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IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 22.07.2021

JUDGMENT DELIVERED ON : 31.08.2021

CORAM:

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

C.M.A.Nos.657, 674, 676, 686, 698 & 699 of 2021

and

C.M.P.Nos.4027, 4119, 4123, 4153, 4202, 4203, 6758 & 6759 of 2021

1. Dr.Sreedhar S Mayavan

2. Mrs.Ashiya Fathima

3. M/s.Primegen Healthcare Laboratories Pvt.Ltd.,
Registered Office at
Flat No.3013, Banyan House,
No.471 MKN Road,
Alandur, Chennai - 600 016.

.. Appellants/Respondents/
Respondents in All CMA's

..Vs..

M/s.LifeCell International Private Limited,
Represented by Authorised Signatory,
Mr.D.Mahesh

.. Respondent/Applicant/
Claimant in CMA.Nos.657, 674 & 676 of 2021

M/s.Fetomed Laboratories Pvt.Ltd.,
No.26, Kelambakkam Main Road,
Keelakottaiyur, Chennai-600 048.

.. Respondent/Applicant/
Claimant in CMA.Nos.686, 698 & 699 of 2021

Common Prayer:-

Civil Miscellaneous Appeals filed under Section 37 of the Arbitration and Conciliation Act, 1996, against order dated 10.06.2020 passed by the Sole Arbitrator in Application Nos.5, 6,4, 1, 2 and 3 of 2020 respectively in Arb.No.1 of 2020.



For Appellants : Mr.S.Ravi
for M/s.Gupta and Ravi

For Respondent : Mr.Krishna Srinivas
for M/s.Ramasubramaniam and Associates

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COMMON JUDGEMENT

All these Civil Miscellaneous Appeals arise out of an interim order, dated 10.06.2020, passed by the Arbitral Tribunal, by allowing all the Applications filed by the respondent herein. The Applications have been filed pending disposal of the Arbitration proceedings in Application Nos.5, 6, 4, 1, 2 and 3 of 2020 respectively in Arb.No.1 of 2020, for grant of injunction from soliciting and poaching the customers and clients of the applicant and for grant of interim injunction restraining the first and second respondent therein from taking up employment or being associated as a Director, Consultant, Partner or Associate with the third respondent or any other Competitors of the Applicant. Further injunction was also sought for injuncting the first and second respondent from using the confidential/proprietary information belonging to the Applicant or disclosing the same to any other third parties. There were 6 (six) Applications filed in the above said Arbitration proceedings by the respondent/Company.

2. The Arbitral Tribunal, after consideration of the rival statements of the parties had allowed the Applications in favour of the applicant therein who is the respondent in these Appeals. The appellants herein are the respondents before the Arbitral Tribunal. The appellants herein were the promoters of the respondent/Company which was engaged in the business of doing diagnostic and testing services. The appellants herein claim that they have enormous expertise in the field of pre-natal screening and new born screening services. The appellants herein have entered into an agreement with the respondent/Company on 20.04.2016 which is called Share Subscription. The agreement contains various rights, liabilities and conditions governing the parties and for the purpose of the present case two specific clauses have been referred to by the learned counsel for the appellant i.e., Clause 10.3 and 10.4 of the Agreement which are extracted hereunder;

"10.3. Non-compete for promoters: So long as any of the promoters hold any Shares in the Company, the promoters undertake and shall ensure that none of their affiliates shall, singly or jointly, directly or indirectly, for their own account or as agent, employee, officer, director, consultant, or



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shareholder or equity owner of any other person, engage or attempt to engage or assist any other person to engage in any business similar to the Company's business. The promoters further undertake that other than as employees of the Company, from the Completion Date, they shall give up, part with and/or cease and desist from carrying on in India or abroad directly or indirectly, any activity or business which is the same as that of the Company's business. They undertake that any venture or investment, whether directly or indirectly, in the Company's business shall only be undertaken, carried on, implemented or held through the Company or its Affiliates.

10.4. Non-solicitation for promoters: The promoters covenant that during their employment with the Company under their respective employment contract and thereafter for a period of two years from the effective date of termination of employment, they will not, directly or indirectly, without the prior written consent of the Company;

10.4(a) attempt in any manner to solicit from any client/customer, except on behalf of the Company, business of the type carried on by the Company or to persuade any person who/which is a client/customer of the Company to cease doing business or to reduce the amount of business which any such client/customer has customarily done or might propose doing with the Company whether or not the relationship between the Company and such client/customer was originally established in whole or in part through his or their efforts; or

10.4(b) employ or attempt to employ or assist anyone else to employ any Employee; or any person who was an employee at any time during the preceding 12 months; or

10.4(c) otherwise interfere in any manner with the contractual, employment or other relationship of any Employee, or a person who was an Employee at any time during the preceding 12 months.

3. In terms of the agreement, both the appellants have been appointed as Managing Director and Director of the respondent/Company. Likewise another Share Purchase Agreement (SPA) was entered into between the parties on 27.06.2018 between the appellants and the respondents. This Court's attention was



drawn to Clause 8 of the agreement, which is extracted herein;

"8. During the tenure of full time exclusive engagement with fetomed/Life cell and for a two year period following the date of separation of SM from Fetomed/LifeCell whichever is later (the "registered period"), SM hereby agree and undertake that, he shall not, whether directly or indirectly (including but not limited to through any person allied by kindred or otherwise, whether in his own capacity or in conjunction with or on behalf of any person, as an employee of, or shareholder or consultant of any other Person, firm or company or through their affiliates), whether for profit or otherwise;

(a) Engage, set up, promote, finance or invest in a business, venture or company which deals with or offers, the same or similar products and/or services that LifeCell is rendering;

(b) Enter into any agreement or agreement relating to a business similar to LifeCell's Business, with any person involved in the same or which would result in the business of such person becoming a business similar to LifeCell's Business;

(c) Provide any know-how or technical assistance to any person in relation to LifeCell's Business;

(d) Divulge or disclose to any person any information (other than information available to the public or disclosed or divulged pursuant to an order of a Court of competent jurisdiction) relating to LifeCell Business, the identity of its suppliers, its products, finance, contractual arrangements, business or methods; and

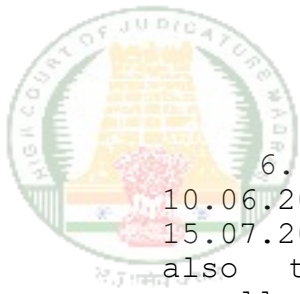
(e) Engage in any other act or thing analogous to the foregoing that would prejudice the interests of LifeCell. SM also agrees that he shall not do or say anything which is harmful to the reputation of LifeCell or any subsidiary or materially affects their existing business relationship with any person. SM acknowledge the non-complete covenants contained in this Agreement and that the restrictions contained herein are considered reasonable for the legitimate protection of the business and goodwill of LifeCell."



4. Mr.S.Ravi, learned counsel for the appellants submitted that as per the first Share Purchase Agreement dated 20.04.2016, the condition of non-solicitation for promoters was to remain in force during the period of employment and thereafter, for a period of two years from the effective date of termination of the employment. When the second agreement was entered into on 27.06.2018, the first agreement had come to an end. Subsequently, the appellants have also resigned from the Directorship of respondent/Company on 31.03.2019. According to the learned counsel for the appellant, the first appellant had resigned on 31.03.2019 and the second appellant resigned on 10.04.2019. According to the learned counsel, the appellants have also transferred their shares on 01.04.2019 and thereafter, the question of invoking Clause 10.3 of the Agreement dated 20.04.2016 did not arise at all.

5. According to the learned counsel, the first appellant had subsequently entered into a Consultancy Agreement on 01.04.2019 and the same was also eventually terminated on 16.07.2019. The learned counsel would submit that the prayer in the Applications namely the injunction which has been granted by the learned Arbitral Tribunal cannot operate beyond a period of 2 years from the date of termination of the original agreement dated 20.04.2016 and in any case it may not extend beyond 15.07.2021 assuming the conditions were in force and continued because of the subsequent consultancy agreement dated 01.04.2019 which had been terminated on 16.07.2019. Therefore, the injunction as granted by the Arbitral Tribunal on 10.06.2020, by allowing Applications have the effect extending beyond the scope of the main Arbitration proceedings and in which case the operation of injunction notice to be discontinued and set aside as on date.

5(a): The learned counsel in fact would submit that in one Application in A.No.2 of 2020, the injunction ought to have not been granted at all namely injunction from taking up employment or being associated as Director, Consultant etc., in terms of the Clause 10.3. According to the learned counsel, Clause 10.3 clearly mandates that so long as any of the promoter held share in the Company, the Promoter shall undertake not to engage in any business similar to the company's business. In this case, the affiliates have already transferred all the shares as on 01.04.2019 and therefore grant of such injunction is completely outside the scope of the agreement. As far as allowing the Applications in A.Nos.4 to 6 of 2020 by the Arbitrator that those Applications were subject matter of the Share Purchase Agreement dated 27.06.2018. The Share Purchase Agreement dated 27.06.2018 cover only for a period of 2 years and the period of 2 years was also over in June 2020 itself in which event, the Arbitral Tribunal ought not to have granted a blanket injunction in respect of Application Nos.4 to 6 of 2020.



6. Even assuming that the period was not over as on 10.06.2020, but the continuation of the injunction beyond 15.07.2021 if the Consultancy arrangement dated 01.04.2019 was also taken into consideration entered into between the appellants and the respondents, is not called for. The two year period commencing from the termination of the consultancy agreement on 16.07.2019, will be over by 15.07.2021. Therefore, the grievance of these appellants herein is operation of blanket injunction granted by the learned Arbitral Tribunal and if this position is to be clarified namely that the injunction may not operate as on date, all the CMAs could be disposed of and a direction to be issued to the learned Arbitrator to proceed further with the main arbitration proceedings.

7. At this, Mr. Krishna Srinivas, learned counsel for the respondent referred to the same Clause 10.3 and submitted that the Clause mandates that employees of the Company shall give up their right to directly or indirectly engage in the business which is same as that of the company's business. Such undertaking is not meant to operate for a particular period of time but it is in fact operative for a life time for the simple reason that the information which an employee or an Associate gains from being part of the Company, is a highly specialised data which cannot be allowed to be shared with the third parties or illegally used against the interest of the Company.

8. The learned counsel submitted that the appellants herein while being associate of the respondent/Company has floated another Company who is the third appellant herein. He referred to the objects of the Company formed by them to highlight the fact that it is a very same business as that of the respondent Company. This Court's attention has been drawn to the Memorandum of Association of the third appellant-Company. The Company was formed on 28.01.2019 and on that day the appellants were full time consultants by virtue of their appointment as Consultant on 01.04.2019, the Consultancy was subsequently terminated on 16.07.2019.

9. The learned counsel further pointed out that as per the terms of engagement of the appellants, they were stipulated to work as full time Consultants at the work place for 3 months from 01.04.2019 and then 2 days a week thereafter. Having accepted this contract and arrangement, the appellants herein had illegally floated their own company. During the existence of their contract with the respondent-Company, the appellants, in blatant violation of the terms of the agreement, had been riding on two horses at the same time. The appellants have wilfully violated Clause 10.3 of the Share Purchase Agreement dated 20.04.2016 and also the Share Purchase Agreement dated 27.06.2018.



10. The learned counsel further submitted that a memo was filed on behalf of the appellants herein stating that they have no objection for appointment of Arbitrator in terms of Clause 9 of the Share Purchase Agreement, before this Court. After taking note of a Memo expressing no objection for appointment of Arbitrator, a consent order was passed by the learned Judge of this Court on 10.01.2020. In the order, the learned Judge has given liberty to the Arbitral Tribunal for passing suitable interim orders under Section 17 of the Act. Therefore, interim applications have been filed before the learned Arbitral Tribunal and the orders were passed. The learned counsel would also refer to Clause 10.5 which would state that the restrictions contained in the Clause 10.3 and 10.4 were reasonable for the legitimate protection of the business and the good will of the Company and the parties themselves. The appellants having agreed to abide by such conditions, it is not open to them to float their own Company directly against interest of the respondent/Company.

11. The learned counsel also submitted that this Court while entertaining these Appeals had granted stay of the interim order on 11.03.2021 and in view of the order granted by this Court, main Arbitration proceedings which have reached advance stage and nearing completion had been abruptly discontinued and as on date the learned Arbitrator has not fixed any date for continuing the Arbitration. Therefore, the learned counsel would submit that these CMAs to be disposed of by confirming the interim injunction of the Arbitral Tribunal as according to him that whether the respondent/Company is entitled to injunction ad infinitum or for a limited period and to what extent that should operate itself is the subject matter of main Arbitration proceedings and therefore, any limitation to be imposed on the operation of interim injunction granted by this Court would nullify the interest of the respondent/Company before the Arbitral Tribunal in the remaining part of the proceedings.

12. By way of reply, Mr.S.Ravi learned counsel referred to the first agreement dated 20.04.2016 and he would draw the attention of this Court to Clause 1.1(1), which defines what completion means. In this regard, he would further refer to Clause 4.1 and 6.1. Clause 4.1 of the agreement would define what is 'first closing', according to which within two business days of the issuance of valid First Tranche CP Confirmation letter and the 'Second Closing' was 2 days of valid Second Tranche CP satisfaction letter. According to him, these appellants have complied with these conditions and paid two installments in 2016 itself. The learned counsel would submit that in any event, in November, 2020 the respondent/Company has switched over to a construction business and not dealing with any more business which was dealt with earlier when the



appellants were associated with the Company. The learned counsel would reiterate that by 27.06.2018, the appellants ceased to be a shareholder of the respondent-Company.

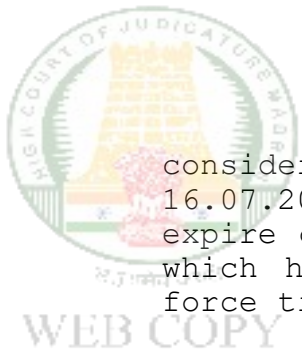
13. The learned counsel would also refute the allegation of gaining extraordinary expertise by the association of the appellant with the respondent-Company as privy to highly specialised data which ought not to be shared with anyone. According to him, at least there are 30 Companies involved in the same business and therefore, there is no exclusivity of the data protection as claimed by the respondent/Company. The learned counsel finally submitted that operation of injunction beyond the period of what is agreed upon by the parties is not called for and therefore, these appeals may be disposed of by setting aside the interim injunction order granted by the Court.

14. Heard the submissions of Mr.S.Ravi for M/s.Gupta and Ravi Associates, learned counsel for the appellants and Mr.Krishna Srinivas for M/s.S.Ramasubramaniam Associates learned counsel for the respondents.

15. From the above factual narrative, the consideration of this Court in all the appeals is as to whether the orders of injunction granted by the Arbitral Tribunal dated 10.06.2020 are to be continued till the conclusion of the arbitral proceedings or not?

16. The competing claims of the parties herein revolve around two agreements, dated 20.04.2016 and 27.06.2018 relating to the share purchase agreements. In regard to the former, dated 20.04.2016, Clauses 10.3 and 10.4 are the crucial clauses which became the bone of contention between the parties. According to the learned counsel for the appellants, the appellants, by virtue of the fact that they had entered into the second agreement, dated 27.06.2018, the earlier agreement and the application of Clause 10.3 had automatically come to an end by the said date. The bar of two year period which had been mentioned in the said Clause, cannot continue to bind the appellants after two years from the date of the agreement, because of the fact that there was a transfer of shares and the appellants ceased to be the Directors of the Company, after coming into force of the second agreement, dated 27.06.2018.

17. Further, the case of the appellants was that on 31.03.2019, the appellants have resigned from the Directorship of the Company and in any case, thereafter, either Clause 10.3 or Clause 10.4 cease to have any binding effect after expiry of two year period. According to the learned counsel, even if the consultancy agreement subsequently entered into between the appellants and the Company on 01.04.2019, was to be taken into



consideration, yet the same having been terminated on 16.07.2019, the two year period from the said date would have to expire on 15.07.2021, and therefore, in any case, the injunction which has been granted by the Arbitral Tribunal, cannot be in force till the disposal of the arbitration proceedings.

18. Per contra, the above argument was rebutted by the learned counsel for the respondent-Company stating that the second limb of Clause 10.3 of the agreement would impose prohibition that they shall give up their right to carry on directly or indirectly any activity or business the same as that of the respondent-Company's business. Such undertaking as provided by Clause 10.3 would have a binding force ad-indefinitum and that is precisely the subject matter of consideration in the arbitration proceedings.

19. During the course of arguments, this Court was informed that the present adjudication of this Court in these appeals may be confined only to the inter-se claims of the parties as to whether the injunction granted should be continued beyond 15.07.2021 in any case or not.

20. On behalf of the parties, various contentions and submissions have been raised, touching upon the merits of the inter-se claims of the parties. However, this Court is not inclined and does not wish to get involved in actual controversy which is in fact the subject matter of consideration before the Arbitral Tribunal. As far as the short issue as to whether the injunction as granted by the Arbitral Tribunal, dated 10.06.2020 be continued or not, this Court has to primarily consider the very clauses as given in two share purchase agreements, dated 20.04.2016 and 27.06.2018. The clauses contained therein place an embargo on the promoter from engaging any activity or business during the period of their association and thereafter, for a period of two years. One is on the aspect of non-competing for promoters and another is on the aspect of non-solicitation for promoters in terms of the relevant clauses in the agreements dated 20.04.2016 and 27.06.2018.

21. Before dealing with the impact of the clauses and as to the factum of its binding nature for a limited period or for unlimited period, the fact of the matter is that, as on date, the appellants herein have ceased to be associated with the respondent-Company. The last of the contractual relationship with the Company had ended with the consultancy agreement dated 01.04.2019, being terminated admittedly on 16.07.2019. Although the learned counsel for the respondent-Company argued that when the consultancy agreement was very much in force, the appellants had started the third appellant-Company having identical objects as that of the respondent-Company by founding the Company on



28.01.2019, yet, this Court, for the purpose of disposal of these appeals, may not adjudicate upon such contention, as the same is to be left to the Arbitral Tribunal for its consideration.

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22. Whether the appellants herein have flagrantly violated the terms of the contract or not, and whether the Company started by the appellants is involved in the same business or not, are not for this Court to answer in the present proceedings, as the scope of the present proceedings is only to dwell upon the period of validity of the injunction granted by the Arbitral Tribunal, as the learned counsel for the appellants had confined his arguments on that aspect alone and not on the other grounds raised in these appeals.

23. It is also an admitted fact that while the interim order being granted by this Court in March 2021, staying the injunction order of the Arbitral Tribunal, the proceedings before the Arbitral Tribunal had been continued and it has reached its advanced stage. However, for some reason, presently, the arbitration proceedings have been discontinued because of the pendency of these appeals here before this Court.

24. On a prima-facie consideration of Clauses 10.3 and 10.4 of the agreement dated 20.04.2016 read with Clause 8 of the subsequent agreement, dated 27.06.2018, the ban in respect of non-competing and non-solicitation, may not be valid and binding on the appellants herein and may not have any binding force beyond a particular period of time, i.e. two years. The two year period appears to have finally ended in July 2021. However, the argument on behalf of the respondent-Company that the undertaking given by the appellants in the face of their gaining highly specialised knowledge and data information during their association with the respondent-Company, is not to be restricted to two years but it should be contextually understood to have binding force for their life time, is of course the subject matter of final adjudication before the Arbitral Tribunal. However, pending finalisation of the arbitral proceedings, whether the injunction can be in force at all, beyond what has been agreed between the parties in terms of the clauses which operate as the basis of exercise of inter-se rights and claims of the parties, is answered hereunder.

25. From a reading of the clauses as relied on by the learned counsel on either side, this Court is of the view that there is some force in the contention of the learned counsel for the appellants herein. Although the issue as to whether the binding nature of the undertaking is for a limited period or it is for all times to come, may be the subject matter of consideration before the Arbitral Tribunal, yet, pending such



finalisation, this Court does not think that the injunction can be allowed to work against the interest of the appellants herein. In any case, the fact of the matter is that the arbitral proceedings have reached advanced stage and it is in the fitness of things and it is expedient for the Arbitral Tribunal to conclude the proceedings at its early convenience, so that there is final resolution of the dispute between the parties.

26. In the above said circumstances, this Court is of the view that the injunction granted by the Arbitral Tribunal on 10.06.2020 on the face of it, appears to have worked itself out and to that extent, the appellants are entitled to succeed before this Court. However, it is made clear that this Court has not dealt with any of the grounds raised in these appeals on the validity or otherwise of the interim injunction granted by the Arbitral Tribunal.

27. The conclusion of this Court is on a prima-facie consideration after taking note of the arguments of both sides and the admitted facts in regard to the association of the appellants with the respondent-Company for the limited period. In fact, it was also argued on behalf of the appellants that the entire payments due to the respondent-Company from the appellants, had been settled in 2016 at all and in this regard, this Court's attention has been drawn to Clauses 4.1 and 6.1 of the agreement, dated 20.04.2016. Both the clauses relate to the first closing and second closing.

28. One other factor was also placed for consideration before this Court that the erstwhile business of the respondent-Company has been changed to construction business and it cannot today stated to be aggrieved by any so-called prejudicial act of the appellants. In fact, this has not been disputed at all. In any event, it is not for this Court to render any finding on the factual disputes, qua, parties, as the same will be entirely within the domain and purview of the Arbitral Tribunal.

29. For the purpose of the present disposal of the appeals, on a prima-facie finding, the injunction as granted by the Arbitral Tribunal on 10.06.2020 need not be continued any further. The present findings of this Court are without prejudice to the rights of the parties before the Arbitral Tribunal. The Arbitral Tribunal is always at liberty to appreciate the inter-se claims of the parties on its facts, without being influenced by any of the findings which are rendered herein on the basis of the arguments advanced on behalf of the appellants before this Court, which have been confined only in regard to the period of operation of injunction granted by the Arbitral Tribunal and not on any other ground.

30. In view of the above, all these appeals are allowed only



to the extent that the injunction granted by the Arbitral Tribunal on 10.06.2020 is not to continue any further and the other grounds raised in these appeals are left open for the parties to agitate before the Arbitral Tribunal. The Arbitral Tribunal is requested to expedite the completion of the arbitral proceedings at an early date, as this Court has been informed that it has reached its final stage of the proceedings, as it deems fit and proper in the facts and circumstances of the case.

No costs. Consequently, C.M.Ps. are closed.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

mrm/cs

To

1. The Sub Assistant Registrar,
Original Side,
High Court, Madras-104.

Copy To

1. Hon'ble Mr.Justice K.Chandru,
(Former Judge)
Sole Arbitrator,
No.4-13, Kanchana, 78,
St.Mary's Road, Abiramapuram,
Chennai-18.

+1cc to M/s.Gupta and Ravi, Advocate, S.R.No.43497

+2cc to M/s.Ramasubramaniam and Associates,
Advocate, S.R.No.43725 & 43726

C.M.A.No.657 of 2021 etc. batch

AJS(CO)
CS/22/09/2021