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

Date of Reserve:24th April, 2024
Date of Decision: 11th July, 2024

\+ **ARB.P. 1210/2023**

LILY PACKERS PRIVATE LIMITED ..... Petitioner
Through: Mr. Anand Mishra, Mr. Sachin Midha & Mr. Aditya Vikram Bajpai, Advocates (M- 9910908594).

versus

VAISHNAVI VIJAY UMAK ..... Respondent
Through: Mr. Pravin Salunkhe and Mr. Ashish, Advocates (M: 9423406815)

WITH

\+ **ARB.P. 1212/2023**

LILY PACKERS PRIVATE LIMITED ..... Petitioner
Through: Mr. Anand Mishra, Mr. Sachin Midha & Mr. Aditya Vikram Bajpai, Advocates

versus

MEETKUMAR PATEL ..... Respondent
Through: None.

AND

\+ **ARB.P. 1213/2023**

LILY PACKERS PRIVATE LIMITED ..... Petitioner
Through: Mr. Anand Mishra, Mr. Sachin Midha & Mr. Aditya Vikram Bajpai, Advocates

versus

RAHUL SHARMA ..... Respondent
Through: Mr. Anupam Kishore Sinha, Adv.

CORAM:
JUSTICE PRATHIBA M. SINGH

JUDGMENT

Prathiba M. Singh, J.

1. This hearing has been done through hybrid mode.

2. These three petitions raise an important issue concerning appointment of an arbitrator under Section 11(6) of the Arbitration and Conciliation Act, 1996 *(hereinafter, the 'Act, 1996')* in employment contracts.

3. The two main questions that arise for consideration in these petitions are:

   i. Whether a lock-in period in employment contracts is valid in law, or does it violate the fundamental rights enshrined in the Constitution of India?

   ii. Whether disputes relating to a lock-in period in employment contracts are arbitrable in terms of the Act, 1996?

4. The parties in all the three petitions are set out in the following table:

Case Number	***Petitioner***	***Respondents***	***Agreement***
ARB.P. 1210/2023	Lily Packers Private Limited	Ms. Vaishnavi Vijay Umak	Service Employment Agreement (Executive) dated 16th April, 2022

ARB.P. 1212/2023	Lily Packers Private Limited	Mr. Meetkumar Patel	Service Employment Agreement (Executive) dated 30th June, 2021
ARB.P. 1213/2023	Lily Packers Private Limited	Mr. Rahul Sharma	Service Employment Agreement (Executive) dated 21st March, 2022

The facts in each of the three petitions are as under:

ARB.P. 1210/2023

5. The present petition has been filed on behalf of the Petitioner-Lily Packers Pvt. Ltd. under Section 11 (6) of the Act, 1996. The Petitioner vide the present petition is seeking constitution of an Arbitral Tribunal in terms of the Service Employment Agreement (Executive) dated 16th April, 2022 *(hereinafter, 'Agreement dated 16th April, 2022').*

6. In the present petition, the Petitioner claims to be a company, which is engaged in the business of manufacturing and trading of corrugated packaging, sourcing and outsourcing of materials by way of hiring and/or contracting with third-parties to perform tasks, handle operations, or provide services for various companies worldwide.

7. It is stated that the Petitioner on 16th April, 2022 employed the Respondent- Ms. Vaishnavi Vijay Umak as a fashion designer in its division called 'De Belle' *(hereinafter, 'division company')*. Further, in this regard, Agreement dated 16th April, 2022 was executed between the parties, wherein

scope of the employee's services were defined.

8. In terms of the Agreement dated 16th April, 2022, there were various conditions agreed upon by the parties including-salary and benefits, working hours, other employment conditions, lock-in period, confidentiality clause, data protection, etc.

9. Clause 5 of the Agreement dated 16th April, 2022 pertains to a lock-in period vide which the Respondent employee agreed to serve the Petitioner company for a period of 3 years from the date of joining. Clause 5 is extracted hereinunder for ready reference:

> *"5. LOCK IN PERIOD. After successful completion of probation period, the Employee will be on lock in period for (2) three years with the company from the date of the joining which cannot be terminated by the Employee before completion of the LOCK IN PERIOD, the Employee contract can be terminated before the Lock in period at sole discretion of the Company or may continue subject to his/her satisfactory performance and conduct, the Company may confirm his/her employment pursuant to expiry of Lock in Period according to the terms of the employment. During his/her Lock in Period or extended period if any, the Employee's employment shall be liable to be terminated by the Company without any notice and without assigning any reason thereof"*

10. The Agreement dated 16th April, 2022 contains a negative covenant in Clause 9, as per which, the Respondent employee has agreed to devote her full time and energy to the Petitioner company during the course of her

employment. Clause 9 of the said agreement reads as under:

> *"9. **OTHER EMPLOYMENT.** During the terms of his/her employment the Employee agrees to devote his/her full time and energy to the duties assigned to him/her. During the term of his/her employment, the Employee will not work, directly or indirectly, for any other person, firm, company or organisation, whether with or without remuneration, or do any free lancing, nor he/she will engage himself/herself or be interested, directly or indirectly, in any trade or business either as employer or Employee or partner or advisor or in any other capacity. The Employee will not, directly or indirectly, engage himself or his dependants in any other employment or business (full time or part time) without prior written approval of the Company."*

11. Clause 10 of the Agreement dated 16th April, 2022 sets out the general terms which the Respondent employee has to comply with. It further emphasizes that the Petitioner company attaches great importance to its information and trade secrets, and the employee may be asked to disclose information pertaining to the Petitioner company's business activities only under certain situations or if there are any local laws or regulatory requirements. The relevant portion of Clause 10 of the Agreement dated 16th April, 2022 is extracted herein for reference:

> *"**10. COMPLIANCE.** The Employee agrees/understands that*
> *(a) He will fully adhere /comply the rules, regulation, and directions relating to the Employee including the HR Policy of the Company.*
> *(b) The Company attaches great importance to company secrets, confidential information, security,*

compliance and fair dealing procedures. He/ She may be asked to disclose Information as deemed necessary to Company with local regulatory requirements arising from the Company's business activities (including the records relating to the investment held by him/her and his/her family members) or which are otherwise consistent with the best practices of the Company."

12. The Agreement dated 16th April, 2022 also contains a separate confidentiality clause i.e. Clause 12, which defines the various kinds of confidential information that the Petitioner company seeks to protect. As per Clause 12.2 of the said agreement, the Respondent employee agrees to not dissipate the confidential information of the Petitioner company. Clause 12.2 of the Agreement dated 16th April, 2022 is extracted hereinunder for a ready reference:

> *"12.2 During course of the employment with the Company, the Employee may learn or obtain confidential and proprietary information or that may be received by or for the Company in confidence. Unless required to do so in the proper performance of his/her duties, the Employee must:*
> *(a) keep all confidential and proprietary information in confidence; and*
> *(b) not divulge or communicate the same to any person; and*
> *(c) not use for his/her own purpose or for any purposes other than those of the Company or,*
> *(d) not cause any unauthorised disclosure, directly or indirectly;*

> *(e) use greater degree of care and caution so that such confidential and proprietary information is not published or disseminated to third party knowledge."*

13. In Clause 13 of the Agreement dated 16th April, 2022, Intellectual Property of the Petitioner company is defined. The said clause, further defines the obligations of the Respondent employee towards the Intellectual Property of the Petitioner company. In Clause 14 of the said agreement, certain obligations are placed on the Respondent employee towards protection of data of the Petitioner Company.

14. Clause 16 of the Agreement dated 16th April, 2022 defines the termination clause. As per Clause 16.1 of the said agreement, the Petitioner company has the right to terminate the employment of the Respondent employee by giving a 30 days' notice in writing. Clause 16.1 of the Agreement dated 16th April, 2022 is extracted hereinunder for reference:

> *"16.1 Termination with notice: Pursuant to confirmation of the employment, the Company may terminate Employee's employment by giving 30 [Thirty] days' notice in writing or salary in lieu of notice. The Employee may also leave the employment of the Company by tendering 180 [One Hundred Eighty] days' notice or salary in lieu of notice. This clause of 180 days shall only be valid after completion of the Lock In period of 03 years mentioned in Clause (5). During notice period the Company reserves its right to direct the Employee to not to perform any of his / her duties or to remain away from Company's premises and/or not to contact clients or other*

Employee of the Company for all or part of the notice period."

15. Clause 16.3 and Clause 16.4 of the Agreement dated 16th April, 2022 imposes certain obligations on the employee which read as under:

> *"16.3 Consequences of Termination: In the event the Employee's employment with the Company is terminated, for any reason whatsoever,*
> *(a) He / She will be liable enter into a full and final settlement with the Company and complete the requisite formalities in respect thereof,*
> *(b) He / She must return all the Company's property/confidential information/Intellectual Property in her / her possession.*
> *16.3 In the event of breach of any or all the covenants of this Agreement, the Company, without prejudice to any of the rights to initiate legal proceedings and is entitled inter-alia to recover a compensation equivalent to the damages, suffered by the Company in addition to an amount equivalent to 6 month's total emoluments calculated at the rate drawn at the time of breach. The Company is further entitled to seek permanent injunction in case of such breach. The Company's decision as to what constitute breach and the damages suffered shall be final and binding.*
> *16.4 The Employee agrees that the work being performed by him/her is or may be highly confidential technical and gives him/her an in-depth exposure to know how and confidential information of the Company and the Employee will also be coming into direct contact with the co- employees, clients, associated of Company or of its sister/group concern. In light of the same it has been willingly agreed by the Employee that in the event of termination of his / her*

employment for any reason whatsoever, he/ she will not directly / indirectly establish or set up, maintain, engage or participate in a Related or Competing Business for period of 6 months after his / her employment is ceased to exist with the Company. The Employee acknowledges that the abovementioned provisions are reasonable and are entered into for the purposes of protecting the Confidentiality &the goodwill of the Company."

16. The Agreement dated 16th April, 2022 in Clause 17 provides for a dispute resolution clause, as per which, disputes between the parties shall be adjudicated through arbitration in terms of the Act, 1996. Clause 17 of the Agreement dated 16th April, 2022 is extracted hereinunder:

*"17. **DISPUTE RESOLUTION** In case of any dispute or differences arising out of this agreement or any communication, transaction or dealings with Lily Packers Private Limited, its divisions or its management the same shall be adjudicated through arbitration. The sole arbitrator shall be appointed by Lily Packers Private Limited. The arbitration proceedings shall be governed by the provisions of the Arbitration and Conciliation Act, 1996 or any statutory modification or enactment thereof from time to time. The seat and venue of arbitration shall be New Delhi, India. The arbitration proceedings shall be undertaken in English. The arbitration award shall be final and binding upon the Parties. Subject to the aforementioned, the courts at New Delhi alone shall have the jurisdiction in relation to the disputes as mentioned hereinbefore.*

In case of any other communication in any form what so ever initiated by the employee containing clauses

inconsistent with the aforementioned clause, it shall be construed as nonest and would stand superseded by the above-mentioned clause. The orbitration clause mentioned herein above shall be final & binding unless & until an express agreement to the contrary in writing is executed or communicated by Lily Packers Private Limited."

17. The case of the Petitioner as stated in the petition is that the Agreement dated 16th April, 2022 consists of a lock-in period in Clause 5, vide which the Respondent employee is bound to serve the Petitioner company for a period of 3 years from the date of joining. However, the Respondent on 14th June, 2023 went on leave and never came back, thereby, working only for a period of one year and two months as opposed to the agreed lock-in period of 3 years.

18. As per the Petitioner, apart from the violation of Clause 5 of the Agreement dated 16th April, 2022 there is an apprehension of violation of Clause 12 i.e. the Confidentiality clause, Clause 13 i.e. the Intellectual Property clause and Clause 14 i.e. Data Protection clause of the Agreement dated 16th April, 2022 on behalf of the Respondent employee.

19. In view of the disputes that arose between the parties, the Petitioner on 21st June, 2023 issued a notice of demand and invocation of arbitration under Section 21 of the Arbitration and Conciliation Act, 1996, in terms of Clause 17 of the Agreement dated 16th April, 2022. However, it is alleged by the Petitioner that in reply to said notice dated 18th July, 2023 the Respondent made false allegations and stated that she was subjected to harassment and

humiliation and that none of the allegations contained in the notice dated 21st June, 2023 are made out. In the said reply, the Respondent did not agree to submit to arbitration as per the Act, 1996. Hence, the present petition, seeking appointment of an Arbitral Tribunal under Section 11 of the Act, 1996.

ARB.P. 1212/2023

20. This petition has been filed on behalf of the Petitioner-Lily Packers Pvt. Ltd. under Section 11 (6) of the Act, 1996. The Petitioner vide the present petition is seeking constitution of an Arbitral Tribunal in terms of the Service Employment Agreement (Executive) dated 30th June, 2021 *(hereinafter, 'Agreement dated 30th June, 2021')*.

21. The Petitioner claims to be a company, which is engaged in the business of manufacturing and trading of corrugated packaging, sourcing and outsourcing of materials by way of hiring and/or contracting with third-parties to perform tasks, handle operations, or provide services for various companies worldwide.

22. It is stated that the Petitioner employed the Respondent- Mr. Meetkumar Patel as an Autocad Design Engineer, vide the Agreement dated 30th June, 2021 wherein the scope of his services were defined.

23. Further, in terms of the said agreement, there were various conditions agreed upon by the parties including-salary and benefits, working hours, other employment conditions, lock-in period, confidentiality clause, data protection, etc.

24. Clause 5 of the Agreement dated 30th June, 2021 pertains to a lock-in

period vide which the Respondent employee agreed to serve the Petitioner company for a period of 3 years from the date of joining. Clause 5 is extracted hereinunder for a ready reference:

> *"5. LOCK IN PERIOD. After successful completion of probation period, the Employee will be on lock in period for (3) three years with the company from the date of the joining which cannot be terminated by the Employee before completion of the LOCK IN PERIOD, the Employee contract can be terminated before the Lock in period at sole discretion of the Company or may continue subject to his/her satisfactory performance and conduct, the Company may confirm his/her employment pursuant to expiry of Lock in Period according to the terms of the employment. During his/her Lock in Period or extended period if any, the Employee's employment shall be liable to be terminated by the Company without any notice and without assigning any reason thereof"*

25. The Agreement dated 30th June, 2021 contains a negative covenant in Clause 9, as per which, the Respondent employee has agreed to devote his full time and energy to the Petitioner company during the course of his employment. Clause 9 of the said agreement reads as under:

> *"9. **OTHER EMPLOYMENT.** During the terms of his/her employment the Employee agrees to devote his/her full time and energy to the duties assigned to him/her. During the term of his/her employment, the Employee will not work, directly or indirectly, for any other person, firm, company or organisation, whether with or without remuneration, or do any free lancing, nor he/she will engage himself/herself or be interested,*

> *directly or indirectly, in any trade or business either as employer or Employee or partner or advisor or in any other capacity. The Employee will not, directly or indirectly, engage himself or his dependants in any other employment or business (full time or part time) without prior written approval of the Company."*

26. Clause 10 of the Agreement dated 30th June, 2021 sets out the general terms which the Respondent employee has to comply with. It further emphasizes that the Petitioner company attaches great importance to its information and trade secrets, and the employee may be asked to disclose information pertaining to the Petitioner company's business activities only under certain situations or if there are any local laws or regulatory requirements. The relevant portion of Clause 10 of the Agreement dated 30th June, 2021 is extracted herein for reference:

> *"**10. COMPLIANCE.** The Employee agrees/understands that*
> *(a) He will fully adhere /comply the rules, regulation, and directions relating to the Employee including the HR Policy of the Company.*
> *(b) The Company attaches great importance to company secrets, confidential information, security, compliance and fair dealing procedures. He/ She may be asked to disclose Information as deemed necessary to Company with local regulatory requirements arising from the Company's business activities (including the records relating to the investment held by him/her and his/her family members) or which are otherwise consistent with the best practices of the Company."*

27. The Agreement dated 30th June, 2021 also contains a separate confidentiality clause i.e. Clause 12, which defines the various kinds of confidential information that the Petitioner company seeks to protect. As per Clause 12.2 of the said agreement, the Respondent employee agrees to not dissipate the confidential information of the Petitioner company. Clause 12.2 of the Agreement dated 30th June, 2021 is extracted hereinunder for a ready reference:

> *"12.2 During course of the employment with the Company, the Employee may learn or obtain confidential and proprietary information or that may be received by or for the Company in confidence. Unless required to do so in the proper performance of his/her duties, the Employee must:*
> *(a) keep all confidential and proprietary information in confidence; and*
> *(b) not divulge or communicate the same to any person; and*
> *(c) not use for his/her own purpose or for any purposes other than those of the Company or,*
> *(d) not cause any unauthorised disclosure, directly or indirectly;*
> *(e) use greater degree of care and caution so that such confidential and proprietary information is not published or disseminated to third party knowledge."*

28. In Clause 13 of the Agreement dated 30th June, 2021, Intellectual Property of the Petitioner company is defined. The said clause, further defines the obligations of the Respondent employee towards the Intellectual Property of the Petitioner company. In Clause 14 of the said agreement,

certain obligations are placed on the Respondent employee towards protection of data of the Petitioner Company.

29. Clause 16 of the Agreement dated 30th June, 2021 defines the termination clause. As per Clause 16.1 of the said agreement, the Petitioner company has the right to terminate the employment of the Respondent employee by giving a 30 days' notice in writing. Clause 16.1 of the Agreement dated 30th June, 2021 is extracted hereinunder for reference:

> *"16.1 Termination with notice: Pursuant to confirmation of the employment, the Company may terminate Employee's employment by giving 30 [Thirty] days' notice in writing or salary in lieu of notice. The Employee may also leave the employment of the Company by tendering 180 [One Hundred Eighty] days' notice or salary in lieu of notice. This clause of 180 days shall only be valid after completion of the Lock In period of 03 years mentioned in Clause (5). During notice period the Company reserves its right to direct the Employee to not to perform any of his / her duties or to remain away from Company's premises and/or not to contact clients or other Employee of the Company for all or part of the notice period."*

30. Clause 16.3 and Clause 16.4 of the Agreement dated 30th June, 2021 imposes certain obligations on the employee which read as under:

> *"16.3 Consequences of Termination: In the event the Employee's employment with the Company is terminated, for any reason whatsoever,*
>
> *(a) He / She will be liable enter into a full and final settlement with the Company and complete the requisite formalities in respect thereof,*

(b) He / She must return all the Company's property/confidential information/Intellectual Property in her / her possession.

16.3 In the event of breach of any or all the covenants of this Agreement, the Company, without prejudice to any of the rights to initiate legal proceedings and is entitled inter-alia to recover a compensation equivalent to the damages, suffered by the Company in addition to an amount equivalent to 6 month's total emoluments calculated at the rate drawn at the time of breach. The Company is further entitled to seek permanent injunction in case of such breach. The Company's decision as to what constitute breach and the damages suffered shall be final and binding.

16.4 The Employee agrees that the work being performed by him/her is or may be highly confidential technical and gives him/her an in-depth exposure to know how and confidential information of the Company and the Employee will also be coming into direct contact with the co- employees, clients, associated of Company or of its sister/group concern. In light of the same it has been willingly agreed by the Employee that in the event of termination of his / her employment for any reason whatsoever, he/ she will not directly / indirectly establish or set up, maintain, engage or participate in a Related or Competing Business for period of 6 months after his / her employment is ceased to exist with the Company. The Employee acknowledges that the abovementioned provisions are reasonable and are entered into for the purposes of protecting the Confidentiality &the goodwill of the Company."

31. The Agreement dated 30th June, 2021 in its Clause 17 provides for a dispute resolution clause, as per which, the disputes arisen between the

parties shall be adjudicated through arbitration in terms of the Act, 1996. Clause 17 of the Agreement dated 30th June, 2021 is extracted hereinunder:

> *"17. **DISPUTE RESOLUTION** In case of any dispute or differences arising out of this agreement or any communication, transaction or dealings with Lily Packers Private Limited, its divisions or its management the same shall be adjudicated through arbitration. The sole arbitrator shall be appointed by Lily Packers Private Limited. The arbitration proceedings shall be governed by the provisions of the Arbitration and Conciliation Act, 1996 or any statutory modification or enactment thereof from time to time. The seat and venue of arbitration shall be New Delhi, India. The arbitration proceedings shall be undertaken in English. The arbitration award shall be final and binding upon the Parties. Subject to the aforementioned, the courts at New Delhi alone shall have the jurisdiction in relation to the disputes as mentioned hereinbefore.*
>
> *In case of any other communication in any form what so ever initiated by the employee containing clauses inconsistent with the aforementioned clause, it shall be construed as nonest and would stand superseded by the above-mentioned clause. The arbitration clause mentioned herein above shall be final & binding unless & until an express agreement to the contrary in writing is executed or communicated by Lily Packers Private Limited."*

32. The case of the Petitioner as stated in this petition is that the Agreement dated 30th June, 2021 consists of a lock-in period in Clause 5, vide which the Respondent employee was to serve the Petitioner company for a period of 3 years from the date of joining *i.e.,* till 1st July, 2024.

However, the Respondent on 17th December, 2022 tendered his resignation vide an email, stating that his last working day shall be on 13th January, 2023 thereby working for a period of approximately 1 year and 6 months. This is stated to be contrary to Clause 5 of the Agreement dated 30th June, 2021 and hence, the claim of the Petitioner that the Respondent employee is in breach of the Agreement dated 30th June, 2021.

33. The Petitioner further apprehends that there is a violation of Clause 12 i.e. the Confidentiality clause, Clause 13 i.e. the Intellectual Property clause and Clause 14 i.e. Data Protection clause of the Agreement dated 30th June, 2021 on behalf of the Respondent employee.

34. In view of the disputes arisen between the parties, the Petitioner on 26th May, 2023 issued a notice of demand and invocation of arbitration under Section 21 of the Act, 1996 in terms of Clause 17 of the Agreement dated 30th June, 2021. However, there was no reply to the said notice on behalf of the Respondent. Hence, the present petition.

ARB.P. 1213/2023

35. This petition has been filed on behalf of the Petitioner-Lily Packers Pvt. Ltd. under Section 11 (6) of the Act, 1996. The Petitioner vide the present petition is seeking constitution of an Arbitral Tribunal in terms of the Service Employment Agreement (Executive) dated 21st March, 2022 *(hereinafter, 'Agreement dated 21st March, 2022').*

36. In the present petition, the Petitioner claims to be a company, which is engaged in the business of manufacturing and trading of corrugated packaging, sourcing and outsourcing of materials by way of hiring and/or

contracting with third-parties to perform tasks, handle operations, or provide services for various companies worldwide.

37. It is stated that the Petitioner company employed the Respondent- Mr. Rahul Sharma as a General Supply Chain Manager, vide the Agreement dated 21st March, 2022 and the scope of his services were defined.

38. Further, in terms of the said agreement, there were various conditions agreed upon by the parties including-salary and benefits, working hours, other employment conditions, lock-in period, confidentiality clause, data protection, etc.

39. Clause 5 of the Agreement dated 21st March, 2022 pertains to a lock-in period vide which the Respondent employee agreed to serve the Petitioner company for a period of 3 years from the date of joining. Clause 5 is extracted hereinunder for a ready reference:

> *"5. LOCK IN PERIOD. After successful completion of probation period, the Employee will be on lock in period for (3) three years with the company from the date of the joining which cannot be terminated by the Employee before completion of the LOCK IN PERIOD, the Employee contract can be terminated before the Lock in period at sole discretion of the Company or may continue subject to his/her satisfactory performance and conduct, the Company may confirm his/her employment pursuant to expiry of Lock in Period according to the terms of the employment. During his/her Lock in Period or extended period if any, the Employee's employment shall be liable to be terminated by the Company without any notice and without assigning any reason thereof"*

40. The Agreement dated 21st March, 2022 contains a negative covenant in Clause 9, as per which, the Respondent employee has agreed to devote his full time and energy to the Petitioner company during the course of his employment. Clause 9 of the said agreement reads as under:

> *"9. **OTHER EMPLOYMENT.** During the terms of his/her employment the Employee agrees to devote his/her full time and energy to the duties assigned to him/her. During the term of his/her employment, the Employee will not work, directly or indirectly, for any other person, firm, company or organisation, whether with or without remuneration, or do any free lancing, nor he/she will engage himself/herself or be interested, directly or indirectly, in any trade or business either as employer or Employee or partner or advisor or in any other capacity. The Employee will not, directly or indirectly, engage himself or his dependants in any other employment or business (full time or part time) without prior written approval of the Company."*

41. Clause 10 of the Agreement dated 21st March, 2022 sets out the general terms which the Respondent employee has to comply with. It further emphasizes that the Petitioner company attaches great importance to its information and trade secrets, and the employee may be asked to disclose information pertaining to the Petitioner company's business activities only under certain situations or if there are any local laws or regulatory requirements. The relevant portion of Clause 10 of the Agreement dated 21st March, 2022 is extracted herein for reference:

> *"**10. COMPLIANCE.** The Employee agrees/understands that*
> *(a) He will fully adhere /comply the rules, regulation, and directions relating to the Employee including the HR Policy of the Company.*
> *(b) The Company attaches great importance to company secrets, confidential information, security, compliance and fair dealing procedures. He/ She may be asked to disclose Information as deemed necessary to Company with local regulatory requirements arising from the Company's business activities (including the records relating to the investment held by him/her and his/her family members) or which are otherwise consistent with the best practices of the Company."*

42. The Agreement dated 21st March, 2022 also contains a separate confidentiality clause i.e. Clause 12, which defines the various kinds of confidential information that the Petitioner company seeks to protect. As per Clause 12.3 of the said agreement, the Respondent employee agrees to not dissipate the confidential information of the Petitioner company. The relevant portion of Clause 12 of the Agreement dated 21st March, 2022 is extracted hereinunder for a ready reference:

> *"12. CONFIDENTIALITY.*
>
> *12.1 For all intents and purposes, the Employee shall be construed to be a Receiving Party and Lily Packers Private Limited shall be construed to be a Disclosing Party. Since the nature of employment and work tasks to be entrusted to the Employee would necessarily involve the sharing of confidential and proprietary information of Lily Packers Private Limited (Disclosing Party) in written, oral and/or*

physical/sample form (collectively "Confidential Information").

12.3. During course of the employment with the Company, the Employee may learn or obtain confidential and proprietary information or that may be received by or for the Company in confidence. Unless required to do so in the proper performance of his/her duties, the Employee must:

(a) keep all confidential and proprietary information in confidence; and

(b) not divulge or communicate the same to any person; and

(c) not use for his/her own purpose or for any purposes other than those of the Company or,

(d) not cause any unauthorised disclosure, directly or indirectly;

(e) use greater degree of care and caution so that such confidential and proprietary information is not published or disseminated to third party knowledge. By the use of such degree of care, the Receiving Party agrees not to in any way disclose, copy, reproduce, modify, use (except as permitted under this Agreement), or otherwise transfer the Confidential Information to any other person or entity without obtaining prior written consent from the Disclosing Party.

(f) The Receiving Party shall not reverse engineer, disassemble or decompile any prototypes, software or other tangible objects which embody the Confidential Information and which are provided during the employment.

(g) Further the Receiving Party & Disclosing Party, at the request, return all originals, copies, reproductions and summaries of Confidential Information and all other tangible materials and

> *devices provided and at its option certify destruction of the same.*
>
> *(h) The Employee undertakes and agrees not to directly supply the goods in any circumstances to the end user or provide the pricing information to anyone. Even if permissions have been provided to the Employee to come in contact with the end user directly, the same would not entitle the Employee to establish any direct negotiations with the end User."*

43. In Clause 13 of the Agreement dated 21st March, 2022, Intellectual Property of the Petitioner company is defined. The said clause, further defines the obligations of the Respondent employee towards the Intellectual Property of the Petitioner company. In Clause 14 of the said agreement, certain obligations are placed on the Respondent employee towards protection of data of the Petitioner Company.

44. Clause 16 of the Agreement dated 30th June, 2021 defines the termination clause. As per Clause 16.1 of the said agreement, the Petitioner company has the right to terminate the employment of the Respondent employee by giving a 30 days' notice in writing. Clause 16.1 of the Agreement dated 21st March, 2022 is extracted hereinunder for reference:

> *"16.1 Termination with notice: Pursuant to confirmation of the employment, the Company may terminate Employee's employment by giving 30 [Thirty] days' notice in writing or salary in lieu of notice. The Employee may also leave the employment of the Company by tendering 180 [One Hundred Eighty] days' notice or salary in lieu of notice. This clause of 180 days shall only be valid after completion of the Lock In period of 03 years mentioned in Clause*

(5). During notice period the Company reserves its right to direct the Employee to not to perform any of his / her duties or to remain away from Company's premises and/or not to contact clients or other Employee of the Company for all or part of the notice period."

45. Clause 16.3 and Clause 16.4 of the Agreement dated 21st March, 2022 imposes certain obligations on the employee which read as under:

"16.3 Consequences of Termination: In the event the Employee's employment with the Company is terminated, for any reason whatsoever,

(a) He / She will be liable enter into a full and final settlement with the Company and complete the requisite formalities in respect thereof,

(b) He / She must return all the Company's property/confidential information/Intellectual Property in her / her possession.

16.3 In the event of breach of any or all the covenants of this Agreement, the Company, without prejudice to any of the rights to initiate legal proceedings and is entitled inter-alia to recover a compensation equivalent to the damages, suffered by the Company in addition to an amount equivalent to 6 month's total emoluments calculated at the rate drawn at the time of breach. The Company is further entitled to seek permanent injunction in case of such breach. The Company's decision as to what constitute breach and the damages suffered shall be final and binding.

16.4 The Employee agrees that the work being performed by him/her is or may be highly confidential technical and gives him/her an in-depth exposure to know how and confidential information of the Company and the Employee will also be coming into

> *direct contact with the co- employees, clients, associated of Company or of its sister/group concern. In light of the same it has been willingly agreed by the Employee that in the event of termination of his / her employment for any reason whatsoever, he/ she will not directly / indirectly establish or set up, maintain, engage or participate in a Related or Competing Business for period of 6 months after his / her employment is ceased to exist with the Company. The Employee acknowledges that the abovementioned provisions are reasonable and are entered into for the purposes of protecting the Confidentiality &the goodwill of the Company."*

46. The Agreement dated 21st March, 2022 in its Clause 17 provides for a dispute resolution clause, as per which, the disputes arisen between the parties shall be adjudicated through arbitration in terms of the Act, 1996. Clause 17 of the Agreement dated 21st March, 2022 is extracted hereinunder:

> *"17.* ***DISPUTE RESOLUTION*** *In case of any dispute or differences arising out of this agreement or any communication, transaction or dealings with Lily Packers Private Limited, its divisions or its management the same shall be adjudicated through arbitration. The sole arbitrator shall be appointed by Lily Packers Private Limited. The arbitration proceedings shall be governed by the provisions of the Arbitration and Conciliation Act, 1996 or any statutory modification or enactment thereof from time to time. The seat and venue of arbitration shall be New Delhi, India. The arbitration proceedings shall be undertaken in English. The arbitration award shall be final and binding upon the Parties. Subject to the aforementioned, the courts at New Delhi alone shall*

> *have the jurisdiction in relation to the disputes as mentioned hereinbefore.*
> *In case of any other communication in any form what so ever initiated by the employee containing clauses inconsistent with the aforementioned clause, it shall be construed as nonest and would stand superseded by the above-mentioned clause. The arbitration clause mentioned herein above shall be final & binding unless & until an express agreement to the contrary in writing is executed or communicated by Lily Packers Private Limited."*

47. The case of the Petitioner as stated in this petition is that the Agreement dated 21st March, 2022 consists of a lock-in period, vide which the Respondent employee was to serve the Petitioner company for a period of 3 years from the date of joining i.e. till 21st March, 2025. However, the Respondent vide an email dated 15th May, 2022 resigned without giving any notice period, thereby breaching the Agreement dated 21st March, 2022. In the said resignation email, the Respondent employee stated that his mental health is deteriorating due to stress caused from work.

48. It is stated that due to unauthorized absence of the Respondent employee as also the overall conduct of the Respondent, which included, irregular attendance in office, miscommunication of information to the employees of the Petitioner, etc. the Petititioner issued a legal notice in May, 2022. However, instead of a written reply, the Respondent employee responded to the said legal notice via a call to the management stating that he is not in the right mental framework to continue with the position.

49. The Petitioner alleges that the statement made by the Respondent employee in the said call stating that he is not in the right mental framework to continue with employment is false and merely an attempt by the Respondent to avoid legal action. The Petitioner further states that the Respondent has already been employed in a different organization.

50. It is also the case of the Petitioner that apart from the violation of Clause 5 of the Agreement dated 21st March, 2022, there is an apprehension of violation of Clause 12 i.e. the Confidentiality clause, Clause 13 i.e. the Intellectual Property clause and Clause 14 i.e. Data Protection clause of the Agreement dated 21st March, 2022, on behalf of the Respondent.

51. In view of the disputes arisen between the parties, it is stated that the Petitioner on 26th May, 2023 and further on 13th July, 2023 issued a notice of demand and invocation of arbitration under Section 21 of the Arbitration and Conciliation Act, 1996. However, as per the Petitioner, the notice dated 26th May, 2023 was returned due to it being unclaimed. The notice dated 13th July, 2023 is stated to have been duly served to the Respondent but no reply to the said notice has been received by the Petitioner. Hence, the present petition seeking appointment of an Arbitral Tribunal to adjudicate the disputes that have arisen between the parties.

<u>Submissions:</u>

52. Mr. Anand Mishra, ld. Counsel appearing on behalf of the Petitioner, Lily Packers Private Limited submits that disputes in the present petitions arise out of the Respondent employees not abiding the respective Service Employment Agreements (Executive) entered into by them and the

Petitioner. Further, the Petitioner has made enormous investments in training the respective Respondents during their employment and thus, the lock-in period as mentioned in the agreements entered into between the parties, ought to have been honoured. The ld. Counsel further submits that the respective Service Employment Agreement (Executive) entered into between the parties contain a dispute resolution clause, as per which, any dispute that arises between the parties with respect to the said agreements, ought to have been referred to arbitration.

53. On the other hand, Mr. Pravin Salunkhe, ld. Counsel appearing on behalf of the Respondent, Ms. Vaishnavi Vijay Umak in ***ARB. P. 1212/2023*** submits that the Respondent herein is not an employee of the Petitioner company but of its division called De Belle. Hence, there is no privity of contract between the Petitioner and the Respondent herein.

54. The ld. Counsel, Mr. Anupam Sinha appearing on behalf of the Respondent-Mr. Rahul Sharma in ***ARB.P. 1213/2023****,* submits that disputes raised in the present cases are not arbitrable as per the Act, 1996. The ld. Counsel states that Clause 5 of the Agreement dated 21st March, 2022 provides for a lock-in period as per which the Respondent employee is bound to serve the Petitioner company for a period of 3 years from the date of joining. The said clause, as per the ld. Counsel, would be contrary to law and in violation of the fundamental rights of life and employment of the Respondent employee, as provided in Article 19 and 21 of the Constitution of India.

55. Mr. Anupam Sinha, ld. Counsel further submits that disputes involving violation of fundamental rights are not arbitrable and hence the present dispute is not liable to be adjudicated by an Arbitral Tribunal. To substantiate this position, the ld. Counsel relies upon the decision of the Supreme Court in ***Lombardi Engineering Limited v. Uttarakhand Jal Vidyut Nigam Limited [(2023) SCC OnLine SC 1422]*** wherein the question-whether a clause in an agreed upon arbitration agreement stipulating pre-deposit for going to arbitration under the Act, 1996 is violative of Article 14 of the Constitution of India, was decided. The Supreme Court in this judgment held that there can be no consent against the law. Further, while holding the arbitration clause therein to be violative of Article 14 of the Constitution of India, the Supreme Court observed that there cannot be an agreement to waive the fundamental rights as provided in the Constitution of India.

56. Mr. Anupam Sinha also places reliance upon the decision of the Supreme Court in ***Kaushal Kishore v. State of Uttar Pradesh & Ors., [(2023) 4 SCC 1]*** to argue that fundamental rights under Article 19 and 21 of the Constitution of India can even be enforced against persons other than the state or its instrumentalities. Thus, in the present cases, the fundamental rights of the Respondent employees as provided in the Constitution of India can be enforced against the Petitioner company.

57. Thereafter, ld. Counsel, Mr. Anupam Sinha raised an issue with regard to the notice of demand and invocation of arbitration under Section 21 of the Act, 1996 sent to the Respondent employee on 13th July, 2023 in ***ARB. P.***

1213/2023. The ld. Counsel submits that the Petitioner in the said notice has demanded Rs. 50,00,000/- as opposed to the amount of Rs. 10,00,000/- prayed by the Petitioner in the petition.

58. On the said issue raised, Ld. Counsel for the Petitioner, Mr. Pravin Salunkhe submits that, in both petitions being ***ARB. P. 1210/2023*** and ***ARB.P. 1213/2023***, the amount claimed by the Petitioner is to the tune of Rs. 10,00,000/-. However, in ***ARB.P. 1212/2023***, the Petitioner claims an amount of Rs. 50,00,000/- from the Respondent employee.

Analysis and Conclusions

59. The present petitions seek constitution of an Arbitral Tribunal under Section 11 (6) of the Act, 1996. The said provision is set out below for a ready reference:

> *"11. Appointment of arbitrators. —*
> *(6) Where, under an appointment procedure agreed upon by the parties, —*
> *(a) a party fails to act as required under that procedure; or*
> *(b) the parties, or the two appointed arbitrators, fail to reach an agreement expected of them under that procedure; or*
> *(c) a person, including an institution, fails to perform any function entrusted to him or it under that procedure,*
> *a party may request [the Supreme Court or, as the case may be, the High Court or any person or institution designated by such Court]to take the necessary measure, unless the agreement on the appointment procedure provides other means for securing the appointment.*

[(6A) The Supreme Court or, as the case may be, the High Court, while considering any application under sub-section (4) or sub-section (5) or sub-section (6), shall, notwithstanding any judgment, decree or order of any Court, confine to the examination of the existence of an arbitration agreement.

(6B) The designation of any person or institution by the Supreme Court or, as the case may be, the High Court, for the purposes of this section shall not be regarded as a delegation of judicial power by the Supreme Court or the High Court.]

60. The dispute in the present petitions arises with respect to Clause 5 of the Service Employment Agreements (Executive) dated 30th June, 2021, 21st March, 2022 and 16th April, 2022. The said clause provides for a lock-in period, as per which, the Respondent employees are restrained from leaving the Petitioner company for 3 years from the date of joining the Petitioner company.

61. The Respondents in the present petitions are employees of the Petitioner company who resigned pre maturely *i.e.,* before the completion of 3 years from the date of joining, as provided in Clause 5 of the aforesaid agreements.

62. The Petitioner, then issued notices invoking arbitration under Section 21 of the Act, 1996. The arbitration clause is contained in Clause 17 of the said Service Employment Agreements (Executive). However, the Respondent employees did not agree for the disputes to be referred to arbitration. Hence, the present petitions.

63. The fundamental submission of Mr. Anupama Sinha, ld. Counsel for the Respondent is that the disputes raised in the present petitions are not arbitrable. The ld. Counsel submits that Clause 5 of the said agreements is violative of Article 19 of the Constitution of India as also Section 27 of the Indian Contract Act, 1872.

64. The law relating to covenants in employment contracts has been discussed in detail in various judicial decisions for over a century. As early as 1885, in ***The Brahmaputra Tea Co. Ltd. v. Scarth (MANU/WB/0175/1885)*** the Civil Appellate Court in Calcutta was considering the question as to whether it would be lawful to bind an employee to the exclusive employment of the employer for a particular term. The employment contract existing in this case provided for a covenant, as per which, the employee was bound to serve the employer exclusively for a particular term and if he leaves the company before the end of his term, he will have to pay liquidated damages. Further there was a restraint on the employee, post termination of his employment, from engaging himself in cultivation of tea for a period of 5 years. The trial court held that both the said covenants were in the teeth of Section 27 of the Indian Contract Act, 1872 and is void, however, some damages were awarded. The Court of Appeal considered the said trial court decision and held that the covenant restraining the employee from engaging in the cultivation of tea for a period of five years from the date of termination of the agreement is void. However, the Court held that the covenant which bound the employee to serve the

employer exclusively for a particular term, during the term of the agreement is valid. The relevant portion of the judgment is hereinunder:

> *"An agreement of service by which a person binds himself during the term of the agreement not to take service with any one else, or directly or indirectly take part in, promote or aid any business in direct competition with that of his employer, is, we think, different. An agreement to serve a person exclusively for a definite term is a lawful agreement, and it is difficult to see how that can be unlawful which is essential to its fulfilment, and to the due protection of the interests of the employer, while the agreement is in force. It is unnecessary to consider all the conditions in the 10th clause. It is sufficient to say that we are not disposed to agree with the Judge that it is wholly void."*

The Court, thereafter, proceeded to enhance the damages to from Rs. 900/- to Rs.2000/-.

65. The covenants in an employment contract similar to the one considered in ***Brahmaputra Tea Co. Ltd. v. Scarth (supra)*** were again considered by the Supreme Court in ***Niranjan Shankar Golikari v. Century Spinning And Manufacturing Co. [(1967) SCC OnLine SC].*** In this case, the covenants operating in the employment contract bound the employee to serve the employer exclusively for a particular term. However, a negative covenant to the effect that the said employee was not to engage himself in similar trade as was carried by the employer, post the expiry of his employment term was also considered. The Supreme Court while deciding on the issues raised therein, drew a distinction between the negative

covenants that operate during the term of the employee's contract and the negative covenants that operate on the employee, post termination of the employment contract. The Supreme Court held that negative covenants operating during the period of the contract of employment wherein the employee is bound to serve the employer exclusively are generally not contrary to law. The relevant portion of the judgment is extracted hereinunder:

> *"**14.** A similar distinction has also been drawn by courts in India and a restraint by which a person binds himself during the term of his agreement directly or indirectly not to take service with any other employer or be engaged by a third party has been held not to be void and not against Section 27 of the Contract Act. In Brahmaputra Tea Co. Ltd. v. Scarth [ILR (XI) Cal 545] the condition under which the covenantee was partially restrained from competing after the term of his engagement was over with his former employer was held to be bad but the condition by which he bound himself during the term of his agreement, not, directly or indirectly, to compete with his employer was held good. At p. 550 of the report the court observed that an agreement of service by which a person binds himself during the term of the agreement not to take service with any one else, or directly or indirectly take part in, promote or aid any business in direct competition with that of his employer was not hit by Section 27. The Court observed:*
>
> > *"An agreement to serve a person exclusively for a definite term is a lawful agreement, and it is difficult to see how that can be unlawful which is essential to its fulfilment, and to the due*

protection of the interests of the employer, while the agreement is in force.”

[See also Pragji v. Pranjiwan [5 Bom LR 872] and Lalbhai Dalpatbhai & Co. v. Chittaranjan Chandulal Pandya [AIR 1966 Guj 189]]. In Deshpande v. Arbind Mills Co. [48 Bom LR 90] an agreement of service contained both a positive covenant viz. that the employee shall devote his whole-time attention to the service of the employers and also a negative covenant preventing the employee from working elsewhere during the term of the agreement. Relying on Pragji V. Pranjiwan Charlesworth v. MacDonald [ILR 23 Bom 103] , Madras Railway Company v. Rust [ILR 14 Mad 18] , Subba Naidu v. Haji Badsha Sahib [ILR 26 Mad 168] and Burn & Co. v. MacDonald [ILR 36 Cal 354] as instances where such a negative covenant was enforced, the learned Judges observed that Illustrations (c) and (d) to Section 57 of the Specific Relief Act in terms recognised such contracts and the existence of negative covenants therein and that therefore the contention that the existence of such a negative covenant in a service agreement made the agreement void on the ground that it was in restraint of trade and contrary to Section 27 of the Contract Act had no validity.

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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."*

66. In ***Niranjan Shankar (supra)***, the Supreme Court proceeded to even grant an injunction restraining the employee from disclosing or divulging any confidential information.

67. This position was reiterated in ***Percept D' Mark (India) (P) Ltd. v. Zaheer Khan & Anr. [(2006) 4 SCC 227]*** wherein the Supreme Court while deciding on the legal position with regard to covenants in contracts, distinguished between the covenants that apply during the subsistence of the contract and post termination of the contract. The Supreme Court observed:

> *"**63.** Under Section 27 of the Contract Act: (a) a restrictive covenant extending beyond the term of the contract is void and not enforceable, (b) the doctrine of restraint of trade does not apply during the continuance of the contract for employment and it applies only when the contract comes to an end, (c) as held by this Court in Gujarat Bottling v. Coca-Cola [(1995) 5 SCC 545] this doctrine is not confined only to contracts of employment, but is also applicable to all other contracts."*

68. The legal position with regard to restrictive covenants in employment contracts is further clarified by various coordinate Benches of this Court. In ***Affle Holdings Pte Limited Vs. Saurabh Singh (MANU/DE/0152/2015),*** while reaffirming the established legal position, the Court held that negative covenants in employment contracts which prohibit the employee from carrying on a competing business beyond the term of the contract are void and not enforceable. However, the Court further observed that such negative and restrictive covenants that operate during the subsistence of the employment contract, are valid. The relevant portion of the judgment is extracted hereinunder:

> *"9.8 In my opinion, the principles with regard to grant of injunction where a negative covenant obtains are far too well settled for me to reinvent the wheel. In the present case, what has to be considered is, can an injunction operate qua respondent no. 1 post termination of his employment contract**. Undoubtedly, the answer has to be that, a negative covenant in the employment contract which prohibits carrying on a competing business beyond the tenure of the contract***

> ***<u>is void and not enforceable. This prohibition operates on account of the provisions of Section 27 of the Contract Act. However, the prohibition does not operate during the subsistence of the employment contract</u>***. *Since, the employment contract, has been terminated on 16.10.2014, clause 6 of the employment contract prima facie ceased to operate qua respondent no. 1. [See Superintendence Co. of India Pvt. Ltd. v. Krishan Murgai AIR 1980 SC 1717; Niranjan Shankar Golikari v. Century Spg and Mfg. Co. Ltd. (1967) 2 SCR 367; and Gujarat Bottling Co. Ltd. v. Coca Cola Co. AIR 1995 SC 2372]"*

69. In the present petitions, the Respondent employees entered into Service Employment Agreements (Executive) dated 30th June, 2021, 21st March, 2022 and 16th April, 2022 with the Petitioner company. Clause 5 of the said agreements provide for a lock-in period, as per which, the employees were bound to serve the employer *i.e.,* the Petitioner company for a period of 3 years from the date of joining the Petitioner. The reasons for the same are not required to be gone into as they could be fact specific depending on the nature of employment, the position held by the employee, the kind of training imparted, the investment made by the employer, etc.

70. The question that arises for consideration is, whether Clause 5 of the said agreements, which provides for a lock-in period for the employees, violate the Fundamental Rights as enshrined in the Constitution of India. In the opinion of this Court, it does not. This is because the fixation or prescription of a lock-in period in employment contracts, merely means that the employee would serve the employer for a certain period. In employment

contracts, the terms which the employees agree to, such as, the lock-in period provided herein, pay fixation, emolument benefits, etc. are usually the subject matter of negotiation. Such clauses in an agreement are usually decided upon voluntarily, as also such employment contracts are entered into by the parties by their own individual consent and volition. It is also noted that such clauses in employment contracts may in fact be necessary for the health of the employer institution as it provides the required stability and strength to the employer institution and its framework. Lock-in periods in employment contracts are especially prevalent at the executive levels in the trade and industry and are considered necessary for the purpose of stability and continuance of the employer organization. It also reduces the employee attrition levels.

71. In the present cases, apart from the clauses that incorporate the lock-in period for employees in the Service Employment Agreements (Executive) dated 30th June, 2021, 21st March, 2022 and 16th April, 2022, there are also various other covenants that apply to the employees, during the term of their employment. The employees during the term of the contract were bound to other employment conditions, such as the confidentiality clause, data protection clause, salary and benefits, etc.

72. The Respondent employees have sought to terminate their employment with the Petitioner company on their own volition, before the expiry of the agreed upon period of 3 years from the date of joining the Petitioner company, as stated in Clause 5 of the Service Employment Agreements (Executive) dated 30th June, 2021, 21st March, 2022 and 16th

April, 2022. The said clause is challenged in the present petitions as being violative of the fundamental rights.

73. Tracing the law back to ***The Brahmaputra Tea Co. Ltd. v. E. Scarth (supra)*** as also on analysis of the law laid down in ***Niranjan Shankar Golikari v. Century Spinning And Manufacturing Co. (supra), Percept D' Mark (India) (P) Ltd. v. Zaheer Khan & Anr (supra)*** and ***Affle Holdings Pte Limited Vs. Saurabh Singh (supra),*** it is observed that principles with regard to the validity of covenants in employment contracts are well settled. Any reasonable covenant operating during the term of the employment agreement would be valid and lawful. It cannot, therefore, be argued that in the present cases there is a violation of any Fundamental Right as enshrined in the Constitution of India. It is further observed that employment contracts in general are contractual disputes and not disputes which raise issues of violation of fundamental rights, in such fact situations. There may be certain employment conditions which could be considered unreasonable curtailment of the employee's right to employment but a 3-year period of lock-in cannot be held to be such a condition.

74. The next question that arises for consideration in the present cases is whether the disputes herein are in itself arbitrable in terms of the Act, 1996?

75. This Court while considering the issue of arbitrability of the present dispute, considers it fit to consider the judgment relied upon by Mr. Anupam Sinha, ld. Counsel for the Respondent. The ld. Counsel has relied upon the recent decision of the Supreme Court in ***Lombardi Engineering Limited v. Uttarakhand Jal Vidyut Nigam Limited (supra).*** In the said case, the

Supreme court was dealing with the validity of Clause 55 of the agreement therein, which contained the arbitration clause. The said clause reads as under:

> *"**CLAUSE-55: ARBITRATION**:*
> ***(a)*** *All question and disputes relating to the meaning of the specification design, drawing and instructions herein and as to the quality of workmanship or materials used on the work or as to any other question claim, right, matter or thing, whatsoever, drawings, specification, estimates instructions, orders or these condition or otherwise concerning the works or the execution or failure to execute the same, whether arising during the progress of the work or after the cancellation, termination, completion or abandonment, thereof, shall be conducted in accordance with the provisions of the Arbitration and Conciliation Act, 1996 or any statutory modification or re-enactment thereof and the rules made the under and for the time being in force, shall apply to the arbitration proceedings. **However, the Party initiating the arbitration claim shall have to deposit 7% of the arbitration claim in the shape of Fixed Deposit Receipt as security deposit.***
> *(b) **On submission of claims the Arbitrator shall be appointed as per the following procedure:***
> *I) For claim amount upto 10.00 Crores, the case shall be referred to Sole Arbitrator to be appointed by the Principal Secretary/Secretary (Irrigation), GoU..."*

76. In the said case, the agreement therein contained a clause as per which, pre-deposit of a certain percentage of the arbitral claim was a condition for invocation of arbitration in terms of the Act, 1996. In respect of

the said clause, the Supreme Court held that an agreement which mandates a pre-deposit of the claimed amount for even referring the matter to arbitration, clearly prevents the party from availing legal remedies in accordance with law. The Supreme Court held that such a clause is in violation of Article 14 of the Constitution of India and there cannot be an agreement to waive of the fundamental rights provided in the Constitution of India. The relevant portion of the judgment ***Lombardi Engineering Limited v. Uttarakhand Jal Vidyut Nigam Limited (supra)*** is extracted hereinunder:

> *"24. Having heard the learned counsel appearing for the parties and having gone through the materials on record, the following issues fall for the consideration of this Court:*
>
> *(1) Whether the dictum as laid down in ICOMM Tele Limited (supra) can be made applicable to the case in hand more particularly when Clause 55 of the General Conditions of Contract provides for a pre-deposit of 7% of the total claim for the purpose of invoking the arbitration clause?*
> *(ii) Whether there is any direct conflict between the decisions of this Court in S.K. Jain (supra) and ICOMM Tele Limited (supra)?*
> *(iii)* ***Whether this Court while deciding a petition filed under Section 11(6) of the Act, 1996 for appointment of a sole arbitrator can hold that the condition of pre-deposit stipulated in the arbitration clause as provided in the Contract is violative of the Article 14 of the Constitution of India being manifestly arbitrary?***
> *(iv) Whether the arbitration Clause No. 55 of the Contract empowering the Principal Secretary/Secretary (Irrigation), State of Uttarakhand*

to appoint an arbitrator of his choice is in conflict with the decision of this Court in the case of Perkins Eastman (supra)?

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84. The concept of "party autonomy" as pressed into service by the respondent cannot be stretched to an extent where it violates the fundamental rights under the Constitution. For an arbitration clause to be legally binding it has to be in consonance with the "operation of law" which includes the Grundnorm i.e. the Constitution. It is the rule of law which is supreme and forms parts of the basic structure. The argument canvassed on behalf of the respondent that the petitioner having consented to the pre-deposit clause at the time of execution of the agreement, cannot turn around and tell the court in a Section 11(6) petition that the same is arbitrary and falling foul of Article 14 of the Constitution is without any merit.

*85. **It is a settled position of law that there can be no consent against the law and there can be no waiver of fundamental rights**. The Constitution Bench of this Court speaking through Chief Justice Y.V. Chandrachud (as His Lordship then was) in Olga Tellis v. Bombay Municipal Corporation, (1985) 3 SCC 545 observed something very illuminating on the said aspect:*
"28. It is not possible to accept the contention that the petitioners are estopped from setting up their fundamental rights as a defence to the demolition of the huts put up by them on pavements or parts of public roads. There can be no estoppel against the Constitution. The Constitution is not only the

paramount law of the land but, it is the source and sustenance of all laws. Its provisions are conceived in public interest and are intended to serve a public purpose. The doctrine of estoppel is based on the principle that consistency in word and action imparts certainty and honesty to human affairs. If a person makes a representation to another, on the faith of which the latter acts to his prejudice, the former cannot resile from the representation made by him. He must make it good. This principle can have no application to representations made regarding the assertion or enforcement of fundamental rights. For example, the concession made by a person that he does not possess and would not exercise his right to free speech and expression or the right to move freely throughout the territory of India cannot deprive him of those constitutional rights, any more than a concession that a person has no right of personal liberty can justify his detention contrary to the terms of Article 22 of the Constitution. Fundamental rights are undoubtedly conferred by the Constitution upon Individuals which have to be asserted and enforced by them, if those rights are violated. But, the high purpose which the Constitution seeks to achieve by conferment of fundamental rights is not only to benefit individuals but to secure the larger interests of the community. The Preamble of the Constitution says that India is a democratic Republic. It is in order to fulfil the promise of the Preamble that fundamental rights are conferred by the Constitution, some on citizens like those guaranteed by Articles 15, 16, 19, 21 and 29 and, some on citizens and non-citizens alike, like those guaranteed by Articles 14, 21, 22 and 25 of the Constitution. No individual can barter away the freedoms conferred upon him by the Constitution. A

concession made by him in a proceeding, whether under a mistake of law or otherwise, that he does not possess or will not enforce any particular fundamental right, cannot create an estoppel against him in that or any subsequent proceeding. Such a concession, if enforced, would defeat the purpose of the Constitution. Were the argument of estoppel valid, an all-powerful State could easily tempt an individual to forego his precious personal freedoms on promise of transitory, immediate benefits. Therefore, notwithstanding the fact that the petitioners had conceded in the Bombay High Court that they have no fundamental right to construct hutments on pavements and that they will not object to their demolition after October 15, 1981, they are entitled to assert that any such action on the part of public authorities will be in violation of their fundamental rights. How far the argument regarding the existence and scope of the right claimed by the petitioners is well- founded is another matter. But, the argument has to be examined despite the concession.

29. The plea of estoppel is closely connected with the plea of waiver, the object of both being to ensure bona fides in day-today transactions. In Basheshar Nath v. CIT [1959 Supp (1) SCR 528: AIR 1959 SC 149: (1959) 35 ITR 190], a Constitution Bench of this Court considered the question whether the fundamental rights conferred by the Constitution can be waived. Two members of the Bench (Das, C.J. and Kapoor, J.) held that there can be no waiver of the fundamental right founded on Article 14 of the Constitution. Two others (N.H. Bhagwati and Subba Rao, JJ.) held that not only could there be no waiver of the right conferred by Article 14, but there could be no waiver of any other fundamental right guaranteed by Part III of the

Constitution. <u>The Constitution makes no distinction. according to the learned Judges, between fundamental rights enacted for the benefit of an individual and those enacted in public interest or on grounds of public policy."</u>

(Emphasis supplied)"

Clearly, a clause which seeks deposit of a part of the claimed amount to avail of the remedy of arbitration is one which would be illegal and unlawful as it is barring a legal remedy from being invoked without deposit of money. No remedy can be subjected to payment of money, unless authorised by law. Such a clause in a contract lacks legitimacy and would not be enforceable.

77. However, the law with regard to covenants in employment contracts is settled. The lawful and reasonable covenants which are operative during the term of employment are valid and enforceable. Such covenants are not in violation of the fundamental rights as provided in the Constitution of India.

78. In the present cases, this Court holds that reasonable lock-in periods in employment contracts that apply during the term of employment are valid in law and do not violate Fundamental Rights as enshrined in the Constitution of India. Hence, in the opinion of this Court, disputes relating to lock-in periods that apply during the subsistence of employment contracts, are arbitrable in terms of the Act, 1996.

79. In fact, in similar factual situations, this Court in ***BLB Institute of Financial Markets Ltd. v. Ramakar Jha [(2008) SCC OnLine Del 1075]*** has referred the disputes to arbitration. In the said case, there existed a clause in the employment contract, as per which, the Respondent employee

therein has agreed to be bound to serve the employer for a period of three years. However, the employee, contrary to the agreed upon lock-in period, left employment after approximately one year. The Court in this case observed that the employee is in breach of the employment contract as the negative covenant in the employment contract was operating during the subsistence of his service agreement and is hence not in restraint of trade. The relevant portion of the judgement is extracted hereinunder for a ready reference:

> *"**43.** In the instant case, indubitably the respondent is in breach of the negative covenant contained in his service agreement, during the subsistence of his service agreement with the petitioner, and the doctrine of restraint of trade cannot therefore be held to apply. The respondent must, accordingly, in my opinion, be held to be bound by the terms of his service agreement, at least till such time as the arbitrator renders his award on the dispute between the parties. The petitioner has thus made out a prima facie case for the grant of interim relief under Section 9 of the Act, restraining the respondent from seeking employment with any business rival of the petitioner or with any organization dealing in Stock Market/Capital Market/Financial Market Education Institute. The balance of convenience also tilts in favour of the petitioner, as the petitioner cannot be monetarily compensated, if any of its trade secrets or information relating to its courses, course materials and business is divulged by the respondent to any other organization carrying on a business akin to that of the petitioner. Irreparable injury would also undoubtedly be caused to the petitioner's business, if such an eventuality occurs.*
> *xxx*

> ***45.*** *The above interim orders shall enure during the pendency of the arbitration proceedings. The nominated Arbitrator shall, however, render his award as expeditiously as possibly and latest within three months from the date of entering into the reference. The arbitrator shall enter upon the reference forthwith, if already nominated and shall be nominated latest within one week, in case no arbitrator is so far nominated. The parties shall fully cooperate in the arbitration proceedings and endeavour to expedite the same."*

80. At this juncture, this Court finds it appropriate to consider the judgment passed by the single bench of this Court in ***Desiccant Rotors International Pvt. Ltd. Vs. Bappaditya Sarkar and Ors., (MANU/DE/1215/2009).*** In the said case, the employee signed an obligation agreement dated 12th June, 2007 with the employer company which, in part, sought to restrain the employee from seeking employment with an employer in a competing business, post termination of his contract with the erstwhile employer. The Court while holding this clause to be invalid, observed that right of livelihood of the employee must prevail. Further, in this case, the Court upheld the injunction order passed, to the effect that the employee would be restrained from approaching the employer's suppliers and customers for soliciting business which was in direct competition to that of the employer. The relevant portion of the judgment is extracted hereinunder:

> *15. I have no doubt that such was the intention of the plaintiff, but with equal conviction I believe that such is the intention of all employers who rely on like negative covenants in employment contracts with their employees. It is this attempt to protect themselves from competition*

> *which clashes with the right of the employees to seek employment where so ever they choose and in a clash like this, it is clear that the right of livelihood of the latter must prevail. Clearly, in part at least, the Obligation Agreement sought to restrain Defendant No. 1 from seeking employment with an employer dealing in competitive business with the plaintiff after he had ceased to be an employee of the plaintiff, and that too for a period of two years. Such an act cannot be allowed in view of the crystal clear law laid on this issue. However, in the impugned order dated February 20, 2008 the injunction restraining Defendant No. 1 is limited in scope, in the sense that it does not restrain the Defendant No. 1 from working with Defendant No. 2 or any other person/company, thereby steering clear of impinging the formers freedom to choose his own work place. The injunction only restrains Defendant No. 1 from approaching the plaintiffs suppliers and customers for soliciting business which is in direct competition with the business of the plaintiff. Hence, the injunction which has already been granted by order dated February 20, 2008 is made absolute. The interim application is disposed of accordingly.*

81. The present cases factually distinguish themselves from the judgment, ***Desiccant Rotors International Pvt. Ltd. Vs. Bappaditya Sarkar and Ors. (supra).*** In the present cases, the employer is not seeking to restrain the employees from seeking employment with any competitor of the employer, post termination of the employment agreements. Covenants in the present employment agreements are only operative during the subsistence of the employment agreements.

82. The Court has perused the letters dated 21st June, 2023 in ***ARB.P.***

1210/2023, 26th May, 2023 in ***ARB.P. 1212/2023*** and 13th July, 2023 in ***ARB.P. 1213/2023*** sent by the Petitioner to the respective Respondents, invoking arbitration under Section 21 of the Act, 1996. The Court has also perused the prayers sought by the Petitioner in the petitions filed herein. The same would show that the Petitioner is interested in protecting its confidential information as also wishes to seek damages from the Respondents. These are disputes within the four-corners of the respective employment agreements entered into between the parties.

83. In the light of reliefs sought by the Petitioner in the present cases, this Court holds that the disputes raised herein are clearly arbitrable in terms of the Act, 1996.

84. It is clarified that all observations made in this order, shall however, not bind the ld. Arbitrator, who shall take an independent view on all the issues that may arise in accordance with law, without being influenced by any observations made by this Court.

85. Accordingly, ***Mr. Akshay Makhija, Sr. Adv. [M:9810079901]*** is appointed as a ld. Sole Arbitrator to adjudicate the disputes that have arisen in these cases under the Employment contracts between the Petitioner and the following Respondents:

a. Service Employment Agreement (Executive) dated 16th April, 2022 executed between the Petitioner and the Respondent-Ms. Vaishnavi Vijay Umak.

b. Service Employment Agreement (Executive) dated 30th June, 2021 executed between the Petitioner and the Respondent-Mr.

Meetkumar Patel.

c. Service Employment Agreement (Executive) dated 21st March, 2022 executed between the Petitioner and the Respondent-Mr. Rahul Sharma.

86. The Arbitration proceedings shall take place under the aegis of the Delhi International Arbitration Centre (hereinafter, *'DIAC')*. The arbitration proceedings shall be conducted under the Rules of DIAC. The fee of the ld. Sole Arbitrator shall be as per the Fourth Schedule of the Arbitration and Conciliation Act, 1996, as amended by the DIAC Rules.

87. List before the DIAC on 5th August, 2024. Let a copy of the present order be emailed to Secretary, DIAC on the email id- delhiarbitrationcentre@gmail.com. All contentions of the parties are left open.

88. Petitions are disposed of with all pending applications, if any.

PRATHIBA M. SINGH
JUDGE

JULY 11, 2024
dj/rks