

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2019] SGHC 183

Suit No 705 of 2017

Between

Pradeepto Kumar Biswas

... Plaintiff

And

East India Capital Management Pte Ltd

... Defendant

AND

Between

East India Capital Management Pte Ltd

... Plaintiff-in-Counterclaim

And

1. Pradeepto Kumar Biswas
2. Indian Ocean Group Pte Ltd

... Defendants-in-Counterclaim

JUDGMENT

[Employment Law] — [Contract of service]
[Tort] — [Misrepresentation]
[Equity] — [Fiduciary relationships] — [Duties]

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Pradeepto Kumar Biswas
v
East India Capital Management Pte Ltd

[2019] SGHC 183

High Court — Suit No 705 of 2017
Choo Han Teck J
23–24 April 2019; 31 May 2019

8 August 2019

Judgment reserved.

Choo Han Teck J:

1 The plaintiff, Pradeepto Kumar Biswas (“Pradeepto”), is the sole director and also shareholder of the second defendant-in-counterclaim, Indian Ocean Group Pte Ltd (“IOG”). IOG is in the business of hotel and resort development services, and wholesale trade import and export. The defendant, East India Capital Management Pte Ltd (“EICM”), was incorporated in Singapore on 10 October 2016. EICM provides investment advisory services and is a registered fund management company.

2 Pradeepto claims that he was an employee of EICM from 15 October 2015 onwards but EICM claims that Pradeepto joined as a “partner” and shareholder of EICM, never an employee. The undisputed facts are as follows.

3 Pradeepto and one Simon John Hopkins (“Hopkins”) discussed the formation of EICM and its wealth and fund management business. The

discussions started in July 2015 and ran through to August. On 25 August 2015 Hopkins sent an email to Gary Thornton, the finance manager of EICM, who subsequently wrote to Pradeepto on 21 October 2015, where it was agreed that Pradeepto would be paid a “notional” monthly salary of \$20,000 when EICM became profitable. A shareholders’ agreement was signed on 17 August 2015 by Hopkins and other shareholders. Pradeepto commenced work with EICM on 15 October 2015.

4 IOG purchased 24% shares in EICM from Hopkins on 12 November 2015 on terms that it would be bound by the shareholders’ agreement. Pradeepto subsequently agreed in April 2017 to have his salary reduced to \$10,000 to ease EICM’s cash flow problems.

5 On 18 June 2017, EICM terminated Pradeepto’s engagement with the company on the ground of misconduct involving Mulgeo Product India Pty Ltd (“Mulgeo”) which was a client of EICM. Pradeepto commenced this action in Suit 705 of 2017 against EICM for unpaid salary amounting to \$351,312.64. EICM counterclaimed against Pradeepto for misrepresentation and breach of fiduciary duties.

6 In the counterclaim, EICM alleges that Pradeepto falsely represented that he would transfer US\$100m of assets that he was managing under Deer Creek Pte Ltd (“Deer Creek”) to EICM; and secondly, that he was earning an annual income of S\$450,000 as the managing director of Deer Creek.

7 EICM’s claim against Pradeepto for breach of fiduciary duty arose from an alleged misuse of confidential information belonging to EICM, and the wrongful diversion of business from EICM to Pradeepto himself and his companies.

8 Mr Kelvin Lee, instructed counsel for Pradeepto, submitted that there was no written employment contract and Pradeepto was not concerned with the management of EICM. His only job was to introduce potential clients to EICM. He submitted that although Pradeepto was referred to as a “partner”, it was only a term of designation and Pradeepto was not truly a partner, and that the fact that he had no access to the company’s accounts supported this. He submitted that EICM’s accounts for the year ending 31 March 2017 shows that EICM had made a profit, and Pradeepto was therefore entitled to the accrued salary claimed.

9 Mr Anand, counsel for EICM, submitted that Pradeepto referred to himself as “partner”, as can be seen in the email correspondence. Further evidence can be seen in the WhatsApp text message of 4 September 2016. Even Pradeepto’s solicitors referred to him as having joined EICM as a partner (in their letter of 25 July 2017). There is no employment contract regarding any employment of Pradeepto by EICM. Mr Anand submitted that, as a shareholder, Pradeepto is only entitled to the profits of EICM, if any, and as it turned out, EICM suffered losses throughout the years.

10 On record, the shareholder of EICM was IOG, not Pradeepto, but the direct issue is whether Pradeepto was an employee of EICM. The legal arrangements were loose, but it appears from the evidence that Pradeepto, who had direct control of IOG, got IOG into EICM as a shareholder. In return, Pradeepto himself was to be employed to find business for EICM. It was under this employment that he was to be paid a “notional” \$20,000 a month, subsequently adjusted downwards by mutual consent in April 2017 to \$10,000 a month. The word “notional” was not defined or explained contemporaneously. Mr Anand now argues that it must mean that it was not a real salary. If counsel

is right, then the payment of Pradeep to's employee CPF by EICM is inexplicable. I am of the view that "notional" means "unpaid" because of the undisputed agreement to defer actual payment.

11 It is incontrovertible that EICM paid the employer's CPF contribution into Pradeep to's CPF account even though the salary itself was deferred. Furthermore, on 18 June 2017, Hopkin wrote to Pradeep to expressly telling him that EICM was terminating his employment with the company. Emails to other clients of EICM such as Amardeep Singh and Abishek Gupta also used the words "terminated Pradeep to's employment". In its correspondence with the Monetary Authority of Singapore, Hopkins also stated that Pradeep to was "employed by EICM as an introducer of clients".

12 The question remains — is Pradeep to entitled to his differed salary? The agreement between Pradeep to and EICM was that he would defer his salary until EICM was profitable. This is not a clear agreement because it does not tell us what happens if Pradeep to was terminated before EICM became profitable, which is the case now. Clearly this right would not survive the termination of the contract and it would be impractical for Pradeep to or EICM to wait for EICM to turn profitable after he had left the company. The only reasonable interpretation of this term is that the deferred salary becomes payable when the company becomes profitable or when the contract of employment is terminated, whichever is sooner.

13 I am satisfied from the accounting record that EICM made a net loss of US\$12,794.86, US\$45,946 and US\$219,044 for the years 2015, 2016 and 2018 respectively. The company made a profit of US\$2,967 in 2017. On the whole, it cannot be said that EICM was profitable, but since Pradeep to's employment

had been terminated, his deferred salary of \$351,312.64 becomes due and payable, and I so hold.

14 With regard to the claim that it was induced into the arrangement with IOG and Pradeepto, EICM relies on two specific representations. First, Pradeepto represented that he was earning S\$450,000 a year at Deer Creek. Counsel for EICM, Mr Anand, submits that this representation was false. The tax returns of Pradeepto shows that his earnings were indeed S\$450,000 although not all of it was from Deer Creek. I am not convinced that any discrepancy would have influenced EICM. There was insufficient evidence to indicate that EICM was relying on this representation to enter into the agreement with IOG and Pradeepto.

15 Second, it was probably bravado for Pradeepto to claim that he could bring in US\$100m worth of investments into EICM. By 4 September 2015 it was clear to EICM that this was not going to happen. The written correspondence indicated that both sides knew that this would not be achieved. An attempt to get Pradeepto to sign an indemnity against losses from the US\$100m not materialising did not succeed. Yet EICM agreed to let Pradeepto commence work on 15 October 2015. I am of the view that EICM did not agree to contract with IOG and Pradeepto on the alleged misrepresentations.

16 EICM also counterclaims against Pradeepto for breaching his fiduciary duties by misusing confidential information in order to enrich himself. The eight instances cited by EICM are —

- (a) diverting revenue due to EICM to SAHT Limited, a company controlled by Pradeepto, from Mahamaya Infrastructure Pte Ltd (“MIPL”);

- (b) diverting revenue from EON Resorts Group (“ERG”) to IOG regarding an acquisition of shares in Vangaru Island Resort in the Maldives;
- (c) diverting S\$262,657.92 from Anilana Hotels & Properties (“Anilana”) to IOG and a company called “East India Capital Holdings Pte Ltd” to mislead third parties into thinking that they were dealing with EICM;
- (d) providing services to the Kalyan Group on behalf of EICM and then billing them through IOG and Trade Finance Corporation (“TFC”);
- (e) wrongfully causing a refund of a non-refundable advisory fee of US\$10,000 to International Drilling Exploration Supply and Services (“Indodrill”);
- (f) causing JED Trade to terminate its contract with EICM;
- (g) diverting revenue of US\$10,000 from a company related to one Mr Subranshu, an associate of Hopkins, to IOG; and
- (h) diverting revenue from Mackwoods to IOG.

There is a claim for diverting money from Story-I Pte Ltd but this claim was not pleaded.

17 EICM further claimed that Pradeepto breached his fiduciary duties in failing to act in the best interests of EICM and listed five instances as particulars of this breach.

18 In all the above, EICM’s claims were not supported by evidence, some of which would have been fundamental. There were no details of the work that Pradeepto or his companies did or the profit they received in respect of MIPL, ERG, Anilana or Mackwoods. There is no evidence that Pradeepto caused JED Trade to terminate its contract with EICM, except for the timing of the termination. As for Indodrill, Hopkins accepted the reason for the refund, and there is no evidence that Pradeepto profited from it.

19 So far as payments were concerned, none of them appear to have been wrongly paid to Pradeepto. Although the Kalyan Group paid TFC, Hopkins accepted that TFC was not related to Pradeepto. The invoice issued by IOG was never paid, and in any event, Pradeepto says that was for work prior to his employment with EICM. The US\$10,000 paid by Subranshu’s company was, according to Subranshu himself, for “different purposes”, and EICM could not identify what work it had done for that company. It was peculiar that EICM could not even identify who its client was. As for EICM’s claim to a 2% commission for one Mr Kumar’s investment into Mulgeo, it transpired that that transaction had been completed before EICM worked on the project or reached the fee arrangement. EICM was therefore not entitled to any commission from that investment.

20 Although under Mr Anand’s cross-examination, Pradeepto seemed evasive and not fully reliable, EICM’s claim based on Pradeepto’s failure to act in its interests was largely vague and unsupported by evidence; nor was it clear as to what losses EICM suffered. Finally, in respect of the alleged failure to secure investments in three funds for EICM, that is surely a misconceived claim. The failure to secure business is just a failure; it does not become a failure to act in the company’s interest without particulars — and there are none.

21 For the reasons above, the plaintiff's claim for deferred salary is allowed. I will hear the question of interests and costs at a later date. EICM's counterclaim is dismissed.

- Sgd -
Choo Han Teck
Judge

Kelvin Lee Ming Hui, Samantha Ong Xin Ying (instructed counsel)
(WNLEX LLC) and Sankar s/o Kailasa Thevar Saminathan (Sterling
Law Corporation) for the plaintiff and defendants-in-counterclaim;
Christopher Anand s/o Daniel, Ganga d/o Avadiar, Eileen Yeo Yi
Ling and J Jayaletchmi (Advocatus Law LLP) for the defendant and
plaintiff-in-counterclaim.
