



Arb.O.P.No.2 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 11.10.2022

Coram:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

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M/s.Ayan Tech Solutions Pvt. Ltd.,  
9<sup>th</sup> Floor, Block 'C', Temple Steps,  
184-187 Little Mount, Anna Salai,  
Chennai – 600 015.  
Represented by its Authorized Signatory,  
Mr.Dhananjaya Reddy

.. Petitioner

Vs.

Ravi Balaji

.. Respondents

This Original Petition has been filed under Section 34(2)(iv) of the Arbitration and Conciliation Act, 1996 praying to set aside the Award dated 18.02.2021 and consequently, decree the claim of the petitioner.

For petitioner : Mr.P.John Zachariah

For Respondent : Mr.Swarnam J Rajagopalan



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## ORDER

This petition has been filed taking advantage of Section 34(2)(iv) of the Arbitration and Conciliation Act, 1996 seeking to interfere with the arbitration award dated 18.02.2021.

2.The claimant before the Arbitral Tribunal is the petitioner herein. The respondent had joined the services of the petitioner on 17.01.2018 and at that particular point of time, while offering employment, an agreement had been entered into between the petitioner and the respondent. Among various clauses in the said agreement relating to the service conditions, one main condition which was pointed out by Mr.P.John Zachariah, the learned counsel for the petitioner, is reference to settlement of disputes through arbitration.

3.Disputes had been narrowed down in two specific clauses, namely, clause Nos.9 and 10 which are as follows:

*“9.No Conflict of Interest*

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*a).You represent that your performance of all the terms of this Agreement and as an employee of the Company does not and will not breach any agreement to keep in confidence proprietary information, knowledge or data acquired by you in confidence or in trust prior to your employment by the Company, and you will not disclose to the Company or induce the Company to use nay confidential or proprietary information or material belonging to any previous employers or others. You further agree to comply with the rules and regulations of the Company.*

*b).During your employment with the Company, you agree not to become associated as an owner, employee, agent, consultant, officer, director or partner or in any other capacity with any business.*

#### 10.Non-solicitation



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*During the term of employment and in the event of ceasing the services of the Company for whatsoever reason, you agree that, in addition to any other limitation during the term of your employment and for a period of one year after the termination of your employment, you will not directly or indirectly;*

*a) Solicit or accept employment with any Ayan Tech Solutions or its Subsidiaries direct & indirect client to which you provide services as Ayan Tech Solutions employee.*

*b) On your behalf or as a partner or as an officer, director, an employee, agent or shareholder or any other entity; or person or as a trustee, fiduciary of other representative or any other person or entity.*

*c) Employ, solicit the employment of, or encourage or aid any other party to employ or solicit the employment of any Ayan Tech Solutions employee or independent contractor to terminate employment with Ayan Tech*



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*Solutions.*

*d) Contact any persons of companies which are customers or prospective customers of Ayan Tech Solutions or any of its affiliates or subsidiaries for the purpose of soliciting the customers or prospective customers in competition with Ayan Tech Solutions its affiliates or subsidiaries nor solicit or divert or cause anyone to solicit or divert, any such customers or prospective customers from Ayan Tech Solutions its subsidiaries, affiliates.”*

4.Mr.P.John Zachariah, learned counsel, then drew the notice of this Court to a Master Services Agreement, which had been entered into by the petitioner with another entity M/s. Infrabeat Technologies Private Limited.

5.Before moving further to discuss about the challenge of the award, it would only be appropriate to point out that the petitioner is involved in the software field providing solutions which would effectively mean that the petitioner's employees are trained in writing software for their clients / partners.

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These clients / partners could also become later competitors to the petitioner.

The respondent appears to have joined in the marketing department. As can be visualized, work in that department involves constant interactions with clients, partners and also with other competing industrial entities. There is always an apprehension that if such employee with such wide range of contacts with additional know how of the working of the petitioner company were to join anyone of those entities / partners / clients / competitors, then valuable information which had come to his knowledge, about the working of the petitioner company could be disclosed by him to the adverse interest of the petitioner.

6.The respondent did just that.

7.He resigned by forwarding an e-mail on 27.02.2018. A small mathematical calculation, between 17.01.2018 the date when he joined and 27.02.2018 the date of the e-mail would indicate that he was in employment only for a period of around forty days.

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8.The learned counsel for the petitioner expressed grievance that immediately after his resignation, the petitioner appears to have contacted the respondent to enquire him as to his further employment and more specifically whether he had joined M/s. Infrabeat Technologies Private Limited. The more specific grievance is that the respondent withheld all information about his further employment.

9.It is claimed by the learned counsel that withholding of information amounted to suppression of material fact and was in violation of the agreement, particularly if clause No.10(a). Even though clause No. 10 had been extracted, it would only be worthwhile to extract again clause 10(a) of the agreement entered into between the petitioner and the respondent,

10.Non-solicitation

*During the term of employment and in the event of ceasing the services of the Company for whatsoever reason, you agree that, in addition to any other limitation during the term of your employment and for a period of one year after the termination of your employment, you will not directly*



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*or indirectly;*

*a) Solicit or accept employment with any Ayan Tech Solutions or its Subsidiaries direct & indirect client to which you provide services as Ayan Tech Solutions employee.*

10. Not being provided with information by the respondent, the petitioner did some digging regarding the prospects of the employment of the respondent and accessed the website of M/s. Infrabeat Technologies Private Limited and found that the respondent was actually working as their General Manager.

11. This led to a dispute being raised by the petitioner and the consequent appointment of an Arbitrator to examine whether there has been any violation of any of the clauses of the agreement entered into between the petitioner and the respondent.

12. The learned Arbitrator appears to have given sufficient opportunity to



both parties.

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13.The petitioner as a claimant had forwarded their claim statement and also provided a list of documents. The respondent had been duly served. There is no grievance on that particular aspect. The respondent was also represented and filed his objections to the claim statement.

14.Issues had been framed as follows:-

*“i).Whether the respondent violated any terms of Employment Agreement dated 17.01.2018 entitling the claimant to claim any damage?*

*ii).Whether the claimant can enforce post contract negative covenant in the Employment agreement dated 17.01.2018 and if so whether the same is violative of Section 27 of the Contract Act, 1872?*

*iii).Whether the relationship between the claimant and M/s.Infrabeat is that of competitor/partner/client?*

*iv).Whether the respondent had access to any confidential*



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*information of the claimant during his brief period of employment for about 30 days?*

*v).Whether the claimant had made any suggestion to the respondent to join M/s.Infrabeat Technologies Private Limited?*

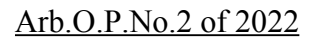
*vi).Whether the claimant had suffered any damages?*

*vii).Whether the claimant is entitled to claim unliquidated damages as per the terms of the agreement dated 17.01.2018?*

*viii).Whether the parties are entitled for the costs of the proceedings and if so to what extent?”*

15.Neither of the parties had sought oral evidence to be adduced, but preferred to argue on the documents filed. Even before this Court, there is no statement made that there had been denial of opportunity of putting forth oral evidence before the learned Arbitrator.

16.It is contended by Mr.P.John Zachariah, learned counsel, that except



for issue Nos.3 and 4 all other issues were answered against the petitioner herein.

17. Issue No.3 is whether there was a relationship between the petitioner herein and M/s. Infrabeat and whether such relationship could be categorized as relationship between a competitor / partner / client. The learned Arbitrator on the basis of the materials provided had state that he could not come to a definite conclusion, on that particular aspect.

18. Issue No.4 was whether the respondent herein had access to confidential information during his brief period of employment of about 30 days, according to the arbitrator, which should actually be around 40 days. The issue was answered against the petitioner herein.

19. On this aspect, Mr. Swarnam J Rajagopalan, the learned counsel for the respondent stated that the burden was heavy on the petitioner herein to prove that the respondent had access to confidential information. It is pointed out by the learned counsel that the petitioner herein had failed to establish that



fact.

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20.Failure to establish such fact will have direct consequences on clause 10(a). Clause 10(a) can be further sub-divided as accepting employment within a period of one year, with any competitor or subsidiary and more importantly to whom “*respondent should have provided services as Ayan Tech Solutions Pvt. Ltd., employee*”.

21.The fact that the respondent did actually provided services as Ayan Tech Solutions Pvt. Ltd., employee, is a fact to the exclusive knowledge of the petitioner herein.

22.I must deeply appreciate the statement made by Mr.P.John Zachariah, learned counsel, who stated that though documents had been filed before the arbitrator, direct information regarding the services rendered by the respondent particularly with respect to any confidential information or with respect to M/s. Infrabeat Technologies Private Limited, could not be sourced out from the available documents.



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23.In view of the fact that the said particular aspect had not been established I hold that the learned Arbitrator had correctly held that there cannot be any curb placed on the respondent in seeking out further avenues of employment in consonance with his qualification and experience.

24.A perusal of the resignation letter and the trail mail thereto reveals that both the petitioner and the respondent had parted company with mutual respect of each other and there was no hard burning at that particular point of time. The fact that the respondent had, for reasons best known to him, suppressed the information that he had actually joined M/s.Infrabeat Technologies Private Limited had given rise to initiate arbitration proceedings.

25.But the burden, as pointed out, was heavily on the petitioner to establish that the respondent had knowledge of confidential information. That burden not having been discharged, I hold that the learned Arbitrator had not breached any procedure which is required to be followed while appreciating documents presented.



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26. None of the other grounds had been pressed during the course of arguments advanced.

27. Let the award stand as it is. I hope that sometime in the future the respondent would join back with the petitioner and they would mend their ways.

28. In view of the above observations, this Arbitration Original Petition is dismissed. No costs.

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**C.V.KARTHIKEYAN, J.**  
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