

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
ARBITRATION PETITION NO. 841 OF 2014

Ployone Polymers India Private Limited **Petitioner**

VERSUS

Rahul D. Mehta **Respondent**

Mr.Mayur Khandeparkar, i/b. Legasis Partners for the Petitioner.

Ms.Sushma Dave for the Respondent.

CORAM : R.D. DHANUKA, J.

DATED : 9th JULY, 2015

P.C.

By this petition filed under section 9 of the Arbitration and Conciliation Act, 1996, the petitioner seeks injunction restraining the respondent from disclosing to or sharing with any third party the confidential and trade secrets information of the petitioner mentioned in prayer (a) of the arbitration petition and for other reliefs. Mr.Khandeparkar, learned counsel for the petitioner states that he does not press prayer clauses (b) and (c). Statement is accepted. Some of the relevant facts for the purpose of deciding this petition are as under :-

2. By an agreement dated 1st August, 2008 respondent was appointed by the petitioner as the Marketing Manager on the terms and conditions as contained in the said agreement. It is the case of the petitioner that the respondent was holding key position in the organization and during his five years tenure of employment, the respondent was entrusted with and in possession of and had access to all the confidential information and trade secrets information and data. On 21st June, 2013, the respondent resigned from the employment of the petitioner and joined the employment of the competitor of the petitioner viz.Toyo Ink India (P) Ltd. at Gujarat.

3. On 4th September, 2013, the petitioner called upon the respondent to refrain from joining or associating with the competitors of the petitioner and from committing any breaches of the agreement dated 1st August, 2008. There is no response to the said notice. The petitioner has thus filed this application under section 9 for interim measures.

4. Mr.Khandeparkar, learned counsel appearing for the petitioner invited my attention to clause 14 of the agreement dated 1st August, 2008 and submits that under the said agreement, the respondent who was an employee had undertaken that during and after his employment with the petitioner company, he shall not transfer to any third party any data, information or documentation that was deemed by the company to be confidential information or intellectual property. He invited my attention to the averments made in paragraph 4(A) of the rejoinder dated 3rd January, 2015 in which the petitioner has disclosed that the respondent had accessed to various confidential information setout therein. There is no denial to the said averments made by the petitioner.

5. Learned counsel appearing for the petitioner invited my attention to one of the averment made in the affidavit in reply and more particularly paragraph 27. It is averred in paragraph 27 that the respondent has not even divulged any information so far and did not intend to do ever as he was not aware of the composition of the product. It is however the apprehension of the petitioner that since the respondent was in employment of the petitioner for about five years, various confidential information of the petitioner was to the knowledge of the respondent and he may diverse those information though stated so in the paragraph 27 of the affidavit in reply. In support of this, learned counsel invited my attention to some of the e-mails exchanged between the parties in support of his submission that the respondent had various confidential information as disclosed in paragraph

4(A) of the rejoinder. The petitioner has sought leave to place reliance on the said correspondence at the time of hearing of this proceedings. A copy of the said documents were also furnished to the learned counsel appearing for the respondent for her perusal.

6. Learned counsel appearing for the respondent on the other hand submits that the respondent does not have any information or any confidential information as disclosed by the petitioner in paragraph 4(A) of the rejoinder.

7. A perusal of clause 14 of the employment agreement dated 1st August, 2008 clearly indicates that the respondent had given an undertaking that during and after his employment with the petitioner, he shall not transfer to any third party any data, information or documentation that was deemed by the petitioner to be confidential information or intellectual property. In my view the respondent thus cannot be permitted to diverse any such information in view of the said undertaking recorded in clause 14 of the said contract of employment agreement dated 1st August, 2008. The apprehension of the petitioner is justified. In my view the present petition thus filed for injunction in view of the negative covenant recorded in clause 14 is maintainable. Petitioner has made out a case for grant of interim measures.

8. I, therefore, pass the following order :-

Petition is made absolute in terms of prayer (a). Since learned counsel appearing for the petitioner does not press other reliefs claimed in the petition, the same are not considered. Arbitration petition is disposed of in the aforesaid terms. No order as to costs.

[R.D. DHANUKA, J.]