

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Judgment Reserved on: May 07, 2013*
Judgment Pronounced on: July 01, 2013

+ **ARB.P. No.406/2012**

MPS LIMITED Petitioner
Through Mr.S.Mukerjee, Adv. with
Mr.Vishrov Mukerjee, Adv.
versus

MRINAL ZALPURI Respondent
Through Mr.Sudhir Vats, Adv. with
Ms.Swati Pandit, Adv.

AND

+ **O.M.P. No.854/2012 & I.A. No.18523/2012**

MPS LIMITED Petitioner
Through Mr.S.Mukerjee, Adv. with
Mr.Vishrov Mukerjee, Adv.
versus

MRINAL ZALPURI & ANR Respondents
Through Mr.Sudhir Vats, Adv. with
Ms.Swati Pandit, Adv.

CORAM:
HON'BLE MR. JUSTICE MANMOHAN SINGH

MANMOHAN SINGH, J.

1. By this common order, I propose to decide both petitions filed by the petitioner. The petitioner, MPS Ltd. is a public company with its registered office in Chennai. It is involved in providing publishing

solutions to national and international companies engaged in typesetting and data digitization services.

2. The respondent No.1 is a former employee of the petitioner, who has started his own company, which is the respondent No. 2 in this matter. He was appointed as a Project Leader in the Software Development Group in 2006. His employment contract required him to maintain confidentiality regarding proprietary information obtained during the period of his employment.

3. The respondents are conducting their business in Delhi and reside in Delhi. The employment contract also gives the Courts of Delhi the supervisory jurisdiction.

4. It is alleged that the respondent No.1 had started a company which allegedly provides the same service as that of the petitioner. It was also alleged that this was done by using the proprietary information of the petitioner.

5. The employment contract contained an arbitration clause which is hereinafter reproduced, *"If you and MPS Technologies are unable to informally resolve any dispute arising out of or related to your employment by MPS Technologies India, you agree that MPS Technologies may elect, in its sole discretion and at any time, for the dispute to be mediated and or submitted to a binding arbitration."*

6. OMP No.542/2012 is under Section 9 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the Act') filed by the petitioner against the respondents wherein the petitioner seeks an injunction to restrain the respondents from dealing with the allegedly copied software and to prevent him from approaching the clients of the

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petitioner for future business. This Court had granted the injunction vide order dated 11th September 2012. The present petition is under Section 11 of the Act, requesting the court to appoint an arbitrator to adjudicate the dispute as well as for consideration of OMP No.854/2012 which is listed for disposal. Both petitions have been argued by the parties.

Arguments of the petitioner in brief:

7. The petitioner submits that the employment contract between it and the respondents clearly prevents the latter from using its proprietary information for their own benefit. The product of the respondents, which is promoted on its website, <http://www.collab4ideas.com>, is alleged to provide the same service as that of the petitioner's company. The website directly represents its product, StatsClarity as an alternative to MPS Insight, the product of the petitioner. Further, the respondents had approached the customers of the petitioner with their product as a cost effective alternative to MPS Insight, which the petitioner argues to be a violation of the employment contract as well. The petitioner has also obtained a demonstration of the respondents' product, which, it claims is exactly similar to its own product.

8. The petitioner argues that due to the loss of business created, there is irreparable harm; balance of convenience also rests in favour of the petitioner since failure to grant an injunction would have a harmful effect on its business. And finally, the petitioner submits that there is a strong *prima facie* case in favour of the petitioner since it is a leader in this particular field.

9. The respondents had also approached a third person, Mr. David Sommer, who is a consultant in the type of software involved in this

dispute, requesting him to promote his product, who agrees that Stat Clarity is quite similar to MPS Insight. The petitioner, therefore, argues that this is a breach of the employment contract, since the respondents' product was created by using the confidential and proprietary information of the petitioner.

10. Finally, the petitioner has also displayed a manifest intention to arbitrate the matter. Pursuant to the arbitration clause in the employment contract which is reproduced above, the petitioner has sent a notice dated 5th September 2012 to the respondents in accordance with Section 21 of the Act, indicating its intention to arbitrate the matter and nominating an arbitrator to adjudicate the dispute.

11. The petitioner has filed this petition under section 11 of the Act, requesting this court to appoint the named arbitrator, Mr. Yoginder Kumar, Advocate at the Delhi High Court to settle the dispute.

12. The respondent No.1 submits that his actions have been in consonance with the terms of his employment contract with the petitioner. He argues that the employment contract does not prevent him from starting up his own enterprise, while it may prevent him from joining the competitors of MPS Technologies. The respondent No.1 further challenges the validity of this clause as being violative of Section 27 of the Indian Contract Act, which prohibits restraint of trade. He further submits that he has a constitutional right to carry on his chosen profession under Article 19 of the Constitution.

13. With regard to the similarity of his and the petitioner's product, the respondent submits that they provide two different services. In any event,

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he argues that the petitioner himself has created his product by drawing from the knowledge of his own competitors.

14. While these matters form the substance of the dispute between the parties, the existence of a valid arbitration clause in the contract would indicate that this dispute should be referred to arbitration in view of two different versions of the parties. The dispute relates to the use of confidential information obtained during the respondent No.1's employment with the petitioner. This would fall within the ambit of "disputes relating to employment" as mentioned in the contract. Further, this dispute calls for the appointment of experts to determine whether any source code has been copied. This requires the appointment of an appropriate tribunal to adjudicate the dispute.

15. Under these circumstances, both the petitions filed by the petitioner are disposed of with the following directions :

- i) Ms.Prathiba M.Singh, Advocate is appointed as sole Arbitrator to adjudicate the dispute between the parties.
- ii) Both parties will raise their claims and counter-claims before the learned sole Arbitrator.
- iii) The interim order already granted on 11th September, 2012 shall continue until and unless it is modified or vacated on finding of application under Section 17 of the Act, if any, filed by the respondents.
- iv) Total fee of ₹1 lac shall be paid by both parties to the learned sole Arbitrator in equal proportion. The learned sole Arbitrator is requested to render the award within the period of 6-9 months, if possible.

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16. No further orders are required to be passed in these matters. The same are accordingly disposed of.

17. Copy of order be given dasti to the parties. Registry to communicate the order to the learned sole Arbitrator forthwith.


(MANMOHAN SINGH)
JUDGE

JULY 01, 2013