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

% Judgment delivered on: 25.06.2025

\+ **FAO 167/2025 & CM APPL. 36613/2025**

VARUN TYAGI .....Appellant

versus

DAFFODIL SOFTWARE PRIVATE LIMITED .....Respondent

Advocates who appeared in this case

For the Appellant : Mr. Asav Rajan, Mr. Ajay Sharma, Mr. Mayank Biyani, Mr. Akash Saxena, Mr. Kashish Sharma & Mr. Devang Shrodriya, Advocates.

For the Respondent : Mr. Divyakant Lahoti, Ms. Vindhya Mehra, Ms. Tanisha Verma, Mr. Raghav Saluja & Mr. Kartik Lahoti, Advocates.

CORAM:
HON'BLE MR. JUSTICE TEJAS KARIA

JUDGMENT

TEJAS KARIA, J

1. The Appellant has filed the present Appeal under Section 104 read with Order XLIII Rule 1(R) of the Code of Civil Procedure, 1908 ("**CPC**"), being aggrieved by the order dated 03.06.2025 ("**Impugned Order**"), passed by the learned District Judge-06 (South), Saket Courts, South Delhi ("**Trial Court**") in CS DJ 353/2025 ("**Suit**").

2. The Impugned Order has allowed an interim injunction in favour of the Respondent restraining the Appellant from working with Digital India Corporation ("**DIC"**) and National E-Governance Division ("**NeGD"**) until the final disposal of the Suit filed before the learned Trial Court.

3. *Vide* the impugned order, it was held that the Respondent had a *prima facie* case against the Appellant, the balance of convenience lay in favour of the Respondent and if the alleged proprietary information, intellectual property, insider knowledge, source code, as the case maybe, is disclosed by the Appellant, the same shall be detrimental to the Respondent and its employees and will result in an irreparable injury to the Respondent.

FACTUAL BACKGROUND:

4. The dispute has arisen out of the Employment of the Appellant with the Respondent. The Appellant is an Information Technology Engineer and was employed as an Associate in the affiliate company of the Respondent on 29.07.2021, and was transferred to the employment of the Respondent on 01.01.2022. An Employment Agreement dated 01.01.2022 ("**Employment Agreement"**) was executed between the Appellant and the Respondent to give effect to the employment of the Appellant.

5. The Employment Agreement contained a Non-Solicitation and Non-Compete Clause. The Non-Solicitation and Non-Compete Clause is as follows:

> *" D. Non-solicitation and Non-Compete*
>
> *2.16 The Employee shall not, directly or indirectly, either as an individual on his/her own account or in any capacity or function, during the employment period and for a period of 3 (three) years following the cessation of employment engage into the following:*
>
> *i. Solicit or attempt to solicit any of the business associates to entice such business associates in any manner or*

offer/provide substantially the same or competing services as provided by the Company and its affiliates to such business associates; or

ii. *Directly or indirectly solicit or associate or advise or undertake employment or otherwise deal with any business associate where the Employee first contacted, or was contacted by, or introduced to the business associate in any manner in connection with any business/professional assignments of Company and its affiliates; or*

iii. *Directly or indirectly solicit, associate, advise or otherwise deal with any of the existing Employees of the Company and its affiliates or any person who was employed by the Company and its affiliates within two years prior to such action."*

6. The Respondent was engaged by the DIC pursuant to Letters of Intent dated 01.12.2021, 15.06.2023 and 27.11.2024, which required specialized software professionals, specifically full stack developers, in connection with a high-priority government initiative titled POSHAN Tracker ("**Project"**). This project is aimed at enhancing nutritional outcomes for children across the country and holds significant public importance. The said engagement remains valid up to 30.06.2026. The relationship between the Respondent and the DIC is that of a 'Business Associate'.

7. The Respondent had assigned the Appellant to work on the Project as a full stack developer, with effect from January 2023. The Appellant, who was assigned by the Respondent to the Project from January 2023, underwent extensive specialized training, reflecting a considerable investment made by the Respondent. Owing to his enhanced expertise, the Appellant was elevated to a leadership role, wherein he was entrusted with oversight of key project modules and active engagement with stakeholders.

8. The Appellant resigned from his job in the Respondent company on 06.01.2025 and thereafter, served a notice period of three (3) months and

was under the employment of the Respondent until 07.04.2025. While serving the notice period with the Respondent, the Appellant was appraised of a job opportunity with the DIC as their General Manager. The Appellant was offered a job with the DIC on 27.03.2025 and accepted the job offer with effect from 08.04.2025, after serving the notice period with the Respondent.

9. Aggrieved by the Appellant's decision to join DIC, which was also the Business Associate of the Respondent, the Respondent filed the Suit for permanent injunction and damages against the Appellant before the learned Trial Court.

10. The learned Trial Court *vide* order dated 23.05.2025 granted an *ex parte* ad interim injunction against the Appellant restraining the Appellant from working with or for the clients and Business Affiliates of the Respondent company until further orders. The Appellant was further injuncted and restrained from disclosing confidential data belonging to the Respondent, which had been acquired by the Appellant during the course of his employment with the Respondent.

11. Aggrieved by the decision of the learned Trial Court to grant an *ex parte* ad interim injunction until further orders, the Appellant filed an Appeal before this Court being FAO No.156/2025 against the order dated 23.05.2025. *Vide* order dated 28.05.2025, the Appeal filed by the Appellant was disposed of while impressing upon the learned Trial Court to dispose the application for interim stay preferably within a period of one week in accordance with law. Further, this Court held that until the learned Trial Court passed the order in the application for interim stay, the injunction granted against the Appellant *vide* order dated 23.05.2025 shall not apply.

12. *Vide* the Impugned Order, the learned Trial Court allowed the Application filed by the Respondent under Order XXXIX Rule 1 & 2 of CPC and restrained the Appellant from working with DIC and NeGD. The learned Trial Court held that there was a *prima facie* case in favour of the Respondent, the balance of convenience also lies in favour of the Respondent and if the Appellant was to share any proprietary information, intellectual property, insider knowledge, source code, as the case maybe, the Respondent and its employees would suffer irreparable harm.

13. Being aggrieved by the Impugned Order, the Appellant has filed the present Appeal.

SUBMISSIONS ON BEHALF OF THE APPELLANT:

14. Mr. Asav Ranjan, the learned counsel appearing for the Appellant submitted that the learned Trial Court has erroneously interpreted the provisions of Section 27 of the Indian Contract Act, 1872 ('**ICA**') by applying the principle of reasonableness and permitting partial restraint, despite the fact that the Employment Agreement stood terminated on 07.04.2025. Further, the Intellectual Property referred to in the Impugned Order belongs to DIC and not the Respondent.

15. The learned counsel for the Appellant submitted that Section 27 of the ICA does not recognize the distinction drawn in English Law between partial and absolute restraint. Any agreement that falls within the scope of Section 27 is rendered void, unless it is saved by Exception 1 to Section 27 of the ICA. This legislative intent is further reinforced by the fact that, notwithstanding the recommendations made by the Law Commission in its Thirteenth Report, no additional exceptions have been incorporated into Section 27 of the ICA.

16. The Appellant relied upon ***Superintendence Co. of India v. Krishan Murgai*** *(1981) 2 SCC 246*, to submit that Section 27 of the ICA does not draw distinction between partial and complete restraint, any agreement with the object of restraining trade is void. Unless the agreement falls within Exception 1 to Section 27 of the ICA the agreement is void irrespective of the nature of the restraint provided thereunder.

17. The learned counsel for the Appellant submitted that the Clause 2.16 of the Employment Agreement, when read along with the definition of 'Business Associate', is worded as a blanket prohibition on the Appellant from working with existing or potential customers. However, such a restriction cannot be sustained or confined even to a single customer, client, vendor, or affiliate of the Respondent, since any form of restraint, whether partial or absolute, becomes legally inapplicable once the Appellant was relieved from service upon completion of the stipulated ninety-day notice period.

18. The Appellant relied upon the judgment in ***Madhup Chunder v. Rajcoomar Doss*** *(1874) 14 Bengal Law Reporter 76*, to submit that Section 27 of the ICA deliberately omits the use of the word 'absolutely,' which is expressly mentioned in Section 28(a) of the ICA dealing with agreements in restraint of legal proceedings. This omission reflects the specific legislative intent to prohibit not only absolute restraints, but also any form of partial restraint on trade or profession.

19. The learned counsel for the Appellant submitted that an agreement in restraint of trade or profession, whereby a person binds himself, is valid only during the subsistence of the Employment Agreement. However, the present case is governed by the judgment of the Supreme Court in ***Superintendence Co.*** (*supra*), wherein it was categorically held that under Section 27 of the

ICA, a service covenant that extends beyond the termination of employment is void.

20. The learned counsel for the Appellant has further relied upon the judgment in ***Niranjan Shankar Golikari v. Century Spg. and Mfg. Co. Ltd.*** *1967 SCC OnLine SC 72* to submit that Section 27 of the ICA restrains a service covenant to be extended beyond the termination of service and a clause intended to restrain trade is void.

21. The learned counsel for the Appellant has relied upon the judgments in the cases of ***Interlink Services (P) Ltd. v. S.P. Bangera*** *1997 SCC OnLine Del 23*, ***Ambiance India (P) Ltd. v. Naveen Jain*** *2005 SCC OnLine Del 367*, ***Wipro Ltd. v. Beckman Coulter International S.A.*** *2006 SCC OnLine Del 743,* to submit that this Court has held that once the agreement between the parties ends, whether by termination or expiry, any restriction placed on a person's ability to work or carry on their profession after that point is not enforceable under Section 27 of the ICA. Further, the learned counsel for the Appellant has relied upon the judgment in ***R. Babu v. TTK LIG Ltd.*** *(2005) 124 Comp Cas 109*, to submit that no injunction can be granted against an employee after the termination of his employment, restraining him from carrying on a competitive trade.

22. Since the Employment Agreement between the Appellant and the Respondent stood terminated on 07.04.2025, and the Appellant joined the DIC on 08.04.2025, the Appellant is well within his legal rights to engage in any competitive trade. This right extends to even providing similar services to a former client or competitor of the Respondent, including the DIC.

23. The learned counsel for the Appellant relied upon the judgment in ***Manipal Business Solutions (P) Ltd. v. Aurigain Consulants (P) Ltd.*** *2022 SCC OnLine Del 2480,* to submit that a clause which lays down a restriction

against any association with a business associate of the previous employer post employment is void.

24. The learned counsel for the Appellant submitted that neither the test of reasonableness nor the principle that a restraint is only partial is applicable to a contractual clause that falls within the ambit of Section 27 of the ICA. The Appellant relied upon ***Percept D'Mark (India) (P) Ltd. v. Zaheer Khan*** *(2006) 4 SCC 227* and ***Navigators Logistics Ltd. v. Kashif Qureshi*** *2018 SCC OnLine Del 11321* to support the submission that the applicability of neither the test of reasonableness nor the notion that the restraint is merely partial arises in the context of a clause falling under Section 27 of the ICA, unless the clause clearly falls within Exception 1 to Section 27 of the ICA.

25. The learned counsel for the Appellant relied upon the judgment in ***Vijaya Bank v. Prashant B Narnaware*** *2025 SCC OnLine SC 1107*, to submit that the onus of establishing that a restrictive covenant in the Employment Agreement does not amount to a restraint on lawful employment nor it is against public policy lies with the employer and not the employee.

26. The learned counsel for the Appellant submitted that not even a single judgment relied upon by the Respondent pertains to the grant or upholding of an injunction after the termination, cessation, or expiry of the Employment Agreement. Further, the learned counsel for the Appellant relied upon ***Indus Power Tech Inc. v. Echjay Industries (P) Ltd.*** *2024 SCC OnLine Bom 3349*, to submit that though a non-compete clause can operate validly during the term of the Employment Agreement, it would not be valid post-termination of the Employment Agreement as it would result in restraint of trade prohibited under Section 27 of the ICA.

27. The learned counsel for the Appellant submitted that no confidential information, trade secret, or proprietary right was created during the course of the Appellant's employment with the Respondent. As per Clause 1 of the Letter of Intent dated 15.06.2023, the scope of work between the DIC and the Respondent Company was limited to the supply of manpower or technical personnel. The Respondent is engaged in the business of providing software professionals on a contractual basis to clients requiring such services. Accordingly, the Respondent neither owns nor has developed any source code, intellectual property, or proprietary material in respect of the Project.

28. The Appellant was assigned to the Project in January 2023. His work involved using publicly available data from the Government's App for the Project and updating it on the Project website through basic coding and graphical representation. The Respondent has portrayed this routine task as an advanced technical work. In truth, the work was mechanical and did not involve any confidential or proprietary development.

29. The learned counsel for the Appellant submitted that the confidential information, intellectual property, source code, or proprietary material in question is owned exclusively by the DIC and not by the Respondent. This is evident in the Letters of Intent issued by the DIC. The Respondent has intentionally not made the DIC a party to the suit, likely to avoid objections on the ground of ownership of the Intellectual Property related to the project. If the DIC asserts its Intellectual Property Rights, the entire claim against the Appellant would stand vitiated and will fail.

30. The learned counsel for the Appellant submitted that irreparable harm will be caused to the Appellant, and the balance of convenience lies in favour of the Appellant. *Vide* the Impugned Order, the Appellant has been

rendered without a source of livelihood, and any restraint from trade may lead to his inability to meet essential financial obligations, including monthly bills and EMIs. Further, the pendency of the suit or enforcement of the Impugned Order would unfairly damage the Appellant's professional record, jeopardising future employment prospects and causing lasting harm to his career and reputation.

31. Hence, the learned Trial Court has erroneously allowed the Respondent's Application for interim protection against the Appellant and the Impugned Order deserves to be set aside.

SUBMISSIONS ON BEHALF OF THE RESPONDENT:

32. Mr. Divyankant Lahoti, the learned counsel appearing for the Respondent submitted that the Appellant was initially hired as a PHP engineer with a limited technical role. Over time, with the Respondent's structured training and guidance, he progressed into a data engineering specialist. The Respondent continued raising invoices on DIC for the Appellant's services until 31.03.2025. However, on 08.04.2025, the Appellant joined DIC as Deputy General Manager in Full Stack Development for the Project. Appellant's direct employment by DIC for the Project, concurrent with active and continuous contractual engagements between the Respondent and DIC which is valid up to 30.06.2026 is in breach of Clause 2.16 of the Employment Agreement.

33. The learned counsel for the Respondent submitted that during his employment, the Appellant acquired specialized knowledge and technical skills relating to the Project developed by the Respondent, involving Backend and Frontend Development, API Integration, and Data Management. His subsequent role relies on confidential information,

proprietary techniques, and internal knowhow gained during this tenure. Such use is expressly prohibited under the Confidentiality and Non-Disclosure Clauses 2.6, 2.7, 2.8, 2.9, 2.10 and 2.11 of the Employment Agreement and the Breach of Trust Clause 4 read with Clause 2.2 of the Employment Agreement. The Appellant's actions, thus, amount to a direct violation of these terms of the Employment Agreement. The relevant Clauses are reproduced hereunder:

> *"2.2 Company incurs substantial expenditure in Research and Development for value creation, improvisation, innovation, updation and development of its product(s). Employee acknowledges that it is imperative for the Company to safeguard such resultant Intellectual Property Rights interests. Employee agrees and acknowledges that if he/she works on any of Company's and its affiliate's product(s), he/she would be involved in such Research and Development processes and will have firsthand knowledge of such Research and Development process outcomes. Accordingly, any such Employee who has been a product team member undertakes to not work or associate with any third person or organization regarding any similar or competing product for a period of 3(three)years from the date of cessation of his/her employment"*
>
> *xxxxxx*
>
> ***B. Confidentiality and Non-Disclosure***
>
> *2.6. Employee understands and acknowledges that his/her employment with the Company creates a relationship of confidence and trust with respect to Confidential Information disclosed by the Company. Employee hereby agrees and acknowledges that he/she will be in possession and may continue to be in possession of Confidential Information of the Company, which is the exclusive property of the Company.*
> *2.7. During the employment and at all times thereafter, Employee hereby undertakes that he will take all necessary precaution to safeguard Confidential Information of the Company.*
> *2.8. Employee undertakes not to share, copy, transmit, publish and/or disclose to any person or organization such Confidential Information, during the course of employment andjor after the cessation of employment with Company. Employee further undertakes to not facilitate sharing, transmission, copying, publishing and disclosure of such Confidential Information during the course of employment and/or the cessation of employment with the Company. However, these restrictions may not be applicable in ordinary course of business of Company when such copying. transmitting, andjor publishing/disclosing Confidential Information is*

carried out solely for official purposes through Company's official and assigned channels of communication.

2.9. Employee agrees and undertakes to not cite, publish, disclose or make any direct references of Confidential Information of Company on any social media platforms and/or on any online biography/curriculum vitae, which will affect his/her obligations to comply with any of the obligations stated hereinabove regarding such Confidential Information.

xxxxxx

2.11. During the employment and at all times thereafter, Employee hereby undertakes to not benefit himself or any person, organization, or competitor- directly or indirectly- on account of the Confidential Information of the Company.

xxxxxxx

"4. Breach of Trust

4.1. Employee understands and acknowledges that his/her employment with the Company is based on the relationship of confidence and mutual trust. Employee acknowledges and agrees that any breach or threatened breach of obligations relating to Confidential Information, Intellectual Property Rights, NonCompete and Non-Solicitation, and Exclusive Engagement will cause Company irreparable harm for which monetary damages are inadequate compensation. The Company shall therefore be entitled to initiate criminal proceedings to enforce aforesaid covenants to prevent any actual or threatened breach of such covenants in the appropriate court of law to further the charge of criminal breach of trust for such misappropriation."

34. The learned counsel for the Respondent sought reliance on the judgment in ***Leeds Rugby Ltd v Harris & Anor*** *[2005] EWHC 1591 (QB),* to submit that post-employment restraints in employment agreements are enforceable if they are reasonable and meant to protect the employer's business interests.

35. The learned counsel for the Respondent relied upon the judgment in ***Stenhouse Australia Ltd. v. Marshall William Davidson Phillips*** *1974 A.C. 391*, to submit that whether a particular contractual provision operates in restraint of trade is to be determined not by the form the stipulation wears, but by its effect in practice.

36. The learned counsel for the Respondent submitted that an employer seeking to enforce a post-employment restraint must prove that the covenant is reasonable and protects a legitimate proprietary interest. Such restraints may be upheld if they prevent the misuse of trade secrets or confidential information acquired during employment. Depending on the role, an employee may also be lawfully restricted from joining a competitor or setting up a competing business that could harm the employer's customer base. In some cases, even soliciting the employer's clients may be validly prohibited.

37. The learned counsel for the Respondent has relied upon the judgment in ***Attwood v. Lamont.*** *[1920] 3 K.B. 571*, to submit that the burden lies on the employer to demonstrate that the covenant imposed on the employee is reasonable between the parties and is aimed at protecting a legitimate proprietary interest of the employer for which such restraint is justifiably required. The Respondent has shown the restraint to be reasonable and hence, the interim stay granted by the learned Trial Court was valid.

38. The learned counsel for the Respondent has sought reliance on the judgment in ***Haynes v. Doman.,*** *[1899] 2 Ch. 13,* ***Caribonum Co v. Le Couch*** *(1913) 109 L.T. 385,* ***Clark v. Electronic Applications (Commercial) Ltd*** *[1963] R.P.C. 234,* ***Brunning Group v Bentley,*** *[1966] C.L.Y. 4489;* ***Littlewoods Organisation Ltd v Harris*** *[1977] 1 W.L.R. 1472,* ***Voaden v Voaden*** *Unreported February 21, 1997, Lindsay J. (Unreported);* ***Polymas Pharmaceutical Plc v Stephen Alexander Charles*** *[1999] F.S.R. 711,* to submit that an employer may lawfully include a covenant that prevents an employee, after the termination of employment, from taking up a role where they are likely to use confidential information or trade secrets gained during the course of their employment.

39. The learned counsel for the Respondent has further relied upon ***S.W. Strange Ltd v Mann*** *[1965] 1 W.L.R. 629,* ***Commercial Plastics v. Vincent*** *(1964) 3 All ER 546,* ***Office Angels Ltd v Rainer-Thomas and O'Connor*** *[1991] IRLR 214,* ***Brake Bros Ltd v Ungless*** *[2004] EWHC (QB) 2799,* ***Baines v. Geary*** *[L.R.] 35 Ch.D. 154,* ***Ropeways v Hoyle*** *(1919) 88 L.J. Ch. 446,* ***Fitch v Dewes*** *(1921) 2 AC 158,* ***Marion White Ltd v Francis*** *[1972] 1 WLR 1423,* ***T. Lucas & Co Ltd v Mitchell*** *[1974] Ch. 129,* ***Spafax (1965) Ltd v Dommett*** *(1972) 116 S.J. 711,* ***S.B.J. Stephenson Ltd v Mandy*** *[2000] IRLR 233,* to submit that an employer may validly restrict a former employee from joining a competitor or starting a similar business if it risks harming the employer's client relationships. Such covenants may also lawfully prevent the Appellant from soliciting the employer's customers post-employment.

40. The learned counsel for the Respondent relied upon the judgment in ***Niranjan Shankar*** (supra) to submit that a negative covenant that prevents an employee from engaging in similar line of work or being employed by another competitor in the same line is not considered a restraint of trade unless it is excessively harsh, unreasonable, one-sided, or unconscionable. The Clause 2.16 of the Employment Agreement is reasonable so as to protect the rights of the Respondent and is neither excessively harsh, unreasonable, one-sided nor unconscionable for the Appellant. Further the Court can grant a limited injunction to protect the employer's interests if the covenant is valid, and its enforcement does not compel the employee to idleness or return to the Respondent. The Appellant cannot make the submission for idleness as he had received another job offer from Accenture. The Appellant has breached the Employment Agreement solely for higher

pay and cannot oppose an injunction enforcing a valid negative covenant to protect the Respondent's interests.

41. The learned counsel for the Respondent has further relied upon the judgment in the case of ***Desiccant Rotors International (P) Ltd. v. Bappaditya Sarkar*** *2009 SCC OnLine Del 1926,* ***Embee Software Private Limited v. Samir Kumar Shaw*** *2012 SCC OnLine Cal 3094,* ***Hi-Tech Systems & Services Ltd. v. Suprabhat Ray*** *2015 SCC OnLine Cal 1192,* to submit that reasonable negative covenants to protect the Intellectual Property Rights of the Respondent are valid and enforceable against the Appellant.

42. The learned counsel for the Respondent submitted that the bar under Section 27 of the ICA is not absolute and may be rebutted if the restraint is shown to be reasonable and not excessive for both parties. Further, reliance was placed upon the judgment ***Gilford Motor Co. v. Horne*** *[1933] CH 935,* to submit that a covenant against solicitation is reasonably necessary to protect the Respondent when the Appellant's new role involves direct contact with or access to the Respondent's Business Associate.

43. The learned counsel for the Respondent has submitted that the negative covenant post-termination of Employment Agreement is reasonable as it restricts the Appellant from joining only DIC and NeGD for three years post termination, allowing him to work elsewhere freely. Despite this, the Appellant accepted an offer from DIC for the Project during the course of his employment with the Respondent, violating the terms of his Employment Agreement. The learned counsel for the Respondent has relied upon the judgment in ***Niranjan Shankar*** (supra) and ***Vijaya Bank*** (supra) to submit that negative covenants with respect to reasonable restriction on post cessation employment is legally valid.

44. The learned counsel for the Respondent has submitted that the Appellant's public declaration of joining DIC, made an open breach of the Employment Agreement, sets a harmful precedent that may influence other employees to disregard their contractual obligations. This act threatens the stability of the Respondent's workforce, disrupts client relationships, and damages operational continuity. As a result, the Respondent faces irreparable harm including loss of reputation, project delays, increased costs for hiring, and reduced efficiency.

45. The Appellant's claim of not having received any proprietary information during his employment with the Respondent is unfounded, as his involvement in the Project required access to confidential processes and technical frameworks crucial to the Respondent's operations. The Appellant's reliance on DIC's Intellectual Property Clause envisaged in Clause 7(ii) of the Letter of Intent dated 15.06.2023, does not undermine the Respondent's right to protect its independently developed proprietary methods and internal know-how. The Clause 7(ii) of the Letter of Intent dated 15.06.2023 is as follows:

> *"7. Association. IPR & Deliverables:*
> *ii. The Intellectual Property Rights on the developed software code and related documentation will be with DIC."*

46. The learned counsel for the Respondent has submitted that the Appellant suppressed material facts and documents and submitted a false certificate in respect of providing complete Trial Court record in the present Appeal. Suppression of material facts and documents by the Appellant disentitles him from obtaining equitable relief. The learned counsel for the Respondent relied upon ***Seemax Construction (P) Ltd. v. State Bank of India*** *1991 SCC OnLine Del 668*, to further submit that suppression of

material facts by the Appellant is a sufficient ground to decline the discretionary relief of injunction.

47. The learned counsel for the Respondent submitted that the Respondent has only sought a narrow restriction against the Appellant and failure to protect the Respondent would lead to an irreparable harm to the business interests of the Respondent. Hence, the Impugned Order dated 03.06.2025 correctly injuncts the Appellant and the Appeal deserves to be dismissed.

ANALYSIS AND FINDINGS:

48. The Appellant has challenged the Impugned Order whereby the Appellant has been restrained from working with DIC and NeGD until the final disposal of the Suit by the learned Trial Court. The Impugned Order has observed that the restraint sought by the Respondent was limited to the existing clients of the Respondent with whom the Appellant had worked during the course of his employment with the Respondent. Accordingly, the learned Trial Court found that such a limited restraint cannot be considered to be a 'blanket ban' and/or a complete restraint on the freedom of trade, commerce and profession. Accordingly, the Appellant was restrained from working with DIC and NeGD till the final disposal of the Suit.

49. The Respondent has relied upon clauses 2.2, 2.6, 2.7, 2.8, 2.9, 2.10, 2.11 and 2.16 to seek injunction against the Appellant from committing a breach of non-solicitation and non-compete obligation under the Employment Agreement between the Appellant and the Respondent by working with DIC and NeGD after the termination of employment of the Appellant with the Respondent.

50. The main issue that requires determination in this Appeal pertains to the validity of the non-solicitation and non-compete clause in the Employment Agreement under Section 27 of the ICA.

51. Section 27 of the ICA provides as under:

> ***"27. Agreement in restraint of trade, void.—***
>
> *Every agreement by which any one is restrained from exercising a lawful profession, trade or business of any kind, is to that extent void.*
>
> *Exception 1.—*
>
> *Saving of agreement not to carry on business of which goodwill is sold.—*
>
> *One who sells the goodwill of a business may agree with the buyer to refrain from carrying on a similar business, within specified local limits, so long as the buyer, or any person deriving title to the goodwill from him, carries on a like business therein, provided that such limits appear to the Court reasonable, regard being had to the nature of the business."*

52. The Appellant has submitted that the learned Trial Court has erroneously construed the law pertaining to Section 27 of the ICA by applying the principle of reasonableness and partial restrain despite termination of the Employment Agreement on 07.04.2025. It is further contended by the Appellant that the Impugned Order wrongly grants partial restrain on the Appellant by restricting in from working with DIC and NeGD on an apprehension of disclosure of alleged proprietary information, intellectual property, insider knowledge, source code by the Appellant to DIC or NeGD.

53. The Appellant has submitted that the Respondent never had ownership power the developed intellectual property, confidential information or the source code as the same already belongs to DIC. The Appellant has relied upon Letter of Intent dated 15.06.2023 and Letter of

Confirmation for Empanelment of Service Providers dated 01.12.2021 issued by DIC to the Respondent, which provide that "*The Intellectual Property Rights on the developed software code and related documentation will be with DIC.*"

54. The Appellant has further submitted that the Respondent has intentionally not joined DIC, the present employer of the Appellant, in order to avoid any objection as to ownership of Intellectual Property, data, source codes and proprietary information by DIC as otherwise the entire Suit against the Appellant shall fail.

55. The Appellant has relied upon the scope of work between DIC and the Respondent, which only provided for supply of manpower. Since the Respondent is in the business of providing manpower to the companies having requirement of software developer, the Appellant has submitted that there was no confidential information, source code, intellectual property right that belonged to the Respondent.

56. The Appellant has submitted that the Appellant started working on POSHAN TRACKER PROJECT since January, 2023. The Appellant while in employment with the Respondent, extracted information from the Government of India's mobile Application called Poshan and updated the same on the Poshan Tracker website of DIC in various forms with graphics. It was submitted by the Appellant that the Respondent has given this mechanical work of representing and augmenting data by way of Coding on an existing website by using computer jargon.

57. The Appellant has submitted that an agreement in restraint of trade/profession is valid only during the term of the agreement and any restriction extended beyond the termination of the service is void under Section 27 of the ICA.

58. Both the Appellant and the Respondent have relied upon the decision of the Supreme Court in ***Niranjan Shankar Golikari*** (*supra*), which held that:

> *"17. The result of the above discussion is that considerations against restrictive covenants are different in cases where the restriction is to apply during the period after the termination of the contract than those in cases where it is to operate during the period of the contract. Negative covenants operative during the period of the contract of employment when the employee is bound to serve his employer exclusively are generally not regarded as restraint of trade and therefore do not fall under Section 27 of the Contract Act. A negative covenant that the employee would not engage himself in a trade or business or would not get himself employed by any other master for whom he would perform similar or substantially similar duties is not therefore a restraint of trade unless the contract as aforesaid is unconscionable or excessively harsh or unreasonable or one-sided as in the case of W.H. Milsted & Son Ltd. Both the trial court and the High Court have found, and in our view, rightly, that the negative covenant in the present case restricted as it is to the period of employment and to work similar or substantially similar to the one carried on by the appellant when he was in the employ of the respondent Company was reasonable and necessary for the protection of the company's interests and not such as the court would refuse to enforce. There is therefore no validity in the contention that the negative covenant contained in clause 17 amounted to a restraint of trade and therefore against public policy.*
>
> *18. The next question is whether the injunction in the terms in which it is framed should have been granted. There is no doubt that the courts have a wide discretion to enforce by injunction a negative covenant. Both the courts below have concurrently found that the apprehension of the respondent Company that information regarding the special processes and the special machinery imparted to and acquired by the appellant during the period of training and thereafter might be divulged was justified; that the information and knowledge disclosed to him during this period was different from the general knowledge and experience that he might have gained while in the service of the respondent Company and that it was against his disclosing the former to the rival company which required protection. It was argued however that the terms of clause 17 were too wide and that the court cannot sever the good from the bad and issue an injunction to the extent that was good. But the rule against severance applies to cases where the covenant is bad in law and it is in such cases that the court is precluded from severing the good from the bad. But there is nothing to prevent the court from granting a limited injunction to the extent that is necessary to protect the employer's interests where the negative stipulation is not void. There is also nothing to show*

that if the negative covenant is enforced the appellant would be driven to idleness or would be compelled to go back to the respondent Company. It may be that if he is not permitted to get himself employed in another similar employment he might perhaps get a lesser remuneration than the one agreed to by Rajasthan Rayon. But that is no consideration against enforcing the covenant. The evidence is clear that the appellant has torn the agreement to pieces only because he was offered a higher remuneration. Obviously he cannot be heard to say that no injunction should be granted against him to enforce the negative covenant which is not opposed to public policy. The injunction issued against him is restricted as to time, the nature of employment and as to area and cannot therefore be said to be too wide or unreasonable or unnecessary for the protection of the interests of the respondent Company."

59. The Appellant has submitted that the Supreme Court held that the negative covenant restricted to the period of employment and to work similar or substantially similar to the one carried on by the employee when he was in the employment, was found to be reasonable and enforceable. However, the Respondent has relied upon the observation that the Court can grant a limited injunction to the extent that is necessary to protect the employer's interest, where the negative stipulation is not void. When the enforcement of negative covenant would not drive the employee to idleness or would compel to go back to the previous employer, an injunction can be granted to enforce the negative covenant, which is not opposed to the public policy. The Respondent has contended that the injunction that is restricted as to time, the nature of employment and as to the area cannot be said to be too wide or unreasonable or unnecessary for the protection of the interest of the Respondent.

60. The Respondent has relied upon the decision of the Coordinate Bench of this Court in ***Desiccant Rotors*** *(supra*), which held that the question of restraint on trade does not have two ways about the fact that the approach towards the negative covenant subsisting during the course of employment

is completely different from the approach, which would be taken post-employment duration. If the negative covenant is not in the form of restraint on trade, but only protects the confidential and proprietary information to which the employee was privy, the same can be enforced.

61. The Respondent has also relied upon the decision of ***Embee Software*** (*supra*), which holds that the non-solicitation clause does not amount to restraint of trade, business or profession and would not be hit by Section 27 of the ICA as being void.

62. The decision of ***Hi-Tech Systems*** (*supra*) relied upon by the Respondent holds that the injunction preventing the employee from disclosing confidential data and soliciting customer is not in restraint of trade.

63. The Appellant has relied upon the decision of ***Superintendence Company*** (*supra*) to submit that Section 27 of ICA does away with the distinction observed in English cases with respect to partial and total restraint. Accordingly, the English cases cited by the Respondent are not helpful to the Respondent.

64. Under Indian Law, all contracts falling within the terms of Section 27 of the ICA are void unless they fall within the specific exception under Section 27 of the ICA. Accordingly, the Appellant has submitted that clause 2.16 read with a definition of '*Business Associates*' in the Employment Agreement between the Appellant and the Respondent is very broad and imposes a blanket ban on the Appellant to not work for any present or potential customer of the Respondent. Hence, the restriction sought to be enforced by the Respondent is clearly in restraint of trade and is void under Section 27 of the ICA.

65. The Appellant has also relied upon the decision of the Supreme Court

in ***Percept D' Mark*** (*supra*) to submit that a restrictive covenant extending beyond the terms of the contract is void and not enforceable. Further, the decision of Coordinate Bench of this Court in ***Wipro Ltd.*** (*supra*) holds that the negative covenants between employer and employee pertaining to the period of post-termination and restricting and employees' right to seek employment and/or to do business in the same field as the employer would be in restraint of trade and, therefore, a stipulation to this effect in the contract would be void.

66. An employee cannot be confronted with the situation where he has to either work for the previous employer or remain idle. An employer-employee contracts, the restrictive or negative covenant are viewed strictly as the employer has an advantage over the employee and it is quite often the case that the employee has to sign standard form contract or not be employed at all.

67. Further, the reasonableness and whether the restraint is partial or complete is not required to be considered at all when an issue arises as to whether a particular term of contract is or is not in restraint of trade, business or profession.

68. In view of the above, it is clear that any terms of the employment contract that imposes a restriction on right of the employee to get employed post-termination of the contract of employment shall be void being contrary to Section 27 of the ICA.

69. In the present case, clause 2.16 of the Employment Agreement restricts the Appellant from undertaking employment or otherwise deal with any Business Associate where the Appellant first contracted or was contracted by, or introduce to the Business Associate in any manner in connection with any business/professional assignment of the Respondent

and/or its Affiliate. Admittedly, DIC and NeGD are covered within the definition of Business Associate under the Employment Agreement. Hence, even though, the Respondent has restricted the injunction to the employment of the Appellant with DIC and NeGD only, the same shall be in restraint of trade and void.

70. It is settled law that the negative covenant post termination of the employment can be granted only to protect the confidential and proprietary information of the employer or to restrain the employee from soliciting the clients of the employer. However, none of the cases relied upon by the Respondent has held that the employee can be restrained from undertaking any employment in order to enforce the negative covenant.

71. This Court in case of ***American Express Bank Ltd. v. Ms. Priya Malik***, (2006) III LLJ 540 DEL has held that right of an employee to seek and search for better employment are not to be curbed by an injunction even on the ground that the employee has confidential data. In the garb of confidentiality, the employer cannot be allowed to perpetuate forced employment. Freedom of changing employment for improving service conditions is a vital and important right of an employee, which cannot be restricted or curtailed on the ground that the employee has employer's data and confidential information. Such a restriction will be hit by Section 27 of the ICA.

72. The Impugned Order has restricted the Appellant from working with DIC and NeGD during the pendency of the Suit on an apprehension that the Appellant may disclose the proprietary information, intellectual property, insider knowledge, source code etc. However, the scope of work between DIC and the Respondent was limited to providing the supply of manpower and by the Respondent. The contractual term between DIC and the

Respondent provided that the intellectual property right at the developed software code and related documentation shall belong to DIC. Hence, the apprehension of the Respondent that confidential information or intellectual property shall be shared with DIC is misconceived as the same already belongs to DIC. Therefore, there is no question of any sharing of the confidential information, source code or intellectual property with DIC. The balance of convenience is in favour of the Appellant as the Appellant has already joined DIC and if the Appellant is restrained from working with DIC during the pendency of the Suit, it would cause irreparable loss to the Appellant. In case, the Respondent is able to prove the breach of the Employment Agreement, it can be compensated by way of damages. In view of the same, the Impugned Order, which is contrary to the settled position of law, cannot be sustained.

73. In view of the above, the present Appeal is allowed and the Impugned Order is quashed and set aside. Pending application(s), if any, shall stand disposed of. No orders as to costs.

TEJAS KARIA, J
(VACATION JUDGE)

JUNE 25, 2025/ *'A'*

Click here to check corrigendum, if any