

Shephali

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

IN ITS COMMERCIAL DIVISION

COMMERCIAL ARBITRATION PETITION NO. 209 OF 2024

Webklipper Technologies Pvt Ltd

...Petitioner

Versus

Harinder Singh Ari & Anr

...Respondents

Mr Mayur Khandeparkar, with Aneesa Cheema, Shreni Shetty Antara
Kalambi, i/b ANB Legal, for the Petitioner.

Ms Mrinal Bharat Ram., for Respondent No. 1.

Mr Dhruv Sethi (appeared online), with Rohan Batra, Shreeya Pednekar,
i/b Akash Menon, for Respondent No. 2.

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CORAM. ARIF S. DOCTOR, J

DATED: 31st July 2024

PC:-

1. The present Petition under Section 9 of the Arbitration and Conciliation Act 1996 has been filed against Respondent No. 1 who is an ex-employee of the Petitioner and had resigned from the employment on 18th September 2023 and is stated to have joined the employment of Respondent No. 2 on 6th November 2023. The disputes

and differences that have arisen between the parties arise out of an Employment Contract, which Mr Khandeparkar points out contains certain clauses which require Defendant No. 1 to maintain confidentiality which continues post termination. The same also restrains Respondent No. 1 from seeking employment with any of the competitors of the Petitioner-Company for a period of 12 months post the employment with the Plaintiff.

2. Mr Khandeparkar points out from the Agreement a non-compete and non-solicit clause which contains a non-exhaustive list of entities which carry out competing businesses to the Petitioner. One of the names on the list is Respondent No. 2 which is an Indian subsidiary of company in that list. It is not in dispute that Respondent No. 1 has in fact resigned from the employment of the Petitioner-Company nor is it in dispute that he has taken employment with Respondent No. 2.

3. Mr Khandeparkar points out that amongst the reliefs that are sought for are restrained on Respondent No. 1 from diverging the confidential information, which is in his possession. He points out that Respondent No. 1 has in his Affidavit in Reply in paragraph 7 stated as follows:

“7. Prayer (a) in the Petition is an injunctive relief against the answering Respondent to restrain the answering Respondent from disclosing and using any confidential information of the Petitioner. It is submitted that the answering Respondent on 31st October 2023 handed over the Petitioner's laptop, power adapter, multiport adapter and the welcome kit to one, Mr. Sarthak Kaushik, as instructed by Ms. Mili Panicker. The answering Respondent also logged out from the official company ID of the Petitioner and shared a screenshot of the same with Ms. Mili Panicker on the same date. The answering Respondent does not have any confidential information/ data/ equipment/ device owned by the Petitioner. The existence of the alleged confidential information as disclosed in the amended paragraph 11 of the Petition is not in the knowledge of the answering Respondent. The apprehension of the Petitioner that the answering Respondent may disclose and use the alleged confidential information of the Petitioner is unfounded and baseless as the answering Respondent is not in possession of the alleged confidential information/ data/ equipment/ device belonging to the Petitioner. In any event and as stated above, the Petition fails to spell out as to how the alleged confidential information has been misused/ there is a purported breach of confidentiality. Therefore, there is no occasion to grant any relief to the Petitioner in terms of the prayer (a).”

4. In view of this statement, which is accepted as statement to the Court, prayer clause (a) is not presently pressed. Insofar as the other prayers are concerned, it was put to the Learned Counsel whether their clients are ready and willing to refer their disputes and differences to arbitration, both Counsel on taking instructions from their respective clients submitted that they were ready and willing to submit their

disputes and differences to arbitration. They called upon the Court to appoint an Arbitrator.

5. Given the nature of the dispute, I deem it fit to appoint Ms Vidya Nair, Advocate as the Sole Arbitrator on the following terms and conditions.

TERMS OF APPOINTMENT

(a) Appointment of Arbitrator: Mr Karl Tamboly, Advocate, is hereby nominated to act as a Sole Arbitrator to decide the disputes and differences between the parties under the Stock and Sale Agreement dated 18th February 2022.

(b) Communication to Arbitrator of this order:

(i) A copy of this order will be communicated to the learned Sole Arbitrator by the Advocates for the Petitioner within one week from the date this order is uploaded.

(ii) The Advocates for the Petitioner will forward an ordinary copy of this order to the learned Sole Arbitrator at the following postal and email addresses.

Arbitrator **Ms Vidya Nair, Advocate**

Address 302, Chambers of Zubin
Behramkamdin, Yusuf Bld.,

Fort, Mumbai 400 001

Mobile 98219 16007

Email nair.vidya89@gmail.com

- (c) **Disclosure:** The learned Sole Arbitrator is requested to forward, in hard copy or soft copy (or both), the necessary statement of disclosure under Section 11(8) read with Section 12(1) of the Arbitration Act to Advocates for the parties as soon as possible. The Advocates for the Petitioners will arrange to file the original statement in the Registry. If the statement is forwarded in soft copy, a print out of the covering email is also to be filed in the registry.
- (d) **Appearance before the Arbitrator:** Parties will appear before the learned Sole Arbitrator on such date and at such place as the learned Sole Arbitrator nominates to obtain appropriate directions in regard to fixing a schedule for completing pleadings, etc.
- (e) **Contact/communication information of the parties:** Contact and communication particulars are to be provided by both sides to the learned Sole Arbitrator. The information is to include functional email addresses and mobile numbers.
- (f) **Interim Application/s:**
 - (i) Liberty to the parties to make an interim application or interim applications including (but not limited to) interim applications under

Section 17 of the Arbitration & Conciliation Act, 1996 before the learned Sole Arbitrator. Any such application will be decided in such manner and within such time as the learned Sole Arbitrator deems fit.

- (ii) The present Petition under Section 9 of the Arbitration Act will be treated, heard, and disposed of as an application under Section 17 of the Act. All affidavits filed in the Section 9 petition will be treated as affidavits filed in the Section 17 application. Liberty to apply to the learned Sole Arbitrator for leave to file further affidavits.
- (iii) The learned Sole Arbitrator is requested to dispose of all interim applications as expeditiously as possible.
- (g) **Fees:** Since this is an order by consent of the parties, the arbitral tribunal's fees shall not be governed by the Bombay High Court (Fee Payable to Arbitrators) Rules, 2018.
- (h) **Sharing of costs and fees:** Parties agree that all arbitral costs and the fees of the arbitrator will be borne by the two sides in equal shares in the first instance.
- (i) **Consent to an extension if thought necessary.** Parties immediately consent to a further extension of up to six

months to complete the arbitration should the learned Sole Arbitrator find it necessary.

(j) Venue and seat of arbitration. Parties agree that the venue and seat of the arbitration will be in Mumbai.

6. It is made clear that the said arbitration is only between the Petitioner and Respondent No. 1 under the Employment Contract.

7. Needless to state that the arbitration shall be govern by the arbitration clause contained int the agreement.

8. The Commercial Arbitration Petition is disposed of. No costs.

(ARIF S. DOCTOR, J)