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

+ **CS(COMM) 804/2022**

ZEE MEDIA CORPORATION LTD Plaintiff

Through: Mr. Joy Basu, Senior Advocate with
Ms. Ritwika Nanda, Advocate, Ms.
Akshita Salampuria, Advocate, Mr.
Kanak Bose, Advocate and Mr.
Naman Khatwani, Advocate.

versus

PALKI SHARMA UPADHYAY Defendant

Through: Mr. Anil Sapra, Senior Advocate with
Dr. Saif Mahmood, Advocate, Mr.
Akshay Sapra, Advocate and
Mr.Sarthak Katyal, Advocate.

CORAM:

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

ORDER

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22.11.2022

CS(COMM) 804/2022

By way of the present suit, the plaintiff/M/s. Zee Media Corporation Ltd. seeks a decree of declaration that the defendant has breached the terms of Appointment Letter dated 09.03.2017 ('Appointment Letter' for short); in particular, that the defendant has violated the notice period policy applicable to her employment.

2. Mr. Joy Basu, learned senior counsel appearing for the plaintiff submits that having been employed *vide* the Appointment Letter, which provided a 60-day notice period, which was subsequently amended to 90 days, the defendant, who last served as Managing

Editor at the plaintiff company, has summarily resigned *vide* 02 separate resignation letters dated 02.09.2022 and 07.09.2022 *w.e.f.* 26.09.2022, without serving the 90-day notice period stipulated in her terms of employment. The court has been shown copies of the resignation letters submitted by the defendant.

3. Mr. Basu further submits, that if that were not enough, the defendant has joined a competitor channel as Managing Editor on 17.09.2022, or perhaps on a date even before that. Apprehension has been expressed on behalf of the plaintiff, that the defendant has carried with her confidential and proprietary information belonging to the plaintiff, to which she was privy in her capacity as Managing Editor at the plaintiff-company. It is in these circumstances that the plaintiff also prays for a decree of permanent injunction restraining the defendant from divulging any confidential and proprietary information belonging to the plaintiff to any third party, entity or organization; and for a permanent injunction restraining the defendant from participating in, consulting with, rendering services for, or engaging in any manner, in any competing business for a period of 90 days from 07.09.2022; and for 06 months thereafter in terms of clause 4.1 of the plaintiff's Notice Period Policy read with clause 18 of the Appointment Letter. The plaintiff has also sought a mandatory injunction in respect of the notice period that the defendant was required to serve; alongwith damages in the sum of Rs.2 crores.
4. Learned senior counsel for the plaintiff has drawn the attention of the court to clauses 11, 15, 16, 17 and 18 of the Appointment Letter, to submit that at the very least, the non-compete clause continues to

operate during the notice period that was required to be served by the defendant as per the terms of her appointment.

5. Mr. Basu has also placed reliance upon the decisions of the Supreme Court in *Niranjan Shankar Golikari vs. Century Spinning and Manufacturing Co. Ltd.*¹; *Power Financial Corporation Ltd. vs. Pramod Kumar Bhatia*² and *Percept D'Mark (India) Pvt. Ltd. vs. Zaheer Khan and Ors.*³, to submit that a non-compete clause does not constitute an unlawful restriction, if sought to be enforced *within the term* of the employment contract.
6. Upon a *prima facie* conspectus of the averments contained in the plaint, the submissions made, and upon a perusal of the documents filed in support thereof, let the plaint be registered as a suit.
7. Issue summons in the suit.
8. Dr. Saif Mahmood, learned counsel appears for the defendant on advance copy, accepts summons; and seeks time to file written statement.
9. Let written statement to the plaint be filed within 30 days, alongwith an affidavit of admission/denial of the documents filed by the plaintiff; the plaintiff may file replication to the written statement within 30 days thereafter, alongwith affidavit of admission/denial of the documents filed by the defendant; with copies to the opposing counsel.

¹ (1967) 2 SCR 378; para 17

² (1997) 4 SCC 280; para 7

³ (2006) 4 SCC 227; paras 62-63

10. List before the learned Joint Registrar for completion of pleadings, for admission/denial of documents and for marking of exhibits on 3rd February 2023.
11. List before court on 10th March 2023.

I.A. No.19266/2022 (stay)

12. By way of this application under Order XXXIX Rules 1 and 2 CPC, the plaintiff seeks ad-interim, *ex-parte* relief against the defendant.
13. Mr. Basu urges, that it is impermissible for the defendant to take-up employment for a period of 90 days from the date of her resignation; or to part with any confidential or proprietary information to which she was privy, to any third party, especially to a competitor company/TV channel. Senior counsel reiterates that the extant position of law is that a non-compete clause does not constitute ‘unlawful restriction’ on a person’s right to employment during the currency of an employment agreement.
14. Issue notice on the application.
15. Dr. Saif Mahmood, learned counsel for the defendant, accepts notice; and seeks time to file reply.
16. Let reply be filed within 30 days; rejoinder thereto, if any, be filed within 30 days thereafter; with copies to the opposing counsel.
17. Mr. Anil Sapra, learned senior counsel appearing for the defendant disputes that the non-compete clause is enforceable even during the notice period.
18. However, Dr. Mahmood assures that no confidential information or other such material is either available with the defendant, or shall at

all be disclosed to any third party; and the plaintiff's fear to that effect is unfounded.

19. It is noticed that though the plaintiff seeks urgent interim restraint orders against the defendant, by the plaintiff's own reckoning, the defendant issued her second resignation letter to the plaintiff on 07.09.2022; and again as per the plaintiff's own allegation, the defendant has been seen on-air on a competitor channel from around 17.09.2022. Accordingly, no case is made-out for grant of any urgent relief since the plaint has been filed some two months after that date. Mr. Basu explains the delay by saying, that the plaintiff was reluctant to approach court and was hoping for an amicable resolution of its disputes with the defendant.
20. In the circumstances of the case, and upon a fair and equitable view, in the opinion of this court, since resignation is an incident of employment itself; and since it is inequitable to prevent an individual from using, deploying and monetizing his or her skills in a given field, no case is made-out for grant of any injunctive relief preventing the defendant from continuing with her employment, even if it is in a competitor company or TV channel.
21. However, what commends itself for acceptance, is that the defendant cannot be permitted to divulge, use or employ any confidential or proprietary information or material pertaining or belonging to the plaintiff, to which she may have been privy during the course of her engagement with the plaintiff, for the defendant's own benefit or for the benefit of any third person or party. The defendant is accordingly restrained from doing so.

22. List before the learned Joint Registrar on 3rd February 2023.

23. List before court on 10th March 2023.

I.A. No. 19267/2022 (seeking exemption from pre-institution mediation)
& I.A. No. 19268/2022 (seeking to file documents in a sealed cover)

24. Re-notify on 10th March 2023.

ANUP JAIRAM BHAMBHANI, J

NOVEMBER 22, 2022

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