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Arb.O.P. No. 9 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.04.2024

CORAM

THE HON'BLE MR. JUSTICE C.V.KARTHIKEYAN

Arb.OP.No.9 of 2024

M/s. Nian Media Private Limited,
Represented by its General Manager,
Mr.Paul Kenny M D,
Corporate Office at 118-E,
Velachery Main Road,
Guindy, Chennai – 600 032.

... Petitioner

Vs.

R. Prabakar

...Respondent

PRAYER : The Original Petition has been filed under Section 11(5) of the Arbitration and Conciliation Act, 1996, to appoint a Sole Arbitrator for the purpose of adjudicating the disputes between the Petitioner and the Respondent in respect of the Employment Contract dated 13.11.2021.

For Petitioner : Mr.K.Karthik

For Respondent : Mr.Sanjay Pinto

ORDER

This Original Petition has been filed, taking advantage of Section 11(5)



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of the Arbitration and Conciliation Act, 1996 seeking appointment of a Sole Arbitrator for adjudicating the disputes between the petitioner M/s. Nian Media Private Limited at Guindy, Chennai and the Respondent R.Prabakar residing at Aminjikarai, Chennai with respect to an Employment Contract dated 13.11.2021.

2. The Employment Contract has been produced as a document to the petition. But what it actually reflects is that is is an Annexure and that too, Annexure-A of the Employment Contract. The contract as such has not been produced. Whether there are further Annexures to such contract has not been disclosed. This particular document which has been enclosed is not the agreement in entirety.

3. Be that as it may, the petitioner claims to operate a You Tube Channel and Face book page under the name of “Behindwoods”, which is owned by M/s. Nian Media Private Limited claiming to be a pioneer in digital media. They claim that they have spent more than 20 years of time, energy and money in painstakingly building new and original content strategies, designs, programs and various other mechanisms, processes and human resource management



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techniques to administer and run a digital media organization.

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4. The respondent had joined the 'Practical Learning Program' as trainee for a remuneration of Rs.20,000/- per month and at the end of six months he was appointed as a News Producer in the petitioner's company. The petitioner states that the respondent had agreed and accepted to abide by the Employment Contract dated 13.11.2021. It must be immediately again pointed out that what has been produced before this Court is not the entire contract between the petitioner and the respondent, but rather an Annexure-A to the said contract. It is not known whether there are further Annexures in that particular agreement or terms of agreement between the petitioner and the respondent.

5. It is stated that the petitioner company had provided extensive training to the respondent and it is also stated that the respondent was exposed to confidential information, technical know-how and formulae which belonged to the petitioner company, all of which are proprietary information, having developed exclusively by the petitioner company. The respondent then absented himself from duty from 07.02.2023 and gave various reasons and finally submitted a resignation letter and was relieved from his post on 06.02.2023.



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6. The petitioner then found that the respondent had joined another company on 01.08.2023 and also alleged that the respondent had been working with the competitor company namely Rednool from 21.02.2023. It is claimed that this was a breach of the terms of agreement and further it is very specifically alleged that the respondent was trying to wean out employees of the petitioner to join that particular competitor company namely Rednool. Unfortunately, the names of those employees of the petitioner who had been so approached by the respondent have not been stated. The manner in which the respondent had approached the said employees have not been stated. The dates on which the respondent had approached the said employees have not been stated. The positions the employees held, which the respondent thoughts would be advantageous to the competitor company, had also not been stated.

7. The learned counsel for the petitioner also had an opportunity to advance arguments before my learned predecessor and my learned predecessor had observed that the agreement which is very blunt and bereft of any detail is against public policy, which restricts the respondent from seeking employment in another company. When this was pointed out, the scope of arguments of the



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learned counsel for the petitioner was narrowed down to one of solicitation of employees of the petitioner. Details have not been given and no materials have been placed as documents to show that the respondent had been either actively or indirectly or through somebody else working day and night to ensure that the employees of the petitioner moved away from the petitioner company to the disadvantage of the petitioner and to the advantage of the competitor company namely Rednool.

8. A counter affidavit had been filed on behalf of the respondent wherein, with respect to this specific averment that he tried to solicit the employees of the petitioner to join his new company had been answered and the respondent stated that he is not in the recruitment department to have authority to solicit employees and also stated that not a single name of any employee had been provided much less evidence of the same.

9. The learned counsel for the petitioner pointed out that the respondent had not stated that had not directly indulged in such solicitation. But the respondent need not to state so. He can only state the position he holds in the competitor company and that post does not authorise him and does not permit



him to engage himself in such solicitation. Therefore, the statement of the respondent that the petitioner had not given any single name of the employee who had been approached by the respondent would suffice. It is for the petitioner to build up their case. It is for the petitioner to give the details of employees who have been approached by the respondent. It is for the petitioner to give the details of the nature of work done by the employees who had been approached by the respondent and how their leaving the petitioner company that would be to the disadvantage of the petitioner if they were to join the company where the respondent is now employed.

10. The learned counsel for the petitioner placed reliance on the order of a learned Single Judge of the High Court of Calcutta reported in **GA 526 of 2012** in the case of **Embee Software Private Limited Vs. Samir Kumar Shaw and others** dated 27.03.2012 wherein it had been observed:-

“If the act of soliciting by the first three respondents takes such an active form that it induces the customers of the plaintiff to break their contract with the plaintiff and enter into a contract with the said respondents or the fourth respondent or prevents other persons from entering into a contract with the plaintiff, such acts of soliciting cannot be permitted. It was held



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in Wipro Limited V. Beckman Coulter International S.A. Reported in 2006 (3) ARBLR 118 (Delhi), “ the non-solicitation clause does not amount to a restraint of trade, business or profession and would not be hit by Section 27 of the Indian Contract Act, 1872 as being void.” Although it is submitted on behalf of the respondents that only the third respondent had a non solicitation clause, in his contract of employment with the plaintiff the principle of law is that in soliciting, which has the effect of breaking a contractual relationship, is a tort and cannot be practised by an ex-employee to damage the business of the ex-employer. Such a principle was also recognised in paragraph 15 of an unreported decision of the Delhi High Court made on 14th July, 2009 in Desiccant Rotors International Private Limited v. Bappaditya Sarkar & another. VFS Global Services Private Limited v Mr. Suprit Roy, reported in MANU/MH/1043/2007 : 2008(2) Bom CR 446 : (AIR 2008 (NOC) 1502) says that a clause which prohibits an employee from disclosing commercial and trade secrets is not restraint of trade.”

11. The facts are certainly distinguishable. The plaintiff in that particular case was a business network with various clients and they provided service in the field of Information Technology. Those programmes and files are



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customer specific and customised to ensure the needs of the specific clients. If those details are taken away and spread over to other competitors, certainly the plaintiff would have a cause of action. The facts in this case are certainly distinguishable different.

12. The further aspect in that particular order is about inducing a person to break the contract. Here again, in this case, no specific details have been given and therefore the said order would not directly apply to the facts of this case.

13. The learned counsel for the petitioner also relied upon a judgement of this Court in ***C.S.No. 258 of 2020 dated 15.12.2021*** in the case of ***E-Merge Tech Gobal Service Private Limited vs. M.R.Vindhyasagar and others*** in which it had been held as follows:-

The case of the plaintiff is that for the past 13 years they are into the business of service/knowledge processing and provide knowledge intensive solutions which also includes patent and technology research, business research, life science information research, etc. The first Defendant was appointed as Manager-Business Development in the Plaintiff Company through a letter of appointment dated 31.12.2007.



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The appointment letter, amongst other things, contained a confidential information agreement and conflict of interest guidelines.

14. In that case, the nature of business of the plaintiff therein was technology research, business research, life science information research etc. In that case, the second defendant company was being run by the first defendant with an identical business model and there was also an non-solicitation of customer and confidentiality terms. In those circumstances looking at the nature of the business, the learned Single Judge had held that it was apparent, after resigning, there was offer of consultancy services. The issue of solicitation was not directly in issue in that particular case. Damages had been granted. In the instant case even if Annexure A is to be taken as a complete contract, there is no mention about the damages to be paid for leaving the company of the petitioner and joining a competitor company. I am not able to visualise as to how this petition itself maintainable on the basis of that contract.

15. The learned counsel for the petitioner relied on yet another order of a Learned Single Judge of this Court in ***O.A.No.534 of 2023*** in the case of ***M/s. Nian Media Private Limited vs. Rahul G***, wherein, very specifically it had



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been observed that there were some Whatsapp messages exchanged between the respondent and the employees of the petitioner which would show that messages were sent informing employees that there are opportunities and therefore they can quit the petitioner therein. Such is not the case of the petitioner herein and no materials have been placed in that nature.

16. In view of the discussions particularly since the petitioner has not come to the Court giving the actual contract and the particular details and there being no dispute and I am not inclined to refer this matter to Arbitration.

17. In view of the above, the Original Petition stands dismissed. No costs.

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Internet : Yes / No

Index : Yes / No

Speaking / Non Speaking order



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C.V.KARTHIKEYAN. J.

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