be vacated at the outset.

Further it is contended that, respondent has a statutory obligation and a right as a morally conscious citizen to report the applicant company and he has also obligation towards the customers to report the illegal and fraudulent manner in which the applicant is dealing with its customers, as such the respondent has filed a complaint reporting the fraud being perpetuated on the applicant's customers to the police and the present interim order does not restrict the right of the respondent to report instances of cheating and fraud to the police or to other statutory authorities as the same are outside the purview of the Non Disclosure Agreement and he will be party to fraud and cheating of Plivo's

customers if he is not allowed to report the various instances of cheating to its customers.

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It is further contended that, respondent joined the applicant company in the position of Associate Director- Customer Success vide offer letter dated 16/10/2017 and also executed a Non Disclosure Agreement dated 27/11/2017. However the said NDA does not restrict the respondent from withholding information whether confidential or otherwise for the purpose of bringing Plivo's illegal and unethical conduct to the notice of regulatory authorities and to its customers. As stated in email dated 18/05/2018 various customers have raised this specific issues with Plivo, however no steps have been taken towards encrypting the authentication keys. As applicant's business heavily involves dealing with information that is inherently confidential and sensitive in nature it is obligatory on its part to adhere to certain regulatory norms prescribed to protect the interest of the various stakeholders especially the customers of such an entity whose information is actually being handled and the terms of service and privacy policy expressly state that authentication keys can only be accessed by the applicant's developer support team to provide debugging and other maintenance related services. When respondent began noticing these breaches he orally complained about the same to his manager in the month of January and February 2018 no positive reply was forthcoming and he also raised issues with respect to the mismanagement, misconduct and

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security lapses but applicant has failed to produce the attachments sent with the email dated 18/05/2018, therefore guilty of suppression.

Further contended that the applicant was brazenly lying and willfully misrepresenting to its customers and misleading them about material terms of service and they have been over billed through unauthorized use of the customers authentication keys. In the e-mail dated 19/05/2018 the respondent requested the Plivo to produce ESOP Scheme/Policy, board resolution approving the ESOP, explanatory statement annexed to notice for passing of special resolution to approve ESOP, annual director's report, register of ESOP holder of the company in Form SH-6 and he was will within his right to request since he was promised employee

stock options in his offer letter.

Further contended that,the respondent in his e-mail dated 19/05/2018 requested Plivo to share a clear written understanding of how his performance would be measured and how the variable pay would be calculated and paid, the respondent has received no response to his email, the applicant infact through Mr. Venu orally informed the respondent after having received the email that they wanted the respondent to resign from the company and was asked to propose a severance package that he would settled for to prevent a dispute. The respondent left his position at GCC to join the applicant company with

the intention of growing as ESOPs and variable pay offered were significant factors, but the applicant company's unprofessional conduct of not providing clear information to the respondent on what his key performance areas and key performance indicators were has resulted in grave financial losses to the respondent and the respondent was suspended for pointing out the blatantly illegal, unethical and fraudulent manner in which the applicant conducts business. The respondent in view of the above proposed a reasonable and negotiable settlement of USD 500,000 post taxes. The proposal was taking into consideration the lost opportunities at GCC which included a possible foreign posting, an impending promotion the opportunity cost of time for finding new employment and the financial losses suffered by the respondent as a result of he lack of clarity in the manner in which Plivo was ascertaining the variable pay of the respondent, loss of realizing ESOPs which had played a significant role in his decision to join Plivo.

It is further contended that, data of over 60000 customers are subjected to breach every single day by the applicant and the respondent has not received any response regarding his employment issues and as the applicant failed to communicate the goals of the respondent, he is entitled to variable pay and the allegation that the respondent is trying to extort

money from the company which he is not entitled to is false and malicious as borne out from the record and following the mail of the respondent to the CEO of the applicant on 30/05/2018 the applicant made a

blatant attempt to cover up its breaches which were discovered by the respondent and under the guise of internal inquiry the applicant suspended the respondent for daring to raise issues with its security practices. After the notice of suspension was served the respondent was made to attend a meeting with Mr. Venu and Ms. Bhanu and laptop given to him by the company was seized and he was informed that the applicant intended to get the said laptop audited by an independent third party and request of the respondent for deleting some of his personal data was turned down and on 11/06/2018 the respondent has replied to the said suspension notice by denying the allegations made against him and termination notice fails to address any of the concerns raised by the plaintiff and it is also silent on the issues raised by the respondent and failed to appreciate the fact that the respondent had not acted in an unauthorized manner and he only wished to raise concerns regarding the illegal and fraudulent manner in which the company was conducting his business.

Further it is contended that, the applicant willfully misconstrued the same and filed FIR No.2350/2018 dated 20/07/2018 against him with

malicious intent of harassing and forcing him to delete the data in his possession and he was extensively interrogated in the matter by the police and has been pressurized to delete the data, but he has refused the same and police threatened him of arresting if he did not delete the evidences he had in his possession, thereafter respondent moved the Sessions Court, Bengaluru for grant of anticipatory bail and he has also filed his complaint regarding the irregularities and data breach committed by the applicant company to the Indian Computer Emergency Response Team which is nodal agency under Government of India to conduct information audit of Plivo and to direct Plivo to put in place appropriate measures to safeguard sensitive customer data. In order to intimidate, harass, humiliate and defame the respondent and to cover up their own irregularities the applicant has gotten a false news paper report published in Times of India on 21/08/2018 making all kinds of baseless, malicious and defamatory statements against him, as such the plaintiff sent legal notice to the reporter, editors, publishers of the said news paper seeking immediate retraction of the articles and also seeking

damages for defamation.

It is further contended that, the plaintiff was served with notice on termination on 22/08/2018 subsequent to these media articles by quoting that

the respondent was a former employee, as such the respondent has filed two suits against the applicant in O.S. No.6218/2018 seeking permanent injunction against the applicant company and the same is pending before CCH-43 and he has also filed O.S. No.6242/2018 before CCH-6 for the relief of permanent injunction. There is no material to show that there was reasonable apprehension that the respondent may disclose the information held by him in a manner that was contrary to the NDA, therefore in the light of above stated facts there is no prima facie case made out in favour of the applicant company as this application has been made only to cover up the security breaches and the illegal manner in which the company conducts its business and this is a tactic used by the applicant to persuade the respondent to drop his allegations against the company which are legitimate and based in concrete evidence demonstrating illegal practices.

It is further contended that, this Hon'ble Court has no jurisdiction to hear or entertain this application as no cause of action arises from the NDA entered into between the parties, as such arbitration application is not maintainable to prevent disclosure of fraud and illegal activities either to statutory and regulatory authorities or to victims of fraud. The applicant is yet to nominate an arbitrator and commence arbitration proceedings. The criminal

proceedings initiated against the respondent are frivolous and malafide in nature and the applicant company has suppressed the material particulars before the court. On these grounds prayed for dismissal interim as well as main application.

4. Heard and perused the written arguments along with material on record. The learned counsel for applicant has relied on decisions reported in 1.2016 SCC online KAR 6931, 2. (2005) SCC Online KAR 595, 3. 2012 SCC Online KAR 9199, 4. 2006 SCC Online Del 551 and 5. 2015 SCC Online Cal

1192 and copy of judgment and decree passed in O.S. No.6218/2018 by CCH-43. The learned counsel for respondent also relied on a decision reported in (1977) 2 SCC 424.

5. The point that arises for my consideration is:

> Whether the application filed under Section 9 of the Arbitration and Conciliation Act along with interim application No.II, by the applicant deserves to be allowed?

6. My answer to the above point is in the affirmative for the following:

REASONS

7. It is worth to note that, the interim as well as main relief claimed by the applicant is as under:-

> 'To Restrain the respondent, and any person acting through him, including his agents, employers, servants, contractors or anybody claiming under or through him from utilizing or disclosing any of the confidential information of the applicant company including any trade secrets, inventions, mask words,

> concepts, ideas, processes, formulas, source and object codes, data programs, other works of authorship, know how, discoveries, developments, designs, techniques and information regarding plans for research, development, new products, strategic plan, marketing and selling, business plans, budge, licenses, price and costs, prospective or current suppliers and customers, financial, business, economic, technical, operational, commercial, employment, management, planning and other information, data, material and expertise of whatever kind whether oral in writing or in any other form relating to the applicant company which is either directly or indirectly disclosed to or acquired by the respondent from the applicant company whether on before or after the respondent entered into the non disclosure and non compete agreement dated 27 November 2017 with the applicant company along with cost'.

8. In this regard, the learned counsel for applicant has filed detailed written submissions by reiterating the averments of the main application and relying on the decisions referred supra urged

that till adjudication of the CMP No.171/2020 filed under Section 11 of Arbitration and Conciliation Act before the Hon'ble High Court the respondent be restrained from disclosing the confidential information of the company as prayed in the interim as well as main petition.

9. Per contra it is the case of the respondent that,the applicant has filed the application on baseless and untenable grounds and deserves to be dismissed in limine. Further,he applicant has suppressed the material facts before this Court and come with unclean hands. In this regard, the learned counsel for respondent also filed detailed written submissions and relying on the decision

referred supra urged that though the applicant has obtained interim relief in the year 2018 by suppressing the material facts but enjoying the same without taking steps to initiate arbitration proceedings except issuing a letter to the respondent, as such he cannot be restrained.

10. It has been held by our Hon'ble High Court in the decision referred at Sl.No.1 supra by the learned counsel for applicant that an ex-employee may be injuncted from using the information in his possession and acting in a manner which can be detrimental to the interest of the plaintiff. Further observed that a company which invests its time, money and manpower in research and development deserves protection against alleged infringement.

Further it has been held in the case of Hi-tech Systems and Services Ltd., (2015) SCC online CAL 1192 that, intellectual properties -Trade Marks Act 1999 and Section 2, 27, 29 r/w Order 39 Rule 1 and 2 CPC - against use of computer data basis containing confidential information and trade secretes, wherein the principal defences of defendant that information which plaintiff is claiming to be confidential in nature and trade secrets are in public domain and in any event, the restrictive covenant contained in the service contract is void being hit by Section 27 of Contract Act, as such plaintiff is able to demonstrate that

there is a basis of genuine apprehension that defendant's ex-employees are going to part with, divulge or to utilize confidential informations and trade secretes in course of their business and

thereby acted in breach.

11. It has been held in the case of Mannaial Kethan and others [(1977) 2 SCC 424] referred supra by the learned counsel for respondent that- Section 24 of Contract Act- held that a contract is void if prohibited by a statute under a penalty even without express declaration that the contract is void because such a penalty implies a prohibition.

12. The provisions of Section 9 of Arbitration and Conciliation Act, 1996 reads as under:-

"9. Interim measures etc., by court:-

(1)Any party may, before or during arbitral proceedings or at any time after the making of the arbitral award but before it is enforced in accordance with Section 36, apply to a court:-

i. for the appointment of a guardian for a minor or person of unsound mind for the purposes of arbitral proceedings; or

ii. for an interim measures or protection in respect of any of the following matters, namely:-

a. the preservation, interim custody or sale of any goods which are subject matter of the arbitration agreement
b. securing the amount in dispute in the arbitration'
c. The detention, preservation or inspection of any property or thing which is the subject matter of the dispute in arbitration, or as to which any question may arise therein and authorizing for any of the aforesaid purposes any person to enter upon any land or building

in the possession of any party, or authorizing any samples to be taken or any observation to be made, or experiment to be tried, which may be necessary or expedient for the purpose of obtaining full information or evidence;
d. Interim injunction or the appointment of a receiver;
e. such other interim measure of protection as may appear to the court to be just and convenient,

and the court shall have the same power for making orders as it has for the purpose of, and in relation to, any proceedings before it".

13. So in the light of aforesaid principles, provisions of Section 9 of the Act and facts and circumstances of the case if we go through the averments of main application along with contents of accompanying affidavit filed with I.A. No.II as well as the documents viz., true copy of the certificate of incorporation and fresh certificate of incorporation consequent upon change of name of the applicant company, board resolution authorizing Mr. Venu Indurthi to represent the applicant company, notarized true copy of the employment offer letter dated 16/10/2017, original of the Non Disclosure and Non Compete Agreement dated 27/11/2017, true print of the e-mail dated 18/05/2018 from the respondent to the CEO of the applicant company, true print of the e-mail dated 30/05/2018 sent by the CEO of the applicant company to the respondent, true print of the e-mail dated 30/05/2018 from the respondent to the CEO of the company, true print of e-mail dated 19/05/2018

from the respondent to the vice president of the applicant company, true print of the e-mail dated 30/05/2018 from the respondent to the vice present of applicant company, notarized true copy of the notice of suspension dated 01/06/2018, notarized true copy of the said record of events dated 01/06/2018, true copy of the legal notice issued by the respondent's advocate to the applicant company, notarized true copy of the reply notice dated 21/06/2018, true print of the e-mail dated 07/07/2018, true print of the e-mail dated 07/07/2018 from the respondent to the vice president of applicant company, notarized true copy of the deposition of the investigation dated 09/07/2018, true print of the e-mail dated 18/07/2018, true copy of the criminal complaint dated 17/07/2018 and true copy of the first information report dated 17/07/2018 relied by the applicant we can find that there is prima facie case in favour of the applicant.

14. Though the learned counsel for respondent urged that as the respondent raised issues with respect to the mismanagement, misconduct and security lapses with the email dated 18/05/2018 which is violation of Section 23 of Contract Act, as such the allegation is denied as false, but with regard to balance of convenience is

concern it is the specific case of the applicant that

as admitted by the respondent he is trying to disclose confidential information of the applicant company and blackmailing by demanding USD 500,000, thereby violated the Clause 1 of the terms of NDA referred supra.

15. In this regard if we go through the statement of objections along with the documents relied by the respondent viz., copy of the applicants terms of use and privacy policy, true copy of the email dated 18/05/2018 sent by the respondent, a true copy of the email dated 30/05/2018 sent by Venkateshwar Balasubramanium, true copy of the suspension notice dated 01/06/2018, true copy of the minutes of meeting dated 01/06/2018, true copy of the reply dated 11/06/2018, true copy of the charge sheet dated 02/08/2018, the respondent's response dated 10/08/2018 to the charge sheet, true copy of the termination notice dated 22/08/2018, true copy of the anticipatory bail application preferred by the respondent, true copy of the affidavit filed by the plaintiff dated 03/08/2018, true copy of the order of the Sessions Court, Bengaluru passed in Crl.Misc.6167/2018 dated 07/08/2018, true copy of the complaint dated 14/08/2018 filed with ICRT, true copy of the print edition of the newspaper in Times of India dated 21/08/2018, true copy of the article in the digital edition of Times of India

dated 21/08/2018, copy of the legal notice dated 22/08/2018, true copy of the news articles published in Moneycontrol.com on 21/08/2018 shows that the respondent has not disputed the fact that he has taken data in the form of e-mails, screen shots, PDFs prints, CDRs but refused to disclose the number of documents taken by him or the number of clients these documents pertained to, which is detrimental to the interest of applicant company. So this has made the applicant to apprehend about disclosure of confidential information by the respondent. The document No.9 e-mail indicates that respondent made an offer to settle the dispute amicably for an amount of USD 500,000. So though the learned counsel for respondent urged that the said e-mail is nothing to

do with document No.5 and applicant company is conducting business illegally and unethically, but as observed in the judgment passed by the learned CCH-43 in O.S. No.6218/2018 dated 24/11/2020, it is the duty of the concerned authority to take necessary action based on complaint regarding irregularities said to have been conducted by the applicant company, as such contention of the respondent on this aspect cannot be accepted.

16. Further it is no doubt true that applicant company cannot violate its own terms of service and privacy policy, but it is equally settled that, the respondent being an ex-employee of the applicant

company cannot disclose the data with held by him which is confidential in nature, except doing in accordance with law.

17. Records reveal that, considering the facts and existence of valid arbitration clause -12 in the agreement, this court has granted interim injunction in the year 2018 itself. Further though the learned counsel for respondent argued that, after obtaining interim order applicant company is enjoying the same without taking further steps, but on perusal of e-mail correspondence dated 31/05/2019 along with annexure filed by the counsel for applicant reveals that the applicant has already taken steps to initiate arbitration proceedings for which the respondent has given reply stating that the act of the applicant is clear breach of terms of NDA. However while arguments were being heard it was brought to the notice of this court that the applicant has already taken necessary steps to initiate arbitrary proceedings by filing CMP No.171/2020 before the Hon'ble High Court of Karnataka and it is still pending for consideration.

18. In this regard, the sub Sections 2 and 3 of Section 9 as inserted by the amendment Act No. 3 of 2016 reads thus:-

> "Where before the commencement of arbitral proceedings, a court passes an order for any interim measure of protection under sub section 1, the arbitral proceedings shall be commenced

> within a period of 90 days from the date of such order or within such further time as the court may determine".

19. This being the fact, as urged by the learned counsel for the respondent the applicant did not take steps within the stipulated period, but the aforesaid material reveals that the CMP filed by the applicant is still pending for consideration before the Hon'ble High Court.

20. It is relevant to point out that though it is contended in the objection statement that this court has no jurisdiction to try the present application, but Section 2(1)(e) of the Act defines the court as District Court or High Court. The material on record indicates that there exists arbitration Clause 12 in document No.4 Non Disclosure and Non Compete Agreement dated 27/11/2017 between the parties to the present petition, then again this court can pass any order under Section 9 of the Act to give effect to the words before or during arbitral proceedings or expiry of stipulated period.

21. Therefore having regard to the facts and circumstances of the case, pendency of aforesaid CMP petition and alleged illegal demand of money by the respondent, if this court make the ad interim ex-pare injunction i.e. interim measures granted on 31/07/2018 as absolute subject to condition it can

meet the ends of justice. Therefore, I find that at this stage if the reliefs as sought for by the applicant through interim application as well as in the main petition is not granted then applicant company will be put to more hardship and inconvenience than the respondent. On the other hand no loss or injury would be caused to the respondent. For these reasons, arguments/written submissions filed by the learned counsel for applicant holds good. On the other hand the arguments/written submissions filed by the learned counsel for respondent do not have weight and cannot be accepted at this stage.

22. Wherefore having regard to the facts and circumstances of the case I come to the conclusion that applicant is able to satisfy the grounds as shown in Section 9(1)&(2) of the Act so as to grant interim injunction or measure of protection under

the said provision of the Act. Consequently I.A. No.II as well as main application deserve to be allowed without cost till disposal of CMP No.171/2020, pending before the Hon'ble High Court. In the result, interim order granted on I.A. No.II dated 31/07/2018 is made absolute. Hence, I answer the point raised for consideration is in the affirmative and proceed to pass the following:

31

A.A No.302/2018

:ORDER:

Application filed under Section 9 of Arbitration and Conciliation Act, 1996 by the counsel for applicant is hereby allowed. In the result the respondent is hereby restrained from utilizing or disclosing any of the confidential information of the applicant company in public domain till disposal of CMP No.171/2020, pending before the Hon'ble High Court.

Consequently interim order granted on I.A. No.II dated 31/07/2018 is made absolute and merged with main orders. Accordingly disposed off. No order as to cost.

(Dictated to the Stenographer directly on computer, revised and corrected by me, signed and then pronounced in the open Court on this the 23rd Day of February 2021.) (C.D.KAROSHI) V ADDL.CITY CIVIL & SESSIONS JUDGE BENGALURU 32 A.A No.302/2018 Operative portion of the orders pronounced in open court vide separate order:-

> ORDER Application filed under Section 9 of Arbitration and Conciliation Act, 1996 by the counsel for applicant is hereby allowed.
>
> In the result the respondent is hereby restrained from utilizing or disclosing any of the confidential information of the applicant company in public domain till disposal of CMP No.171/2020, pending before the Hon'ble High Court.
>
> Consequently interim order granted on I.A. No.II dated 31/07/2018 is made absolute and merged with main orders. Accordingly disposed off.
>
> No order as to cost.
>
> (C.D.KAROSHI) V ADDL.CITY CIVIL & SESSIONS JUDGE, BENGALURU .