

Arun

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
ARBITRATION PETITION (L) NO. 11089 OF 2021**

Living Audio Systems LLP

...Petitioner

Versus

Monika Kanaujia & Ors

...Respondents

**Mr Sharan Jagtiani, Senior Advocate, with Shradha Achaliya, i/b
Sapna Raichure, for the Petitioner.
Mr Manan Sanghai, for Respondents Nos. 3 & 4.**

**CORAM: G.S. PATEL, J
(Through Video Conferencing)
DATED: 23rd June 2021**

PC:-

1. Heard through video conferencing.
2. Mr Jagtiani appears for the Petitioner. He confirms that the principal contesting Respondents Nos. 1 and 2 have not only been served on 16th May 2021, but have also been given notice on 19th June 2021 of the listing of this Arbitration Petition under Section 9 for ad-interim relief today. Respondents Nos. 3 and 4 were also given notice. They are represented by Counsel today.
3. The claim in the Arbitration Petition relates to confidential information that the Petitioners say the 1st Respondent

(“**Kanaujia**”), an erstwhile employee bound by an employment contract that had confidentiality, non-disclosure and non-compete provisions, set up a competing business in the name of the 2nd Respondent. She is alleged to have provided the Petitioner’s confidential and proprietary information to her own company, Respondent No. 2 (“**TAC**”), and to Respondent No. 4 (“**ITS**”), another company. Respondent No. 3 (“**Tijare**”) used to be employed with one Paragon Business Solutions Ltd. This was an entity that was one of the Petitioner’s vendors.

4. It is not seriously disputed that Kanaujia and Tijare knew each other. Tijare and ITS through their Advocate, Mr Sanghai, state that other than one email, they have received no information from Kanaujia. There may be other proceedings in parallel and there are of course counter-allegations being made by Tijare and ITS against the Petitioners. Those need not detain us today in view of the ad-interim order that I am inclined to make. That order will be in terms of prayer clause (g) at pages 39–40 but restricted to Kanaujia and TAC. I do not propose at this stage to pass an order of this kind against Tijare and ITS. Since they have appeared and Mr Sanghai has made a statement on their instructions, they will be given time to file an Affidavit in Reply.

5. As to prayer clause (b) at page 36, Mr Jagtiani states that Kanaujia has confirmed that she has now found the iPad in question. There can be no objection to requiring her to return that iPad to the Petitioner. It was supplied to her during the course of her employment with the Petitioner.

6. The arbitration provision in question is set out in the Non-Disclosure Agreement at page 51. This says in Article 10 that the arbitration is to be held in accordance with the Arbitration Act, 1996 in Mumbai. It is this Court that will have jurisdiction.

7. I am not, today, rendering any wider finding. At this ad-interim stage I leave all contentions open. I do however take note of the fact that Article 1 of the Non-Disclosure Agreement of 7th May 2018 had a broadly-worded definition of 'confidential information'. This included all IPR, know-how, formulas, processes, designs etc. It also extended to customer data, employee data and so on. Article 2 re-affirms that this information is confidential and that all employees of the Petitioner are bound by confidentiality. Under Article 4 of the Non-Disclosure Agreement that she signed, Kanaujia agreed to protect the confidential agreement as if it were her own. This Non-Disclosure Agreement of 7th May 2018 was followed by an appointment letter of the same date. Kanaujia started working with the Petitioner from that date.

8. On 24th September 2018, the Petitioner and Kanaujia executed a Non-Compete Agreement. Mr Jagtiani relies on this not for the proposition that post-termination, Kanaujia cannot take up a competing business, but because the Non-Compete Agreement repeats, reasserts and re-affirms the requirement of *confidentiality*. That requirement will, prima facie, survive any termination.

9. According to the Petitioner, in circumstances to which I will return at a later date, the Petitioner learnt only in late February 2021

that Kanaujia and one Ramesh, another employee of the Petitioner, had set up a competing business in Delhi. The Petitioner's chief business is in home automation systems. This requires the Petitioner to liaise with a number of different professionals from various disciplines including architects, engineers, interior designers and so on. From page 15 of the plaint, there is a narrative which sets out how the Petitioner's Aditya Gupta learnt of what Kanaujia was doing in Delhi in coordination with Ramesh. Apparently, Kanaujia was confronted with this information at a client's site. Gupta asked Kanaujia to return her company (Petitioner)-provided laptop. She did. On checking the machine, Gupta was surprised to see that Kanaujia had sent quotations on the letter-head of TAC. There were several files apparently on the letter-head of the 4th Respondent. Kanaujia was also found to be using company laptop for her personal email although this was forbidden by the terms of her engagement. In Kanaujia's presence, Gupta searched her personal email account and this threw up other material that prima facie indicated that eight of the nine names mentioned in a list of potential clients were in fact all clients of the Petitioner. These clients were being given information that belonged to the Petitioner. Kanaujia was doing this even while in the Petitioner's employ. The attempt was to divert the Petitioner's business, using its confidential information, to TAC, Tijare and ITS. This led to the Petitioner terminating Kanaujia's employment on 27th February 2021. She accepted this.

10. Mr Sanghai makes a statement that his clients, Respondents Nos. 3 and 4, Tijare and ITS have no professional or other relation with Kanaujia or TAC. The statement is noted.

11. As I noted, prima facie the non-disclosure requirement survives any termination. It binds Kanaujia and, through her, her company. I can see no reason for Kanaujia and TAC to have stayed away from this hearing. prima facie, it seems that Kanaujia and TAC are diverting the Petitioner's clients using the Petitioner's confidential information. That is protected from such disclosure.

12. Mr Jagtiani's application is not for a restraint against Kanaujia doing competing business. The law in that regard is settled and not contentious. But that competition must be fair and not in violation of contractual obligations that survive termination, as requirements of confidentiality undoubtedly do. A telling circumstance is the material that Gupta obtained from Kanaujia's laptop. The averments about this prima facie indicate that it is indeed the Petitioner's material and confidential information that is or was the basis of approaches made by Kanaujia to the eight clients named in prayer clause (g)(i). The right to carry on a competing business does not and cannot extend to the illicit use of another party's confidential information and data. What Mr Jagtiani seeks is not a blanket injunction against competing but a very restricted prayer based on certain evidentiary material that has been adequately disclosed.

13. I am also inclined to grant prayer clause (g)(ii). If Kanaujia opts to work in the same field or the same sector as the Petitioner, then she must surely be aware that third party consultants or fellow professionals will be compromised by her use of the Petitioner's confidential information.

14. Since Kanaujia and TAC are not present today, , I will make this a time-limited order in terms of prayer clauses (g)(i), (g)(ii), (g)(iii) and (g)(iv). It will continue until 16th July 2021.
15. Liberty to Kanaujia and TAC to apply for a variation, modification or recall of this order after at least five clear working days' notice to the Advocates for the Petitioner.
16. There will also be an order in terms of prayer clause (b). The 1st Respondent is to return the iPad in question by 2nd July 2021.
17. Affidavits in Reply by Kanaujia and TAC are to be filed and served on or before 2nd July 2021. Tijare and ITS have filed an Affidavit in Reply. A copy will be served on or before 25th June 2021. Affidavits in Rejoinder to be filed and served no later than by 9th July 2021. No further Affidavits without leave of the Court.
18. List the matter on 14th July 2021.
19. All concerned will act on production of an ordinary copy of this order.

(G. S. PATEL, J)