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Arb.Appln.No.198 of 2024
and O.A.Nos.267 to 269 of 2024
A.No.3942 of 2024

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RESERVED ON 22.08.2024	PRONOUNCED ON 03.10.2024
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K. KUMARESH BABU, J.

The Application in Arb.Appln.No.198 of 2024 has been filed to direct the respondents to immediately return the laptop (Asset:1081-LT-0074), along with all confidential and proprietary information, that the respondent has had access to arising out of the Agreement.

2. The Application in O.A.No.267 of 2024 has been filed to grant interim injunction restraining the respondents or any of its affiliates, agents or any person(s), directly or indirectly, from infringing or exploiting the proprietary drawings of the petitioner of the Single Seater passenger Seats and Hansa Passenger Seats, pending disposal of the arbitration.

3. The Application in O.A.No.268 of 2024 has been filed to grant interim injunction restraining the respondents or any of its affiliates, agents or any person(s), directly or indirectly, from divulging or exploiting the confidential information obtained during the period of Agreement, specifically the customer requirements and specifications developed by the



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petitioner in consultation with its customers.

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4. The Application in O.A.No.269 of 2024 has been filed to grant interim injunction restraining the respondents or any of its affiliates, associates, agents or any person(s), directly or indirectly, from soliciting or engaging or undertaking any assignment of production or supply of driver seats and passenger seats for tractors and trucks to any person including Fricke Holdings GmbH and Hansa.

5. The Application in A.No.3942 of 2024 has been filed to take the present affidavit on record and delete respondent No.2 from the array of parties and pass such other orders.

6. Heard Mr.Shailendera Kishore Singh, learned counsel for the petitioner in Arb.Appln.No.198 of 2024, O.A.Nos.267 to 269 of 2024 and for respondent in A.No.3942 of 2024 and Mr.M.S.Bharath, learned counsel for the respondents 1 & 2 in Arb.Appln.No.198 of 2024, O.A.Nos.267 to 269 of 2024 and for petitioner in A.No.3942 of 2024.

7. The learned counsel for the applicant would submit that on



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~~16.10.2014~~, a consultancy agreement was entered between the applicant and the first respondent in which the second respondent was the Managing Director and signatory of the first respondent. He would submit that originally the applicant had approached a Man Power Recruitment Agency for recommendation of an individual capable of providing a seat design. The said Man Power Recruitment Agency had proposed five individual consultants who fitted the requirements of the applicant. A recommendation was also made by the said Man Power Recruitment Agency about the keen interest shown by the second respondent. According to him, the first respondent was a non-existing company at that point of time. After the fructification of the meetings of the applicant and the second respondent and considering the various taxing laws, the second respondent had connived an idea of creating a Company in order to take the benefit of taxing statutes. Thereafter, the first respondent was created and an Agreement was entered into. The said Consultancy Agreement had been time and again renewed till ~~30.09.2022~~. When the second respondent had intimated on behalf of the first respondent that he do not propose to continue with the agreement. He would also submit that the respondents had been utilising the services of the applicant's employees, particularly the design team for preparation of designs of seats under the Consultancy Agreement. During May 2020, the second



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respondent had exhibited his intention to manufacture FENDT tractor seats which was similar to the applicant's design so that it would benefit his successors.

8. The same was replied to by the applicant that it would be contrary to the non-competitive agreement Clause in the Agreement that had been entered with the applicant. Thereafter, he had engaged the design team of the applicant for designing the said seat and had also been sent with the soft copies of various designs in September 2022 through an employee named Shiva before the last date of the contract.

9. He had also taken me through various documents to substantiate his contention that there has been a breach of the contractual obligations and with the designs that had been created by the employees of the applicant company, the second respondent had been manufacturing and supplying seats not only to the customers of the applicant but also to third parties. He would further submit that these came to light when the applicant Company was informed that the second respondent under the cover of the applicant was trying to negotiate and supply to one of the customers of the applicant as the representative of the applicant.



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10. He would submit that even though the contract had expired, the confidentiality and intellectual property rights are alive and therefore, the petitioner had sought for return of the laptop. But, however, the respondents had claimed that the applicant Company had assigned the laptop to the applicant themselves. He would submit that such an assignment was only an auto-reply by the company department and he would submit that the said laptop contains various designs that had been downloaded by the second respondent from the mails that he had received from employees. Further, he would contend that the respondents should also be enjoined in the manner prayed for in the three applications.

11. Countering his arguments, the learned counsel for the respondents at the outset would submit that the present application is not maintainable as against the second respondent. He would submit that the second respondent was a signatory of the consultancy agreement between the applicant and the first respondent and that does not mean that the second respondent could be personally held liable for the contract. In that context, he would rely upon Section 230 of the Indian Contract Act and contend that the contract shall not personally bind the agent, signatory of the company and therefore, the same



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could not be enforced against the second respondent, he being the signatory of the first respondent. He would further submit that it was a mistake committed by the counsel for the second respondent in replying to a notice received under Section 21 of the Arbitration Act and he is defending the same suitably in the O.P. filed under Section 11 before the Hon'ble Apex Court. He would submit that Clause 11 namely Competitive Clause under agreement will not bind the second respondent as he is individually not a party to the Consultancy Agreement. Therefore, his individual rights to exploit the designs created by him cannot be the subject matter of Arbitration and further, if there is any infringement of the second respondent, the same cannot bind upon the arbitration agreement and the applicant would have to challenge the same in appropriate proceedings under the relevant Clause.

12. With regard to the return of the laptop, even though he had received a mail from the applicant that the asset had been assigned to him, he was always willing to return the laptop. He would further contend that it is true that in May 2020, the first respondent by e-mail had contacted the applicant for manufacturing co-driver seats on the design of the first respondent. According to him, the applicant had agreed to assist the first respondent in manufacturing the said design and therefore, it cannot be said to be the design



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made with the assistance of the R&D team of the applicant and therefore, they cannot restrain the respondents from exploiting the said design. Since, the cost indicated by the applicant to the second respondent was too high, the project did not materialize at that point of time.

13. He would submit that even after the termination, the respondents have not been using the designs that had been developed by the applicant and that the seats that have been designed subsequent to the agreement are different and therefore, Clause 11 of the agreement cannot be said to have been violated. He had also taken me through various documents with regard to the designs which he had been dealing after the termination of the agreement in contrast to the designs that have been developed by the applicant and contend that it is not the same design. He would also further submit that there is no urgency in these applications, since the applicant had approached this Court more than a year after which the alleged breach has complied on.

14. In reply, the learned counsel appearing on behalf of the applicant had relied upon various judgements to contend arbitrality of intellectual property disputes, breach of non-competitive Clause, breach of



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confidentiality and with regard to maintainability of these injunction Applications as against the second respondent also.

15. I have considered the rival submissions made by the learned counsels appearing on either side and perused the materials available on record.

16. Before proceeding to deal with the injunction applications, I am inclined to first look into the claim of maintainability of the application in respect of the second respondent. The applicant had contended that originally they had approached a third party Man Power Agency for identifying an individual consultant. The said Man Power Agency had identified the second respondent and only after negotiations with the second respondent, the second respondent came up with an idea of creating the first respondent for his tax benefits and had requested the applicant to enter into an agreement with the second respondent. He had also submitted that the second respondent is a one man company. Even though, the learned counsel appearing for the respondents had admitted to the same, he would contend that the first respondent and the second respondent are two different legal entities and therefore, the second respondent cannot be mulcted with the



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obligations and liabilities of the first respondent. It is to be noted that an application under the Section 11 is pending before the Hon'ble Apex Court, but, however, what is pending before this Court is an injunction Application under the Section 9 to preserve the subject matter of Arbitration. It is not disputed by the respondent that pursuant to the Consultancy Agreement he had also designed products during the tenure of the Consultancy Agreement. The prayers in A.Nos. 267 to 269 of 2024 are for a negative injunctions to restrain the respondents from infringing or exploiting the proprietary drawings belonging to the applicant, to divulge or exploiting the confidential information obtained during the period of agreement which were developed by the applicant in consultation with its customers through and under the Consultancy Agreement and for an injunction from soliciting or engaging or undertaking any assignment of production of supply driver seats and passenger seats for tractors and trucks to any person. The prayers in A.No. 267 of 2024 refers to the proprietary drawings of the applicant and the prayer in A.No. 268 of 2024 refers to the confidential information which would have arose during the period of agreement. Clause 10 of the agreement provides for obligation of confidentiality. For better appreciation, the relevant Clause is extracted hereunder:-

“10. Obligation and Confidentiality



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The consultant is committed to maintain absolute confidentiality towards any third party in regard to any confidential matters, including the services contemplated in this agreement.

The obligation of confidentiality includes any matters and activities that have and will become known to the Consultant during its activity and encompasses any other material and personal circumstances in the company of the Principal that do not rank among the formal business and trade secrets.

The Consultant furthermore undertakes to return to the Principal, in case of termination of the Agreement, all supporting documents and information obtained for the fulfillment of its tasks besides all documents, reports, etc., prepared for the services under this Agreement.”

17. A reading of the said Clause would indicate that it is the obligation of the respondents to maintain absolute confidentiality to any third party. With regard to the matters including the services contemplated under the said agreement and also include any other material and personal circumstances of the applicant that do not rank among the formal business trade secrets. Such confidentiality had to be preserved by the parties to the agreement. It is true



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that the second respondent is not a signatory to the agreement but as the Managing Director of the one man company (first respondent), the second respondent is also aware of the confidential discussions and creation of designs by the first respondent in consultation with the employees of the applicant.

18. In such an event, the second respondent cannot contend that he is not obligated under the agreement to preserve the confidentiality. Even though he is the signatory of the first respondent, he shall also be personally bound to keep the confidentiality or otherwise it would cause irreparable injury to the applicant.

19. Further, from the reading of the mail dated 17.05.2020 sent by the second respondent to the applicant would indicate that the same had been sent by the second respondent only in his personal capacity wherein he had also indicated the benefit to his family members. This would indicate that the second respondent is aware of all the confidential information of business belonging to the applicant.

20. Since, he was aware of all the designs, which were conceived,



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developed during the period of agreement which span over for a period of eight years as being the Managing Director of the first respondent Company, there is no impediment for this Court to consider an injunctive relief against the second respondent or otherwise, the subject matter of the arbitration proceedings would have already been destroyed, by the time an Award is passed. Therefore, I am of the view that the second respondent is a proper and necessary party for protecting the subject matter of arbitration in the present proceedings.

21. Even though, the claim for designs prepared by the respondent in consultation of the employees of the applicant's company have been seriously disputed, I am of the view that the same cannot be gone into in the present proceedings. However, it is an admitted case that the first respondent had entered into an Consultancy Agreement for creating designs and developing the designs for almost a period of more than eight years. It is also not disputed that various designs have been developed by the parties in collaboration. It is also an admitted fact that the first respondent is in possession of the laptop which would definitely contain the various designs and confidential information which are all now in his possession.

Eventhough, the first respondent had agreed to return the laptop, in view of



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the present dispute the laptop has still not been handed over.

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22. In view of the consent given by the learned counsel for the respondents, the respondents are directed to return the laptop, confidential and proprietary information available with them within a period of two (2) weeks from the date of receipt of a copy of this order. The respondents are also restrained from divulging or exploiting the confidential information obtained during the period of Agreement, specifically the customer requirements and specifications developed by the applicant in consultation with its customers and further restrained from infringing or exploiting the proprietary drawings of the applicant of the Single Seater passenger Seats and Hansa Passenger Seats, pending disposal of the arbitration.

23. A further application in A.No.269 of 2024 has also been filed for grant of interim injunction from soliciting or engaging or undertaking any assignment of production or supply of driver seats and passenger seats for tractors and trucks to any person including Fricke Holdings GmbH and Hansa. Clause 11 of the Agreement deals with competition. The said clause envisages that the respondent shall not to engage himself directly or indirectly any similar assignment with any competitor. It also indicates that the



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said clause is valid till the contract period and for a period after the expiry of the contract which shall have the same run time as the collaboration under this contract before. It would have been correct if a prayer is sought for not to use the designs created during the period of contract . A non-competitive clause in a contract cannot be put in perpetuity. It is almost two years the contract period had expired and already the applicant had complained that the respondents have breached both the confidentiality clause and the competitive clause. Even though, this Court was inclined to grant an injunction protecting the agreement with regard to confidentiality, this Court is not inclined to grant any relief in the prayer in the instant application. An individual cannot be prevented from creating any further new designs for the very same object for the benefit of the end-users in which process he can also enjoy the benefits. The prayer sought for in the application is very vague/wide and this Court is not inclined to entertain this application.

24. In fine, the Arb. Appln. No. 198 and O. A. Nos. 267 & 268 are allowed and the application in O. A. No. 269 of 2024 and A. No. 3942 of 2024 are dismissed.



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Index : Yes/ No
Speaking/ Non-speaking order
Neutral Citation : Yes/ No

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