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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision: 02.03.2015

+ CS(OS) 2380/2011

AIREF ENGINEERS (P) LTD

..... Plaintiff

Through: Mr. Vaibhav with Ms. Aamna and
Mr. Shantanu Sood, Advs.

versus

VINOD SHETTY

..... Defendant

Through: Ex parte.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J. (Oral)

1. This is a suit for permanent injunction to restrain the defendant and all others acting on his behalf from committing breach of contract, misuse of confidential information, know-how, misappropriation of plaintiff's trade secrets amounting unfair competition, damages, rendition of accounts and delivery up.

2. The plaintiff's case is a company registered under the Companies Act. This suit has been filed through its Managing Director who has been duly authorised to do so. The plaintiff claims to be engaged in the business of providing solutions for multidisciplinary engineering services. It offers sales, service, maintenance, repair and installation of new high efficient heating and air conditioning systems, engineering and preparing layout

blueprints of such systems depending upon complex and varied client requirements. In addition to Central Air Conditioning & Heating, the plaintiff claims to have a long standing experience and expertise in various other services such as Building Automation System, Water Supply & Plumbing, Captive Power Supply & Generation, Fire Righting & Detection, Security, Surveillance & Access Control, Ventilation, Pneumatic Systems, Internal & External Electrification, Shock & Vibration Isolation, Geotechnical Instrumentation, Building and Road works etc. The plaintiff claims to have over 20 years of experience, when the suit was filed, and technical expertise to handle big government projects and that they are competent to be entrusted with essential information and trade secrets that are confidential in nature. The plaintiff's customers include National Projects Construction Corporation Limited (NPCC) and Engineers India Limited, CPWD, RITES, AAI and PWD of various states. The nature of the work entrusted to the plaintiff requires them to safeguard all information which is given to them by their clients. Consequently, non-disclosure of confidentiality is an essential aspect for the services rendered by the plaintiff. In turn, each employee of the plaintiff is bound by a non-disclosure and confidentiality contract with the plaintiff company to protect such information and to maintain secrecy.

3. The defendant was appointed as an Executive Engineer (Civil) on 26.06.2009. He was posted at the site of the project to be undertaken by the plaintiff on behalf of the Ministry of Defence.

The defendant was reporting to his senior, the Project Manager. He was made privy to confidential information of the plaintiff and the Indian Army. Confidential information included measurement books and technical and civil drawings.

4. The secrecy clause in the appointment letter reads as under:

*“1. The company is working on projects which are covered under the **Indian Official Secret Act 1923**. Utmost secrecy is to be maintained by the employee regarding all information, date and documents related to the scope of work.*

2. All the company information, date and other related documents shall be treated as proprietary and confidential by the employee. All the Company proprietary information, date and other related documents and confidential information obtained during the course of implementation of these projects shall be Company’s exclusive property and shall not be used for any other purpose except for the execution of the related projects. The date, information, records, type of job, its Location and other document shall not be copied, transferred, or divulged and/or disclosed to third party in full/part, nor misused in any form whatsoever.

3. All the Company proprietary and confidential information, data, drawings and other related documents shall be returned to the Company management along with all

proved copies and duplicates including date/plans as prepared by the employee, in the event of the employee resigning from the company, and all such information & data cannot be used or divulged to anyone under any circumstance in future by the outgoing employee.

*4. To implement the above you are required to sign the undertaking towards **Indian Official Secret Act 1923** and return to us as a token of your acceptance of the terms and conditions.”*

5. On 8th October, 2010, the defendant took leave till 19.11.2010 on the ground of his brother's health problem. The leave was sanctioned in accordance with the company policy. The defendant was required to report to work on 20.11.2010. He did not report to work on 20.11.2010, instead an e-mail was received by the plaintiff stating that the defendant wished to resign from duty and start his own firm. He further stated that his one month notice was dated 07.10.2010 and the same was to be construed from that date. Through a letter dated 24.11.2010, the defendant was called upon to settle the issue especially since it concerned the plaintiff's confidential and sensitive information. There was no response to the said letter. Thereafter, a notice was sent by the plaintiff on 15.03.2011 which too went unheeded. Reminders were sent on 15.05.2011 and 05.08.2011. These reminders also remained unanswered.

6. It is the plaintiff's case that the defendant wilfully misappropriated confidential and sensitive information and data for his own use and hence the suit has been filed for damages of Rs.20.00 lacs for breach of contract. According to plaintiff, the following documents have been misappropriated by the defendant and they need to be returned in terms of the secrecy clause in the appointment letter:

“(i) measurement books and drawings in the defendant's possession provided during the course of project for Indian Army;

(ii) information regarding the plaintiff's proposals and work in progress;

(iii) information that has been provided to the plaintiff on a confidential basis by third parties;

(iv) information regarding the plaintiff's research and development, inventions, and proprietary methods and business practices;

(v) information regarding the plaintiff's past and present clients;

(vi) information relating to any suppliers and vendors of the plaintiff; and

(vii) all such information marked “Confidential” or which was designated as such.”

7. In the Written Statement ('WS'), the defendant has stated that he had given all the requisite information; that the plaintiff had accepted his resignation and that he was issued site clearance and the No Dues Certificate.

8. In the replication to the WS, the plaintiff denied that the defendant was manhandled by the Managing Director of the plaintiff company or that the defendant was insulted and scolded by him.

9. The defendant submitted that he was appointed on 21.06.2009 and not on 26.06.2009 and that he was not privy to any confidential information exchanged between the plaintiff company and the Indian Army. Therefore, confidential information including the measurement books, the technical and civil drawings of the plaintiff was never shared by him. It was submitted that work of the defendant was never relating to civil work and he was always under the supervision of his seniors. He submitted that the No Dues and Clearance certificates issued by Mr. Sashi Kant Mall and Mr. Vimal Azad to him clearly certified that the plaintiff company had taken possession of all relevant papers including the mobile phone SIM card and the motor bike. The claims made in various notices were also denied by the defendant. The defendant's WS is not supported by any document. The documents of the No Dues Certificate and the Clearance Certificate were not brought on record by the defendant and hence stand not proved.

10. Thereafter, the defendant had been proceeded *ex parte*.

11. The affidavit in evidence of Mr. Mahesh Monga, Managing Director of the plaintiff company (marked PW1/A) reiterates the aforesaid claims and the same are not controverted in any way.

12. The plaintiff's case is un rebutted through evidence. In the circumstances, there is no reason to believe the defendant's case. The plaintiff has made out a case for grant of an injunction.

13. The learned counsel for the plaintiff submits, upon instructions that he would not be pressing for the relief of damages except for costs to the suit.

14. In view of the aforesaid, the defendant is permanently enjoined from misusing of plaintiff's confidential information, know-how, misappropriation of plaintiff's trade secrets and doing any other thing or act amounting to unfair competition. The defendant is further restrained from misusing and misappropriating information, and disclosing information contained in such documents, in unauthorized possession of the defendant, to third parties. The defendant is further directed to deliver to the defendant all such information and documents as detailed in the prayer clause.

15. The suit is decreed in the above terms.

16. A decree sheet be drawn up accordingly.

March 2, 2015/acm

NAJMI WAZIRI, J.