ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI

Suit No.1788 of 2017

Date	**Order with signature of Judge**

Present:
Mr. Justice Muhammad Ali Mazhar

Colgate Palmolive (Pakistan) Limited.....Plaintiff

Vs.

Rai Tahir Iqbal & another.....Defendants

For hearing of CMA No.10760/2017.

Date of hearing: 23.08.2017.

Mr. Ijaz Ahmed, Advocate for the Plaintiff.

Mr. Badar Alam, Advocate for the Defendants.

Muhammad Ali Mazhar, J: The plaintiff has brought this suit for specific performance and to permanently restrain defendant No.1 not to serve the defendant No.2 and or any other competitor of the plaintiff for a period of six months from the date of his resignation.

Factual backdrop

> The short and snappy facts conscripted in the plaint are that the plaintiff is engaged in the business of locally manufacturing, importing and selling consumer products such as toothbrushes, detergents, personal care, oral care products and household cleaning products. The defendant No.2 is also a company incorporated under the laws of Pakistan likewise engaged in the business of manufacturing and selling consumer products for personal care, oral care products, toothpastes, mouthwash, talcum powders, shaving creams, shampoos, liquid soaps, hair colours, facial and bleach creams

> and other related goods. The defendant No.1 was appointed by the plaintiff as Regional Sales Manager vide offer letter dated 26.05.2014. The plaintiff and defendant No.1 also entered into a Non-Disclosure and Non-Competing Agreement. The defendant No.1 also signed Confidentiality Agreement on 26.05.2014. The grievance of the plaintiff is that the defendant No.1 in view of negative covenant could not join defendant No.2 unless six months period is expired after separation from the plaintiff.

2. The learned counsel for the plaintiff argued that his client invested significant effort and financial resources on the training of defendant No.1. The information relating to quality as well as information relating to the marketing and distribution network of the plaintiff is valuable assets of the plaintiff. The plaintiff is sales driven company and accordingly growth of the plaintiff in terms of the sales is completely dependent on the new products and improvements in the existing products and relationship with its marketing network. To keep the information regarding improvements in the existing products, development and marketing network of the new products, employees of the plaintiff are required to sign Non-Disclosure and Non-Competing Agreement. The Clause 3 of the Non-Disclosure and Non-Competing Agreement signed by the defendant No.1 is as under:

> **"3. Employee shall not own, manage, operate, consult or to be employed in a business substantially similar to or competitive with, the present business of COLGATE or such other business activity in which COLGATE may substantially engage during the term of employment and for a period of 6 months following termination of employment not withstanding cause or reason for termination."**

Moreover he referred to Clauses 11 to 13 of the offer letter dated 26.05.2014 which are reproduced as under:-

> **"11. At the time of separation/leaving the Company, you will be required to return all of the Company's confidential material without making any copy thereof;**

> **12. During the term of your service with the Company or thereafter, you shall not divulge any of the Company's or its associated Company's information and shall keep all the secrets thereof confidential, otherwise Company reserve the right to take legal action against you at a proper legal forum that shall be entirely at your risk as to cost.**
>
> **13. After separation from the Company's services, you will not directly or indirectly compete with the business of Colgate for at least six (06) months; Competition means owning or working for a business of the following type: You shall not join or be associated in any manner whatsoever, either in any business, factory or establishment in competition or their agent, who are manufacturing similar/competitive product to that of the product segment you were dealing with in Colgate." [Emphasis applied]**

3. The learned counsel contended that the information possessed by defendant No.1 is of critical importance. The plaintiff also shared confidential information for improvement and development of existing and new products for introduction in the market but the defendant No.1 in violation of the terms of the offer letter and Non-Disclosure and Non-Competing Agreement resigned and joined defendant No.2. The aforesaid act of the defendant No.1 in connivance with defendant No.2 will cause irreparable losses to the plaintiff unless the defendant No.1 is restrained from being engaged by defendant No.2. It was further averred that the defendant No.1 in connivance with defendant No.2 can use the stolen confidential information of the plaintiff. The plaintiff has serious apprehension that defendant No.1 would disclose more information to third parties and also deliver copies of such confidential information to the competitor of the plaintiff. The defendant No.1 out of his own freewill and after reading the terms of the offer letter and Non-Competing and Non-Disclosure Agreement signed the same and joined the plaintiff so he is bound by the agreed terms of the offer letter and Non-Competing and Non-Disclosure Agreement.

Judicial precedents quoted by the plaintiff's counsel

(1) PLD 1981 Karachi 720 (Nooruddin Hussain and another vs. Diamond Vacuum Bottle Manufacturing Co. Ltd., Karachi and another). Specific Relief Act Ss. 56 & 57. Negative covenant. Party with open eyes and for valuable consideration entering into a contract taking upon itself burden to perform a negative covenant cannot be relieved.

(2) 2003 MLD 1947 (Al-Abid Silk Mills Limited vs. Syed Muhammad Mudassar Rizvi). Specific Relief Act. Suit for specific performance of negative covenant contained in letter of appointment and injunction. Such covenant was to the effect that defendant after leaving employment with plaintiff would not join other organization of similar trade for period of 11 months. Such restriction could not be termed to be unreasonable.

(3) 1987 MLD 3009 (BNS Air Services (Pvt.) Ltd. vs. Anwar Ali & another). Written agreement between parties containing negative stipulation according to which defendant being employer of plaintiff undertook not to seek employment with another concern engaged in similar business as plaintiff-Company for one year after leaving plaintiff-Company. Ad interim injunction order was confirmed in circumstances.

(4) [1937] 1 KB 209 (Warner Brothers Pictures, Incorporated vs. Nelson) [1936 W. No. 2785]. It is conceded that our courts will not enforce a positive covenant of personal service; and specific performance of the positive covenants by the defendant to serve the plaintiffs is not asked in the present case. The practice of the Court of Chancery in relation to the enforcement of negative covenants is stated on the highest authority by Lord Cairns in the House of Lords in *Doherty v. Allman.* (2) His Lordship says: "My Lords, if there had been a negative covenant, I apprehend, according to well-settled practice, a Court of Equity would have had no discretion to exercise. If parties, for valuable consideration, with their eyes open, contract that a particular thing shall not be done, all that a Court of Equity has to do is to say, by way of covenant, that the thing shall not be done; and in such case the injunction does nothing more than give the sanction of the process of the Court to that which already is the contract between the parties. It is not then a question of the balance of convenience or inconvenience, or of the amount of damage or of injury–it is the specific performance, by the Court, of that negative bargain which the parties have made, with their eyes open, between themselves.

(5) [1945] All ER 155 (Marco Productions, Ltd. v. Pagola and others) [King's Bench Division, November 20, 1944]. In the result, I am not satisfied that before an injunction restraining a breach of the negative covenant can be granted, it is necessary for the plaintiff to establish that they would suffer damage as a result merely of a breach of the negative covenant; in other words, ……..Having given the matter my most earnest consideration, I think this is a case where, upon principles well settled by the authorities, I ought to grant the injunction claimed. There will be an injunction accordingly, and I propose to limit it to a period of four weeks, which I regard as the minimum period of the proposed engagement of the defendants.

4. The learned counsel for the defendants argued that in case of any breach of contract, the only remedy is to

claim damages hence the suit for specific performance is not maintainable. No interim injunction can be claimed by the plaintiff for restraining the defendant No.1 from joining the defendant No.2. It was further averred that when the defendant No.1 was in service of Nestle Pakistan Ltd., the plaintiff offered him better opportunity, therefore, he joined them. At the time of joining, the plaintiff got signed certain documents as a formality. Any condition in a contract which is against the law and the fundamental rights of a citizen is void and inoperative. The alleged condition putting restriction on defendant No.1 not to seek employment in any other company is void and against the law and fundamental right of the defendant No.1. It was further contended that the defendant No.1 was working as Regional Sales Manager in the plaintiff's establishment and he had no concern with plaintiff's production, quality control and research departments nor the plaintiff was disclosed any alleged secret information which could be passed on to the defendant No.2. The plaintiff never made any investment on any specialize training or otherwise during the tenure of defendant No.1 service rather the plaintiff and their staff were benefited from defendant No.1 expertise in the field of sales. It is also important to point out here that 80% of plaintiff's business pertains to detergents, dishwashing products and only 20% of its business pertains to oral paste and soap whereas the main products of defendant No.2 are talcum powder, beauty cream, gripe water and Medicam Dental Cream, which is a distinct product as compared to plaintiff's toothpaste.

Judicial precedents cited by the Defendants' Counsel

(1) 2002 CLD 77 (Concentrate Manufacturing Company of Ireland and others vs. Seven-Up Bottling Company (Private) Limited and others). Specific Relief Act (I of 1877). Breach of

contract. In case of breach of contract which agreement is not even enforceable under the law, the court should not exercise its judicial discretion to create a situation, which has ceased to exist when the lis is commenced.

(2) 2002 YLR 3946 (Syed Ali Imam Rizvi and another vs. All Pakistan Textile Mills Association and another). Court while granting interlocutory relief would maintain situation as was prevailing at the time of institution of proceedings and would not create a new situation.

(3) PLD 1998 Karachi 1 (Messrs Petrocommodities (Pvt.) Ltd. vs. Rice Export Corporation of Pakistan). Specific Relief Act. Where permanent injunction could not be issued, interim injunction also would not be issued.

(4) PLD 1978 Quetta 164 (Malik Gul Hassan and others vs. Malik Haji Ismatullah and others). Object of an interlocutory order is to maintain status quo of the subject-matter till disposal of the suit.

(5) 1982 CLC 344 (Mst. Sughra Bai vs. Mst. Rabia). (a) Civil Procedure Code (V of 1908). Injunction granted only to restore status quo and not to create a new situation.

(6) 1990 CLC 83 (Mst. Sardar Begum Faruqui and others vs. Rashida Khatoon and others). Object of a status quo order is to maintain the subject-matter of the suit as it was at the time of passing of the status quo order and not to alter it or to create a new situation.

5. Heard the arguments. In the Constitution of Islamic Republic of Pakistan, Article 18 protects the right of citizens to engage in any profession or occupation or trade or business which are diverse sorts of sources and bases of livelihood. The state so enjoins Article 38 of the Constitution among others provide for all citizens within the available resources of the country, facilities for work and adequate livelihood with reasonable rest and leisure. Indeed Article 18 is concerned with the economic life of the nation and of its citizens which declares in unequivocal terms that every citizen shall have the right to conduct any lawful trade or business which merely furnishes a fresh and authoritative declaration of a preexisting right under the common law. In granting the right, Article 18 uses the expressions ‘profession or occupation’ and ‘trade or business’ without defining those expressions. These are all general terms applicable to many objects and as will be seen they run into each

other. Profession means a vocation or occupation, requiring special, usually advanced, education, knowledge and skill e.g. law or medical professions. The labour and skill involved in a profession is predominantly mental or intellectual rather than physical or manual, whereas the occupation means that which principally takes up one's time, thought and energies especially one's regular business or employment; also whatever once follows as the means of making a livelihood. Particular business, profession, trade or calling which engages individual's time and efforts; employment in which one regularly engages or vocation of his life. It is general principle of the common law that a man is entitled to exercise any lawful trade and calling as and when he wills, and the law has always regarded zealously any interference with trade, even at the risk of interference with the freedom of contract, as it is public policy to oppose all restraints upon liberty of individual action which are injurious to the interest of the State. ***(Ref: Judicial Review of Public Actions by Justice (R) Fazal Karim)***

6. Nevertheless, Section 57 of the Specific Relief Act extends to the agreement of negative characters such as are necessarily implied from the contracts. The question whether a particular covenant is unreasonably wide has to be decided on the nature of agreement, the qualifications of employee and service he has to render considered along with places where the employee can get alternative service of the same nature. There is a distinction between restraints applicable during the term of the contract of employment and those that apply after its cessation. The onus lies on the employer to prove that negative covenant restraining employee on termination of services from competing for certain period is necessary

for the protection of its good-will or business. A covenant during the period of contract of employment was held not to offend Section 27 of the Contract Act as the employee is bound to serve his employer exclusively within such covenant that may be construed to be outside the purview of Section 27 unless shown to be unconscionable or excessively harsh or unreasonable. The legal position may be jotted down such as when a contract or a covenant is impeached it is the duty of the court to construe the same and ascertain to what extent it constitutes a restraint of trade; a contract or covenant which has for its object a restraint of trade is prima facie void under Section 27 of the Contract Act; negative covenants operating during the period of contract of employment do not fall under Section 27 of the Contract Act; the restrictive covenants applicable during the employment can only be questioned on the ground that they are unconscionable or excessively harsh or unreasonable; any restrictive covenant extended beyond the termination of service is void under Section 27 of the Contract Act. The question whether a restraint of trade is reasonable or not is a question to be determined by the court after construing the contract and considering the services existing when it was made. The distinction between the restraints imposed by a contract during its subsistence and those operative after its expiration is of a fundamental character. Where it is proved that employer is justified in apprehending that the employee may on joining the competitor divulge the special knowledge and secrets in business gained by him while in employer's service, after receiving special training when in such instances the negative covenant may be enforced and an injunction order can be passed which may be restricted

as to time, nature of employment and area in order to protect the employer's interests.

7. The niceties and exactitudes of Section 57 of Specific Relief Act dictates and commands that where an affirmative agreement implied with negative agreement express or implied not to do a certain act, the circumstances that the court is unable to compel specific performance of the affirmative agreement shall not preclude it from granting an injunction to perform the negative agreement. Incontrovertibly this Section has been given overriding effect to clause (f) of Section 56 of the Specific Relief Act which postulates that the injunction may be refused to prevent the breach of a contract the performance of which would not be specifically enforced but in tandem, it is also well settled exposition of law that the relief by way of injunction whether interim or permanent is granted in the discretion of the court. The power of court to grant or refuse injunction in case of contract consisting of a negative as well as the affirmative agreement is essentially the matter of judicial discretion. At this point, the defendant No.1 was appointed Regional Sales Manager vide letter dated 26.05.2014. In clause 10 it was stipulated that after confirmation the defendant No.1 may be separated from the company's services subject to furnishing one month's prior written notice or one month's basic salary in lieu thereof from either side. However, in Clause 13 a negative covenant was couched that after separation, the defendant No.1 (employee) will not directly or indirectly compete the business of Colgate for at least six (06) months. Learned counsel for the plaintiff also referred to a confidentiality agreement dated 26.05.2014 in which inter alia provided defendant No.1 shall not disclose

trade secrets and proprietary information of Colgate to any person outside the Colgate and not to use the information for own benefit or the benefit to persons outside the Colgate. The learned counsel for the plaintiff also referred to a Non-disclosure and Non-competing agreement in which under Clause No.3, it was integrated that employee shall not own, manage, approach, consult or to be employed in a business substantially similar to or competitive with the present business of Colgate or such other business activity in which Colgate may substantially engage during the term of employment and for a period of six (06) months following the termination of the employment notwithstanding cause or reason for termination.

8. The gist of the judicial precedents referred to by the learned counsel for the plaintiff was vetted by me with astute consideration and cogitation but what deciphers and make sense of to me that in the dictum laid down in the case of **Nooruddin Hussain (supra)** the suit was filed basically on two grounds i.e. the defendant No.1 without due prior consent and permission of the plaintiffs as provided in the consent decree had put up the machinery on the furnace of defendant No. 2 and marketing its goods. The next ground that the defendant No. 1 enticed away the workers of the plaintiffs and engaged them in the Factory and both the defendants were manufacturing goods on the same machine so the plaintiff considered both these actions of the defendants in that suit in flagrant disobedience of the undertakings given by the defendant No. 1 in the decree. In the case of **Al-Abid Silk Mills Ltd. (supra)** the plaintiff was engaged in the homes textile. The defendant in that case was appointed Assistant Manager Quality Control. The plaintiff

considered that Quality Control, Research and Development have major role in achieving high quality of its product so they appointed the defendant as Assistant Manager, Quality Control. The plaintiff claimed that during the course of employment from 1996 to 2002 the defendant was trained in all aspects of quality control and in this process he was made privy to a number of original ideas pertaining to quality control, formulated and developed in advanced by the plaintiff. After leaving the employment the defendant was obliged not to accept employment for 11 months with any other similar organization but he joined similar position in some other organization. The plaintiff came to know that number of manuals, duplicate copies, including quality material stitching procedure and work instructions were missing so they served a notice and called upon the defendant to return all manual and materials. The court held that by a negative covenant the defendant was not restrained from getting employment in the organization other than homes textile. It was further held that the plaintiff demonstrated prima facie case for the grant of injunction and during the arguments, the plaintiff's counsel also offered three month's salary so the application was granted as prayed by the court in the above case subject to the payment of three month's salary to the defendant by the plaintiff to be deposited with the Nazir within a week. In the case of **BNS Air Services (supra)** a negative covenant was agreed that defendant shall not seek employment with another concern engaged in same business as company for a period of one year after leaving. The defendant left the job in the month of June 1987 in breach of undertaking and joined the company which was engaged in the similar business of Air Cargo. The allegation against the defendant was that he started soliciting business from

the plaintiff's customers and diverting it to the defendant No.2. In the case of **Warner Brothers Pictures (Supra)**, the plaintiff claimed injunction against the defendant who was a film artist to restrain her during the currency of her contract from rendering any service to any other motion picture or stage production. The court concluded the contract of personal service contains negative covenant the enforcement of which will not amount either to decree of a specific performance to a positive covenant of the contract or to give the decree in which the defendant must either refrain idle or perform this positive covenant the court will enforce this negative covenant but this is subject to a further consideration. The court further held that the injunction is a discretionary remedy and the court in granting it may limit it to what the court considers reasonable in all the circumstances of the case. Last but not least, the case of **Marco Productions Ltd (supra)** expounds that the defendant agreed to act in the company's theoretical production for the Christmas Season 1942. A restricted covenant was incorporated that artist shall not perform during the engagement in any other entertainment private or public. The 1942 agreement shall carry out by both the parties, however, the company given an option to the defendant for the same services for the Christmas Season 1943. Some disagreement were cropped up in relation to 1943 agreement which was compromised and the option was even agreed to be exercisable for Christmas Season 1944 but the defendant contracted to appear for another theoretic producer for 1944 Christmas Season at Manchester. The plaintiff claimed for a declaration that 1943 agreement was binding and also claimed an injunction to restrain the defendants from appearing in

any entertainment other than produced by the plaintiff company.

9. Regardless of the enunciation pronounced in the above lawsuits explicating the magnitude and immensity ought to be given to the affirmative covenant and or negative covenant, the fact remains that each case is to be appreciated by the court keeping in mind the well settled proposition of law that each case has its own peculiar facts and essentials that cannot be attracted or engrossed straightforwardly and yieldingly to other case. The rationale of discussing and dwell on the aforesaid judicial precedents cited by the learned counsel for the plaintiff individually and separately is to understand and take hold of true nature of controversy and wrangle. To my assessment and appraisal the circumstances in which a question as to grant or non-grant of injunction was taken into consideration by the courts in the above dictums were altogether based on different premise hence found distinguishable and not attracted to the present case. Undoubtedly the plaintiff at the time of appointing the defendant No.1 secured a confidentiality agreement, Non-disclosure and Non-Competing Agreement as well as a condition was also incorporated in the appointment letter that after severance at least six months the defendant No.1 shall not join any similar organization. To shield the dynamism and legitimacy of this restrictive clause, the learned counsel for the plaintiff robustly argued that the plaintiff invested huge financial resources on the training to improve the defendant No.1 skills but nothing has been placed on record with any quantum/figure of such investment which may prima facie indicate or point out that the plaintiff made some investment on the defendant No.1 training for the

enhancement and augmentation of his skills. The defendant was appointed in the marketing department and not in production or quality control department or for any research work. Neither the duty of the plaintiff was involved in any production or manufacturing of any product or merchandise nor to control or check the quality of products during which some formula or recipe might have been hijacked or captured by the plaintiff for the use of outsiders or competitors rather than his primary job was to monitor the sales of his region as a Regional Sales Manager or subsequently as Sales Manager.

10. In the ongoing age and era the marketing of finished goods is planned keeping in mind predominantly the quality of product, class/segment of consumers, the behavior/response and demand of the consumers to the product, thenceforth promotional campaigns by means of print and electronic media with different sort of incentives/discounts that are normally offered to the whole sellers and retailers including the schemes introduced for the benefits of consumers. Each product has to establish in the market its own share/response, shelve place and goodwill. The plaintiff's counsel made much emphasis that some confidential information was stolen by the defendant No.1 which can be used by him for the benefit of defendant No.2. Apprehension has been shown that the defendant No.1 will disclose alleged information to third parties and deliver copies of such confidential information to competitors. In this regard, I am constrained to point out that except sweeping allegations, no specific confidential data/record is mentioned in the plaint allegedly stolen by the defendant No.1 and passed on to the defendant No.2. It has also not

been alleged that any company's belongings is in possession and custody of defendant No.1 which he failed to return, on the contrary, the plaintiff paid the salary of notice period to the defendant No.1 which gives rise to the presumption that the defendant No.1 got the clearance from H.R department at the time of leaving. The pleadings unequivocally demonstrate that even no legal notice was ever issued by the plaintiff to call upon the defendant No.1 to return the alleged confidential information or to bound down him to abide by the negative covenant. The agreement between the plaintiff and defendant No.1 was not for any specific period of time. Had the case of the plaintiff that during the currency of the agreement the defendant No.1 got him engaged in dual employment or the defendant No.1 committed to serve the plaintiff for a particular period of time but he failed to honor his commitment and during the tenure of the agreement joined some other competitors, the plaintiff might have claimed the injunction against the defendant for restraining him not to provide his services to any other organization or the competitor with an option to rejoin the plaintiff but here set of circumstances are by and large different.

11. It is also significant to jot down that the plaintiff is associated with Colgate Palmolive Company, USA which according to the plaintiff's assertion a leading international company selling their products more than 200 countries and in association with them, the plaintiff is engaged in the business of locally manufacturing, importing and selling consumer products whereas the defendant No.2 is engaged in the business of local manufacturing of consumer products including tooth paste etc. All allegations mentioned in the plaint have

been denied by the defendant No.1 in his counter affidavit. It was further stated by the defendant No.1 that the plaintiff and defendant No.1 are not direct competitor as 80% of the plaintiff's business pertains to detergents, dishwashing products and only 20% business pertains to oral paste and soap whereas the main products of defendant No.2 are talcum powder, beauty cream, gripe water and Medicam Dental Cream which is a distinct product as compared to plaintiff's product, therefore, there is no notable competition.

12. In my view the post of Regional Sales Manager or Sales Manager of any consumer product has no direct impact or control or influence over the mind of consumer behavior and on mere changing a company or employer neither he can influence the mind nor can change the consumer behavior or demand to shift and opt another product. It is beyond the reasonable comprehension that the defendant No.1 may be able to cause and trigger such influence and impact on consumer mental power and psyche not to use Colgate products but to shift on defendant No.2 products.

13. The restrictive covenant sometimes become unenforceable and creates chaos and anarchy unless some compensatory conditions are assimilated to make it commonsensical, executable and implementable. Here in both the situation i.e leaving job by the defendant No.1 or termination of his job by the plaintiff without assigning any reason, the restrictive covenant in the both scenario made applicable under which the only defendant No.1 was barred and proscribed to join any other competitive organization being an ultimate victim and sufferer of a restrictive covenant. So in my considerate view while

putting any such condition in the appointment letter the employer keeping in mind the rampant unemployment and joblessness, should also incorporate a condition that if the agreement or bond imposing condition not to join any competitor for a certain period of time then for that particular period of time, the employer must pay the compensation also for the livelihood of such employee who cannot coerce and force to face starvation, deprivation or to remain idle for such period of time without any compensation or remuneration. While determining the question and interpretation of negative covenant in the terms and conditions of the employment, the court ought to persevere with true-to-life approach appreciative to the ground reality rather than interacting outmoded point of view and attitude. The tenor and connotation of negative covenant permissible under Section 57 of the Specific Relief Act does not mean exploitation nor is it meant for using as a tool or instrument of harassment or victimization for an unfair treatment. It is easygoing for an employer or entrepreneur to permit that the employee may fetch the job in any other organization not dealing the same field, quite the opposite, it is a hard core reality and truth that unemployment is multiplying epidemic in such a way where a person may not have much available/reasonable and practical options to decide what he may choose or reject. The main core and fundamentals of defendant No.1 job was marketing which excellence he otherwise had even at the time of joining plaintiff. On sendoff plaintiff's organization by the defendant No.1, it was not so stress-free or easy to search out a job in any other organization remote to his expertise. The defendant No.1 was not employed by the plaintiff as an interne or trainee but even at the time of his employment he was opted as

full-fledge Regional Sales Manager which shows that at the time of joining he had requisite experience to handle and manage the marketing region of the plaintiff. So keeping in view his own experience in the marketing of consumer products, he could have joined the same field and in case of non-availability of job in other fields, he cannot be forced to face starvation and scarcity. I am mindful to the situation where some organizations or institutions invest substantial amount on the training of employees or for some specialized curriculum in a particular discipline for grooming their qualification, expertise and skills but in return they secure a bond for some specific tenure/length of service in which employee cannot leave or resign. This kind of contract or bond may be enforced in which actually and substantially the employer provide the financial support and assistance for the employee's training, education and growth in any area of interest or branch of learning and in return of such investment expect him to serve a particular period.

14. For sure, in principle of governing negative covenant the court has discretion to grant injunction but at the same time the court has a right to refuse injunction if there is a lack of reasonableness and balance of convenience and inconvenience if any in favour of the defendant in not granting injunction. In a case involving a contract of personal service the court has to see where in granting an injunction is the negative covenant it directly or indirectly grant specific performance, the thing which the court ought not and should not do. Meant for negative stipulation, an injunction can be granted in exceptional cases for example where the employer has transferred and conveyed technical knowhow/expertise to its employee to train them for specific specialized field

of the work and during the currency of the contract or where a contract stipulates for special, unique/distinctive or extraordinary personal services or acts or where the services to be rendered are purely intellectual or are peculiar and individual in their character. The reason seems to be that the services of the former class are of such a nature as to preclude the possibility of giving the injured party adequate compensation in damages, while the loss of services of the latter calls can be adequately compensated by an action for damages. Restrictive covenant in the case in hand on the face of it seems to be unreasonable and unwarranted.

15. The learned counsel for the defendants has referred to the case of **Malik Gul Hassan (supra)** in which a well settled proposition of law has been expounded that the object of an interlocutory order is to maintain status quo of the subject-matter till disposal of the suit. Again in the case of **Mst. Sughra Bai, Mst. Sardar Begum Faroqui and Syed Ali Imam Rizvi (supra)** it is explicated that the injunction is granted only to restore status quo and not to create a new situation. Passing of orders aimed to establish a new state of things different from those existing prior to institution of suit are not warranted. Whereas in the case of **M/s. Petrocommodities Pvt. Ltd**, **(supra)** the court expounded that where permanent injunction could not be issued, interim injunction also would not be issued. However, in the case of **Concentrate Manufacturing Company of Ireland (supra)** the court enlightened a guideline for the interpretation of documents that question of construction of an instrument is a question of law and it is the duty of

the court to interpret the document in its proper legal perspective and apply the correct law.

16. In the wake of above discussion, the injunction application (CMA No.10760/2017) is dismissed.

Karachi:-
Dated.4.12.2017 **Judge**