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

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Date of Judgment: 09.04.2021

+ **O.M.P.(I) (COMM.) 131/2021**

KRISHAN KUMAR SINGH

..... Petitioner

Through: Mr Samar Bansal, Ms Devahuti
Pathak and Ms Harsheen
Madan, Advocates.

Versus

TUI INDIA PVT. LTD. & ORS.

..... Respondents

Through: Mr Amit Singh Pasrcih, Mr
Amit Rajan Singh, Mr Kshitij
Paliwal and Mr Prateek
Sharma, Advocates.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

[Hearing held through video conferencing]

VIBHU BAKHRU, J. (ORAL)

I.A. 5129/2021

1. Allowed, subject to all just exceptions.

O.M.P.(I) (COMM.) 131/2021 & I.A. 5128/2021

2. The petitioner has filed the present petition, *inter alia*, praying
as under:-

“In view of the aforesaid facts and circumstances, it is most respectfully prayed that this Hon’ble Court may be pleased to pass the following interim measures:

- (a) Pass an *ex parte* ad interim order staying the operation and effect of Termination Letter dated 29.03.2021 and any/all actions or decisions taken pursuant thereby restoring the status of petitioner as CEO of Respondent No. 1 company;
- (b) Pass an *ex parte* ad interim order restraining the Respondents from holding the proposed EOGM on 17.04.2021 for removal of the Petitioner as a Director of Respondent No. 1 company;
- (c) Pass an *ex parte* ad interim order directing the Respondents to continue to pay salary, compensation and all other benefits in terms of the Employment Agreement dated 05.03.2018 and/or company policies;
- (d) Pass an *ex parte* ad interim order restraining the Respondents from publishing and/ or circulating in any manner, whether externally or internally, defamatory material with respect to the illegal termination of employment of the Petitioner;
- (e) *In the alternative*, in case the Hon’ble Court is not inclined to stay termination of employment of Petitioner as CEO, then:
 - i. Permit the Petitioner to continue to use the Volvo XC60 car taken on Company Car Scheme and permit the Petitioner to directly pay the equated monthly instalments for the same;

- ii. Or Direct the Respondents to refund to Petitioner the Equated Monthly Instalments paid till date by him and thereafter take back the Car;
 - iii. Permit the Petitioner to copy / clone the data contained in the laptop provided by the Respondent company, subject to an undertaking by the Petitioner that the said data would only be used for the purpose of prosecuting the arbitration;
- (f) Confirm all of the above ex parte ad interim orders after issuing notice to the Respondents;
- (g) Pass such other or further order(s) as this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case and in the interest of justice."

3. The petitioner was appointed as a Chief Executive Officer of respondent no.1 company (hereafter TIPL) and impugns a letter dated 29.03.2021, whereby his employment with TIPL was terminated. The petitioner also seeks to interdict the holding of an Extraordinary General Body Meeting of TIPL, which is scheduled to be held on 17.04.2021 to consider the petitioner's removal as a whole-time director of TIPL.

4. The petitioner states that his services have been terminated "for cause" in terms of the Employment Agreement dated 05.03.2018, which according to the petitioner, is unsustainable as TIPL has no reason to terminate the services of the petitioner. It is also averred in

the petition that TIPL has done so to avoid payment of higher emoluments and severance package, which would be payable in the event the petitioner's services were terminated without any cause.

5. Mr Bansal, learned counsel appearing for the petitioner has relied upon the decision of the Coordinate Bench of this Court in ***Dr Sharad Sahai v. DIO Digital Implants India Pvt. Ltd.:*** **OMP(I)(COMM.) 87/2021 decided on 12.03.2021** in support of his contention that by if an employee's employment is terminated without meeting the necessary conditions for which such employment contract can be terminated, an order staying the said termination of services can be passed.

6. TIPL had issued a show cause notice dated 21.03.2021 to the petitioner setting out several allegations against him. He was suspended from his position as a CEO of the company and was called upon to show cause why his services not be terminated. One of the principal allegations against the petitioner is that he had obstructed functioning of TIPL company and his actions had resulted in TIPL defaulting in complying with the statutory requirements. It was also alleged that the petitioner had been issuing veiled threats to other Directors.

7. The petitioner responded to the said notice disputing the allegations and also sought further time to file a detailed reply. The petitioner was provided an additional day to so, which petitioner claims was insufficient. The petitioner submitted his detailed reply on

24.03.2021 contesting the allegations made against him. Notwithstanding the above, the petitioner's services were terminated by the impugned letter dated 29.03.2021.

8. Clause 8 of the Employment Agreement dated 05.03.2018 contain provisions relating to termination of the said agreement. Sub-clauses 8.1 and 8.3 are relevant and are set out below:

“8. **Termination**

8.1 Employer may terminate Employee's employment at any time for Cause (as defined below). As used herein, the term “**Cause**” shall mean any of the following events:

- (i) any negligent or intentional misapplication of the Employer's funds, or Employee's conviction for any criminal proceedings, or plea of *nolo contendere*, of a felony or any offense or any other crime including involving moral turpitude by any court of law or tribunal or governmental authority;
- (ii) any other action by the Employee involving, malfeasance, or negligence in the performance of Employee's duties, after written notice to the Employee and his failure to fully cure such action within a reasonable period of time, but in no event more than thirty (30) days after such notice, unless such action is not reasonably susceptible of cure, in which case no cure period shall be given;

- (iii) any breach of Employee's fiduciary duties to the Employer, after written notice to the Employee and his failure to cure such breach or refusal within a reasonable period of time, but in no event more than thirty (30) days after such notice, unless such action is not reasonably susceptible of cure, in which case no cure period shall be given;
- (iv) any material failure to adhere to or comply with any policies or procedures of the Employer or the Employer Group or their successors, after written notice to Employee and his failure to cure such failure within a reasonable period of time, but in no event more than thirty (30) days after such notice, unless such failure is not reasonably susceptible of cure, in which case no cure period shall be given;
- (v) any proven material violation by Employee of any applicable laws, rules and regulations, including those related to the procurement and the ethical conduct of business, or a material violation of the Employer policies and procedures;
- (vi) Employee's material breach of any provision of this Agreement; or
- (vii) Any other act or omission which would constitute cause at law.

Once it is established that a Cause exists for the termination of the employment relationship,

Employee's employment may be terminated upon the giving of five (5) days' prior written notice and in case of provision of a cure period in the said notice, on the expiry of such cure period. Employee's employment shall be deemed to have been terminated for Cause at the expiration of such five (5) day period. In the event the employment relationship is terminated for Cause pursuant to this Section 8.1, the Employee shall only be entitled to receive accrued but unpaid compensation set forth in Section 4 through the date of termination and all other compensation and benefits shall cease as of the date of termination.

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8.3 Employer may terminate the employment relationship at any time for any reason whatsoever, without Cause, by the giving of sixty (60) days' prior written notice. In the event, the employment relationship is terminated by Employer without Cause, Employee shall be entitled to receive (i) accrued but unpaid compensation set forth in Section 4 through the date of termination; (ii) all other benefits payable as per the Employer's policies; and (iii) a severance pay equivalent to twice the fixed part of Employees CTC as applicable on the date of termination."

9. In the present case, the show-cause notice does indicate the reasons for termination of the petitioner's employment. It is not necessary for this court to examine whether any of the reasons fall within the scope of Sub-clause 8.1 of the Employment Agreement as it is apparent that in terms of clause 8.3, TIPL could also terminate the

Employment Agreement without any cause. Thus, indisputably, the employment contract with the petitioner is determinable. The relief sought by the petitioner is in the nature of specific performance, which in view of the Section 14(d) of the Specific Relief Act, 1963 cannot be granted. Apart from the above, it is also apparent that TIPL has lost confidence in the petitioner as it is apparent from the allegations made in the impugned termination letter. Clearly, in such circumstances, an order interdicting the petitioner's termination would not be apposite.

10. The reliance placed by Mr Bansal on the decision in the case of ***Dr Sharad Sahai v. DIO Digital Implants India Pvt. Ltd.*** (*supra*) is also misplaced. In the said case, the court had noted that the employment contract was an offshoot of a Joint Venture Agreement in terms of which the company in which the petitioner was a shareholder therein agreed to subscribe 30% of the total equity shareholding in the respondent, which was constituted as a Joint Venture Company. DIO Corporation, South Korea agreed to subscribe 70% of the total equity shareholding in the respondent. The petitioner was appointed as a CEO in terms of the Joint Venture Agreement and the employment agreement. The respondent company, DIO Digital Implants India Pvt. Ltd., was constituted as a Joint Venture Company and terminating the Dr Sharad Sahai's employment would in effect amount to excluding a joint venture partner from the affairs of the respondent company. More importantly, the said decision does not indicate that the employment agreement contain a clause, which entitled the employer (DIO Digital Implants India Pvt. Ltd) to terminate the petitioner's

employment without any cause.

11. In the present case, TIPL is entitled to terminate the services of the petitioner on a no-fault basis. Thus, clearly, the employment contract in the present case is a determinable one.

12. The petitioner has also sought certain prayers in the alternative. The petitioner prays that he be permitted to retain his vehicle (Volvo XC60), which was taken under the 'Company Car Scheme' and to directly pay the equated monthly instalments for the same. In addition, the petitioner also seeks that he be permitted to copy the data contained in the laptop provided by the respondent company.

13. The petitioner contends that the said data is necessary in order for the petitioner to pursue the ensuing arbitration proceedings.

14. Mr Bansal states that the petitioner is willing to undertake that he would not use the data pertaining to the respondents for any purposes except for prosecuting the arbitration proceedings that are likely to be commenced by him.

15. Mr Pasrich, learned counsel for the respondent states that respondent no.1 has no objection if the petitioner takes over the vehicle in question (Volvo XC60) as well as the loan availed for purchasing the same. He points out that this would be subject to the financier agreeing for the same, however, insofar as TIPL is concerned, it has no objection for the same and would execute the necessary documents for the same.

16. He further states that subject to the petitioner furnishing an undertaking to this Court that it would not use any of the material available on the laptop or any other device provided by TIPL, TIPL has no objection to the petitioner copying the data available on the devices provided.

17. In view of the above, the petitioner may retain the vehicle (Volvo XC60) subject to taking over the liability to repay the financier, with its consent. The petitioner is also permitted to copy any data as available on the laptop or any device as provided by TIPL, subject to the petitioner furnishing an undertaking in the form of an affidavit that the same would not be used for any other purpose other than for the prosecuting the arbitration proceedings that the petitioner intends to commence in connection with the disputes with the respondents, within a week from date.

18. The petition is disposed of in the aforesaid terms. The pending application is also disposed of.

VIBHU BAKHRU, J

APRIL 9, 2021
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