(2014) 10 DEL CK 0013

Delhi High Court

Case No: CS(OS) No. 2504/2013, I.As. No. 20267/2013 (u/O 39 R-1and2 CPC), 20268/2013 (u/O 2 R-2), 2965/2014 (u/O 39 R-2A), 3848/2014 (u/O 39 R-4), 3849/2014 (of D-3 u/O 7 R-11), 3850/2014 (of D-3 u/O 1 R-10and13), 6146/2014 and 6147/2014

Lal Pathlabs Pvt. Ltd. — APPELLANT

Vs

Arvinder Singh — RESPONDENT

Date of Decision: Oct. 15, 2014

Acts Referred:

- Arbitration and Conciliation Act, 1996 - Section 9
- Civil Procedure Code, 1908 (CPC) - Order 1 Rule 10, Order 1 Rule 13, Order 2 Rule 2, Order 39 Rule 1, Order 39 Rule 2
- Contract Act, 1872 - Section 27
- Payment of Bonus Act, 1965 - Section 3

Citation: (2014) 60 PTC 309

Hon'ble Judges: Rajiv Sahai Endlaw, J

Bench: Single Bench

Advocate: Rajiv Nayar, Sr. Adv., Sudhir Sharma, Sanjeev Kumar Sharma, Angad Kochhar and Abhishek Shivpuri, Advocate for the Appellant; Krishnendu Datta, Sanyat Lodha, Mansih Srivastava, Rahul Malhotra and Kapil Rustagi, Advocate for the Respondent

Judgement

Rajiv Sahai Endlaw, J.

The applications of the plaintiffs, under Order XXXIX Rules 1 and 2, Order II Rule 2 and Order XXXIX Rule 2A of the CPC and of the defendant no. 3 under Order VII Rule 11 and Order I Rules 10 and 13 of the CPC, in this suit for the reliefs of (i) for a decree of permanent injunction restraining the defendants from carrying on any activity/business competing with the business of the plaintiffs in Udaipur; (ii) for a decree of permanent injunction restraining the defendants no. 1 & 2 from soliciting and recruiting the employees, clients and doctors of the plaintiffs by inducing them to leave the employment of the plaintiffs and join the defendant no. 3; and (iii) for a decree of permanent injunction restraining the defendants no. 1 & 2 from divulging

or disclosing confidential and proprietary information of the plaintiffs to any third party or to use such information for their own benefit and to the detriment of the plaintiffs, are for adjudication. While issuing summons of the suit and notices of the applications, vide ex parte ad interim order dated 13th December, 2013 the defendants were restrained from divulging the proprietary information of the plaintiffs to any third party or from soliciting and recruiting employees and doctors of the plaintiffs. The said ex parte ad interim order continues. The senior counsel for the plaintiffs and the counsels for each of the three defendants have been heard on the applications.

2. The plaintiffs have instituted the suit pleading:-

(i) that the plaintiff no. 1 Company is a diagnostic service provider in the field of medical tests with a pan-India presence under the name and style of "Dr. Lal Path Labs";

(ii) that the defendants no. 1 & 2 i.e. Dr. Arvinder Singh and Dr. Rajendra Kachhawa had in or about the year 1999, in partnership started carrying on the business of a diagnostic centre also in the field of medicine in the name and style of "Amolak X Ray & Diagnostic Centre" at 24-C, Madhuban Colony, Udaipur, Rajasthan;

(iii) that the aforesaid partnership firm in or about October, 2003 sold and transferred the said diagnostic centre business to one M/s. Piramal Diagnostic Services Private Limited (PDSL); PDSL continued carrying on the same business and providing the same services as earlier being provided by Amolak X Ray & Diagnostic Centre, from the same location and in the name and style of "Wellspring Amolak Pathlab Diagnostics" and later on in the name and style of "Piramal Amolak Diagnostic";

(iv) subsequently vide Business Purchase Agreement dated 24th November, 2009, the said business along with its assets was sold by PDSL to the plaintiff no. 2 Amolak Diagnostics Private Limited (ADPL) of which the defendants no. 1 & 2 were the only equal shareholders; the plaintiff no. 2 ADPL continued carrying on business from the same location in the name and style of "Amolak Diagnostics";

(v) that in or about the year 2011 the defendants no. 1 & 2 approached the plaintiff no. 1 Company with an offer to sell their 100% shareholding in the plaintiff no. 2 ADPL;

(vi) a Share Purchase Agreement dated 21st January, 2011 (SPA) was signed whereunder the defendants no. 1 & 2 sold to the plaintiff no. 1 Company their entire shareholding constituting 100% shareholding of the plaintiff no. 2 ADPL together with the goodwill of the plaintiff no. 2 ADPL for a consideration of Rs. 14,25,00,000/-; thus the plaintiff no. 2 ADPL became a wholly owned subsidiary of the plaintiff no. 1 Company;

(vii) that as part of the aforesaid transaction, the defendants no. 1 & 2 had also undertaken that they shall not engage directly or indirectly in any business which competes with the business of the plaintiff no. 2 ADPL;

(viii) that as part of the aforesaid transaction, the defendants no. 1 & 2 also agreed to enter into Retainership Agreements with the plaintiff no. 1 Company whereunder the defendants no. 1 & 2 agreed to render their professional services to the plaintiff no. 1 Company for a period of three years starting from 21st January, 2011 and to devote all their working time and attention to provide services to the Company; the defendants no. 1&2 further agreed not to solicit or induce any of the plaintiff Companies'' employees to leave plaintiff Companies and join any other employment and to hold all confidential and proprietary information in the strictest confidence and not to disclose it to any person, firm or corporation or to use the same otherwise than in carrying out the work of the two plaintiff Companies; the defendants no. 1 & 2 had also agreed to indemnify the plaintiff Companies;

(ix) that in terms of the aforesaid, the defendants no. 1 & 2 started working with the plaintiff Companies as Chief of Lab and as Chief Radiologist respectively at Udaipur;

(x) that though the defendant no. 1 in terms of the above was obliged to serve the plaintiffs for three years w.e.f. 21st January, 2011 but resigned vide letter dated 23rd May, 2013 and the plaintiff no. 1 Company agreed to relieve him w.e.f. 1st July, 2013; at that time also, the defendant no. 1 submitted an undertaking dated 11th June, 2013 reiterating his obligation of abstaining from competing directly or indirectly with the plaintiffs, from soliciting the employees of the plaintiffs and abiding by the terms of the SPA and the other agreements;

(xi) the plaintiffs on 2nd July, 2013 learnt that a new diagnostic centre by the name of "Arth Diagnostics" owned by Arth Diagnostics Private Ltd. (defendant no. 3) and providing the same services in the field of medical tests had commenced operating in the close vicinity (at 4C, Apex Chamber, behind Bharatiya Lok Kala Mandal, Madhuban Colony, Udaipur, Rajasthan) of the place where the business aforesaid acquired for consideration by the plaintiff no. 1 Company was being carried on; it was also learnt that the said business was using identical trademark and trade name "AMOLAK" as well as a mark deceptively similar to the plaintiff no. 2 ADPL''s logo;

(xii) the plaintiffs on making enquiry learnt that the defendant no. 1, after leaving the employment of the plaintiff Companies on 1st July, 2013, had joined the defendant no. 3 and that in fact the money for setting up of the defendant no. 3 had come from the bank accounts of the defendants no. 1 & 2 though one Mr. Satyendra Singh Panwar who was earlier an employee of the plaintiff no. 2 ADPL was shown as a shareholder and Director of the defendant no. 3;

(xiii) that the defendants no. 1 & 2 also started approaching the customers, clients and doctors attached to the plaintiffs; and,

(xiv) the plaintiff no. 2 ADPL filed a suit for permanent injunction in the Courts at Udaipur for restraining the defendants from using the trademark and logo of the plaintiff no. 2 ADPL and from passing off the business of the defendant no. 3 as that of the plaintiffs.

3. The defendant no. 1 has contested the suit, by filing a written statement, inter alia on the grounds:-

(a) that this Court has no territorial jurisdiction to entertain the suit, the entire cause of action pleaded having accrued at Udaipur; the plaintiff no. 2 ADPL itself had prior to the institution of this suit filed the suit aforesaid against the defendants at Udaipur;

(b) that this Court is also not the forum conveniens for the present suit;

(c) that the restraint sought by the plaintiffs against the defendant no. 1, a Pathologist by profession is a restraint of trade and profession and unreasonable;

(d) that the terms and conditions if any in the contracts, entitling the plaintiffs to do so, are void and contrary to law;

(e) that the reliefs claimed in the present suit are against public policy and contrary to law;

(f) that the defendant no. 1 was compelled to leave the employment of the plaintiffs owing to the plaintiffs having purported to transfer the defendant no. 1 to Gurgaon; that the defendant no. 1 owing to the illness of his wife, was/is unable to so shift;

(g) that the reliefs claimed in the present suit are an attempt on the part of the plaintiffs to create a monopoly;

(h) denying that the defendant no. 1 had financed the setting up of the defendant no. 3;

(i) that the plaintiff no. 2 ADPL, before being purchased by the plaintiff no. 1 Company had been set up and created by the defendants no. 1 & 2 as an established and reputed lab and diagnostic centre in the city of Udaipur with a large customer base;

(j) that the defendant no. 1 had complied with all the terms and conditions of his agreements and after the termination of the Retainership Agreement w.e.f. 1st July, 2013, stood relieved from all his obligations;

(k) that any term and condition of the agreements which restrained the defendant no. 1 from freely practicing his profession subsequent to the termination of the Retainership Agreement, is contrary to law and void ab-initio;

(l) that the plaintiffs had forced the defendant no. 1 to leave the employment of the plaintiffs under the Retainership Agreement since the defendant no. 1 had failed to

be part of the illegal and unethical practices of the plaintiffs;

(m) denying that he was possessed of any confidential or proprietary information of the plaintiffs or had access thereto;

(n) that the defendant no. 1 had merely loaned some monies to the aforesaid Mr. Satyendra Singh Panwar;

(o) denying that the defendant no. 1 had solicited any patients or employees of the plaintiffs; and,

(p) that the plaintiffs had indulged in forum shopping after having failed to obtain any interim relief in the previously instituted suit in the Courts at Udaipur.

4. The defence taken by the defendant no. 2 in his written statement, though differently worded, is in essence the same as in the written statement of the defendant no. 1 save that the defendant no. 2 pleads that he had offered to resign vide e-mail dated 22nd August, 2013 but which was not accepted and he continued to work for the plaintiffs for a period of three years as agreed.

5. The defendant no. 3 has contested the suit by filing a written statement on the grounds:-

I. denying that it had solicited any employees or patients of the plaintiffs; however the city of Udaipur has limited number of experienced pathological professionals available for the expanding pathological needs and if any of the doctors, staff or patients have switched from the plaintiffs to the defendant no. 3, they must have done it on their own;

II. controverting the valuation of the suit for the purposes of Court Fees and jurisdiction;

III. that the plaintiffs had earlier moved an application under Section 9 of the Arbitration and Conciliation Act, 1996 in this Court but had subsequently withdrawn the same to file the present suit owing to the involvement of the defendant no. 3, not a party to the Arbitration Agreement; the said fact had been concealed from the plaint; the plaintiffs have thus indulged in forum shopping;

IV. that no cause of action against the said defendant had accrued to the plaintiffs within the territorial jurisdiction of this Court;

V. denying that any cause of action had accrued to the plaintiffs against the defendant no. 3;

VI. denying that the defendants no. 1 & 2 were involved in the setting up of the defendant no. 3 and/or were involved in the business of the defendant no. 3; and,

VII. pleading other defences similar to the defences in the written statement of the defendants no. 1&2.

6. The plaintiffs have filed replications to the three written statements.

7. The plaintiffs, by IA No. 20267/2013 seek interim relief on the same lines as the main relief claimed in the plaint.

8. The plaintiffs, by IA No. 20268/2013 seek leave to sue the defendants for recovery of damages at a subsequent stage.

9. The plaintiffs, by IA No. 2965/2014 allege violation of the ad interim order, by the defendant No. 2 joining the employment of the defendant no. 3 as a Radiologist as published in the newspaper Rajasthan Patrika on 26th January, 2014.

10. The defendant no. 1 has filed IA No. 3848/2014 under Order XXXIX Rule 4 of the CPC for vacation of the ad interim order.

11. The defendant no. 3 has filed IA No. 3849/2014 under Order VII Rule 11 of the CPC for rejection of the plaint on the ground of the same being devoid of any cause of action.

12. The defendant no. 3 has filed IA No. 3850/2014 for deletion of its name from the array of defendants on the ground of the plaint not disclosing any cause of action thereagainst.

13. Needless to state, the replies have been filed to all the aforesaid applications.

14. IA No. 6146/2014 and IA No. 6147/2014 have been filed by the defendant no. 3 for exemption and which are allowed subject to just exceptions. The counsels have addressed arguments mainly on the application for interim relief but the discussion thereon would also govern the outcome of the other applications.

15. The senior counsel for the plaintiffs,

A. has drawn attention to:-

(a) the SPA, particularly to,

(i) the nomenclature therein of the defendants no. 1 & 2 as sellers;

(ii) Clause 2.2.1 thereof, wherein the sale consideration of Rs. 14,25,00,000/- has been arrived at on the basis of projected financials for the year ending 31st March, 2011; and,

(iii) Clause 10.4 thereof, being a non-compete covenant and to Schedule-J thereof listing the tangible assets sold therein and their total valuation of Rs. 2.27 crores and has argued that the balance approx. Rs. 12 crores was for purchase of goodwill;

(b) Retainership Agreements executed by both the defendants, to serve the plaintiffs for a minimum period of three years and Clause 9 whereof contains a non-solicitation of employees and clients and non-compete covenant;

(c) the Non-Disclosure Agreements dated 30th October, 2012, also executed by the defendants, agreeing to, during the term of the agreement and thereafter, not retain, make copies of, divulge, disclose or communicate to any person any of the plaintiffs'' "Proprietary Information" or relating to the plaintiffs'' business;

(d) the undertaking executed by the defendant no. 1 on 11th June, 2013 reiterating the non-solicitation and non-compete covenant;

(e) the photocopy of a business card of Arth Diagnostics with the trademark "AMOLAK" and giving its "New Address";

(f) the photocopy of the business card of the defendant no. 1, also containing the name of Arth Diagnostics and describing him as ''Chairman & Managing Director'' and ''Chief Pathologist'' thereof; and

(g) the statements of the bank account of Mr. Satyendra Singh Panwar aforesaid to show receipt of monies from the defendant no. 1 and payment thereof for purchase of the shares of the defendant no. 3;

B. has argued,

(a) that the suit filed by the plaintiffs against the defendants in the Courts at Udaipur, prior to the institution of the present suit, was only for the relief of injunction against infringement of trademark and passing off and has with reference to the plaint therein demonstrated that the plaintiffs had specifically reserved the right to take action separately against the defendants with respect to the SPA;

(b) that vide exception to Section 27 of the Indian Contract Act, 1872 (Contract Act), one who sells the goodwill of a business, may agree with the buyer to refrain from carrying on a similar business, within specified local limits so long as the buyer carries on a like business therein provided that such limits appear to the Court reasonable, regard being had to the nature of the business;

(c) that the defendants, on the contrary have set up a competing business at a distance of less than 100 yds. and has in this regard invited attention to a snapshot of the Google Maps; and,

C. has relied on:-

(i) Bajranglal Bajaj Vs. The State of Madhya Pradesh and Others, -laying down that goodwill cannot be sold apart from the business and the sale of business implies the sale of goodwill though not expressly mentioned;

(ii) Hukmi Chand Vs. Jaipur Ice and Oil Mills Co. and Others, -where a clause, though in restraint of trade, was held to be valid because the defendant on dissolution of business had taken his share in the goodwill and it was held that the restraint cannot be said to be unreasonable on the ground that no time limit is specified as

the same is specified in the exception itself to Section 27 of the Contract Act i.e. till the purchaser of the goodwill carries on a like business;

(iii) M/s. Gujarat Bottling Co. Ltd. and others Vs. Coca Cola Company and others, , Wipro Limited Vs. Beckman Coulter International S.A., and Allied Dunbar (Frank Weisinger) Ltd. Vs. Weisinger [1988] I RLR 60, 8 Tr L 20-to canvas that a stipulation in a contract which is intended for advancement of trade shall not be regarded as being in restraint of trade and stands on a different footing as compared to an employer-employee contract;

(iv) Wipro Ltd. (supra)-to contend that non-solicitation clause does not amount to a restraint of trade, business or profession and would not be hit by Section 27 supra;

(v) Sukanya Holdings Pvt. Ltd. Vs. Jayesh H. Pandya and Another, and judgment dated 13th September, 2012 of this Court in CS(OS) No. 2086/2010 titled M/s. R.R. Enterprises Vs. Garware-Wall Ropes Ltd.-to contend that the remedy of arbitration was not open to the plaintiffs as cause of action against the defendants no. 1 & 2 on the one hand and against the defendant no. 3 on the other hand could not be bifurcated;

(vi) V.V. Sivaram and Others Vs. Foseco India Limited, -to contend that disclosure of confidential information after cessation of employment can be restrained;

(vii) Niranjan Shankar Golikari Vs. The Century Spinning and Mfg. Co. Ltd., -to contend that a person may be restrained from carrying on his trade by reason of an agreement voluntarily entered into by him with that object; and,

(viii) Weinberger v. Romero-Barcelo, 456 U.S. 305, 312, 102 S. Ct. 1798, 1803, 72 L. Ed. 2d 91 (1982) and Allied Dunbar (Frank Weisinger) Ltd. (supra)-to contend that restrictive covenants in case of sale of goodwill have been held to be reasonable.

16. The counsel for the defendant no. 1 has argued:-

(a) that Section 27 supra declares every agreement by which anyone is restrained from exercising a lawful profession, trade or business of any kind to be void to that extent; the exception thereto is only with respect to agreements of sale of goodwill of business and not qua the sale of goodwill of a profession; the said exception is not applicable to the sale of goodwill of professional practice, as of a doctor;

(b) that the defendant no. 3 is a juristic person and a corporation sole and the defendants no. 1&2 are neither its shareholders nor directors; merely because they are Consultants in the defendant no. 3 does not mean that the business of the defendant no. 3 is the business of the defendants no. 1 & 2;

(c) that the defendant no. 1 moreover is a resident of Jaipur (defendant no. 2 is admittedly a resident of Udaipur);

(d) has drawn attention to LE Passage to India Tours and Travels Pvt. Ltd Vs. Deepak Bhatnagar, where a learned Single Judge of this Court held that the exception to Section 27, though speaks about the business but does not include a profession and that there can be no covenant to sell the skills of an individual, as the same is contrary to Section 27 of the Contract Act;

(e) that in the transaction between the plaintiff no. 1 on the one hand and the defendants no. 1 & 2 on the other hand there was no sale of goodwill and the valuation of Rs. 14.25 crores arrived at, was on the basis of assets, cash flow and projected earnings only;

(f) that the defendants no. 1 & 2, as part of the aforesaid transaction had agreed not to carry on any competing business but had not agreed not to carry on their profession as a Pathologist and Radiologist respectively;

(g) that as far as the restrictive covenants in the Retainership Agreements are concerned, they were binding only during the term of employment and cannot bind the defendants after they left the employment of the plaintiffs;

(h) that medical profession is not business;

(i) that the plaintiffs have not established any sale of goodwill;

(j) that the defendant no. 1 is not carrying on any similar business;

(k) that the plaintiffs have impleaded the defendant no. 3 merely to plead a case of the defendants no. 1 & 2 carrying on the business which they had agreed not to do but have failed to establish that the business of the defendant no. 3 is of the defendants no. 1 & 2;

(l) that there is a difference between carrying on business and practicing profession; it is for this reason only that two sets of agreements i.e. SPA with respect to business and Retainership Agreement with respect to professional services were executed;

(m) that the money transaction between the defendant no. 1 and the defendant no. 3 is merely of loan and is not a transaction of the defendant no. 1 investing in the business of the defendant no. 3;

(n) that the allegations in the plaint are vague, without any particulars;

(o) that the elements of balance of convenience and irreparable loss and injury are also in favour of the defendants;

(p) the plaintiffs have not made a prima facie case of having suffered any loss owing to any activities of the defendants;

(q) that the grant of interim relief to the plaintiffs would amount to grant of final relief only;

(r) that the plaint is not based on facts but on the basis of beliefs of the plaintiffs;

(s) has relied on:-

(i) Dr. M.M. Hassan Vs. T.C. Mohammed, -laying down that the word "business" does not include medical profession;

(ii) Percept D''Mark (India) Pvt. Ltd. Vs. Zaheer Khan and Another, -laying down that post-contractual covenants or restrictions are void under Section 27 of the Contract Act;

(iii) Lalbhai Dalpatbhai and Co. Vs. Chittaranjan Chandulal Pandya, where injunction was refused on the ground that if the same were to be granted the result would be that the defendant would be either reduced to idleness and starvation or be compelled to go back in the employment of the plaintiffs; and,

(iv) Chairman, M.P. Electricity Board and Others Vs. Shiv Narayan and Another, vide which the question, whether the legal profession is a commercial activity, in the context of charges for the electricity consumed, was referred to a larger Bench.

(t) that the plaintiffs have not claimed any money for the loss if any suffered as yet; and,

(u) that the goodwill, even if any purchased by the plaintiffs, was protected for $2^{1/2}$ years during which the defendant no. 1 has remained in the employment of the plaintiffs and the same was more than an adequate safeguard.

17. The counsel for the respondent no. 2, while adopting the arguments of the counsel for the defendant no. 1 has argued that the defendant no. 2 has been a resident of Udaipur and has completed his Retainership Agreement with the plaintiffs and cannot be forced to work with the plaintiffs as would be the case if injuncted from practicing in Udaipur.

18. The counsel for the defendant no. 3 has argued:-

A. that the plaintiffs have no privity with the defendant no. 3 and no cause of action against the defendant no. 3;

B. that this Court does not have territorial jurisdiction over the defendant no. 3 whose activities are confined to the city of Udaipur, Rajasthan;

C. the defendant no. 3 has taken a loan of Rs. 65 lacs from the State Bank of India (SBI) for the purposes of its business;

D. that the defendants no. 1 & 2 are neither shareholders nor directors of the defendant no. 3;

E. that the plaintiffs cannot enforce the agreements entered into with the defendants no. 1 & 2 against the defendant no. 3;

F. that the defendant no. 3 cannot be restrained from carrying on its business;

G. that there is no allegation in the plaint, of any collusion between the defendants no. 1 & 2 on the one hand and the defendant no. 3 on the other hand;

H. that the contracts which are sought to be enforced are by their very nature determinable and/or compensation in money for breach whereof would be sufficient;

I. has relied on Desiccant Rotors International Pvt. Ltd. Vs. Bappaditya Sarkar and Another where injunction to restrain an ex-employee from joining the employment of a competitor was denied on the ground that right of livelihood must prevail;

J. that the defendant no. 3 was incorporated on 14th June, 2012 and took loan aforesaid from SBI on 16th March, 2013; on the contrary according to the plaintiffs the cause of action for the suit had accrued on 2nd July, 2013 after the defendant no. 1 left the employment of the plaintiffs on 1st July, 2013;

K. that the plaintiffs have concealed filing of the application under Section 9 of the Arbitration Act and withdrawal thereof;

L. that the argument of the plaintiffs before the Udaipur Court and in the proceedings of Section 9 of the Arbitration Act for piercing the corporate veil of the defendant no. 3 had not succeeded; and,

M. has relied on Dalpat Kumar and Another Vs. Prahlad Singh and Others, -on the aspect of balance of convenience.

19. The senior counsel for the plaintiffs, in rejoinder, has argued:-

I. that the judgments relied upon by the counsels for the defendants relating to employer-employee relationships are not applicable since the transaction subject matter of the present suit was of sale of business of a diagnostic centre;

II. has referred to Clauses 6.13(e), 8.2 and 10.6 to contend that the representations made by the defendants no. 1 & 2 therein are with respect to sale of business with its assets;

III. with reference to Clause 3.1 read with Schedule-D of the SPA has contended that the sale was also of all intangible assets including goodwill;

IV. has with reference to the definition of ''Intellectual Property Assets'' in the SPA argued that the same also includes goodwill;

V. that since the valuation of tangible assets given in the SPA is of only Rs. 2.27 crores, the remaining sale consideration out of Rs. 14.25 crores necessarily has to be towards the consideration for intangible assets including goodwill;

VI. has referred to Commissioner of Income Tax, W.B. III Vs. Chunilal Prabhudas and Co. (Defunct Firm), -laying down that goodwill has no separate existence apart from business;

VII. has relied on Gadakh Yashwantrao Kankarrao Vs. E.V. alias Balasaheb Vikhe Patil and Others, to show that media reports were taken into consideration;

VIII. Dr. P. Vadamalayan Vs. The Commissioner of Income Tax, Madras, and Commissioner of Income Tax Vs. Upasana Hospital, to contend that the distinction between business and profession is blurring; and,

IX. has referred to Goyal MG Gases Pvt. Ltd. Vs. Air Liquide Deutschland GmbH and Others to contend that the remedy of arbitration was not available to the plaintiffs.

20. I have weighed the pleadings, the documents and the respective contentions and am of the considered opinion that a case for interim injunction restraining the defendants no. 1 & 2 from practicing as Pathologist and Radiologist respectively in the city of Udaipur, whether in their own name or in association or employment with any other person is made out, for the reasons hereafter appearing.

21. As far as the aspect of territorial jurisdiction of this Court to entertain this suit is concerned, the counsel for the defendant no. 1, on a specific query of this Court, had replied that all the documents executed by the parties were part of one and the same transaction. The counsel for the defendant no. 2, as aforesaid, had adopted the said argument. The plaintiffs and the defendants no. 1 & 2, as part of the said transaction had signed the SPA dated 21st January, 2011, Retainership Agreements also dated 21st January, 2011 and Non-Disclosure Agreements dated 30th October, 2012. The SPA though does not give the place of its execution, is engrossed on a stamp paper issued at Delhi and the witnesses thereof disclose their residence at Gurgaon and from which an inference, at this stage, can be drawn to the effect that the Agreement was executed at Delhi. The Retainership Agreements signed by the two defendants separately are also executed on a stamp paper issued at Delhi and expressly state the same to have been executed at New Delhi. However since both the SPA and the Retainership Agreements are of the same day and part of the same transaction, it can safely be assumed that the SPA also was executed at New Delhi. The reliefs claimed in the plaint, it is not controverted, are emanating therefrom. Even though the defendants no. 1 & 2 may be residents of outside Delhi, from having signed the SPA in the territorial jurisdiction of this Court, a part of cause of action would accrue here. Not only so, the SPA further provides that all actions, suits, proceedings arising from or in any way relating to the SPA shall be subject to the exclusive jurisdiction of Courts in Delhi. Thus at least at this stage it cannot be said at least qua the defendants no. 1 & 2 that this Court has no territorial jurisdiction.

22. That brings me to the aspect of Section 27 of the Contract Act. The defendants no. 1 & 2, in the SPA had represented, (i) that the plaintiff no. 2 ADPL was a closely-held private limited liability company engaged "in the business of providing diagnostics services including both, pathological and radiology"; (ii) that they together held 100% of the issued, subscribed and paid up equity share capital of the

plaintiff no. 2 ADPL; (iii) that they were desirous of selling their entire shareholding in the plaintiff no. 2 ADPL for a gross consideration of Rs. 14.25 crores; (iv) that the Gross Purchase Price had been computed on the basis of Audited Financial Statements for the year ended 31st March, 2010 as well as on their representation that the plaintiff no. 2 ADPL will achieve minimum annual Gross Revenue of Rs. 7,00,00,000/- and an annual Earnings before Interest, Depreciation, Taxes and Amortization (EBIDTA) of Rs. 2,70,00,000/- in the next one year from the date of the Agreement (with the same being computed without deduction of the remuneration or consultancy fee of Rs. 36,00,000/- payable to the defendants no. 1 & 2); (v) that the plaintiff no. 2 ADPL had full power and authority to utilize the premises, being Bungalow No. 2, Plot No. 24-C, Madhuban Colony, Udaipur for carrying on its business and the plaintiff no. 2 ADPL will not be deprived of use of the said premises; (vi) that the lease of the said premises was subsisting till 8th June, 2013 and they will use their best endeavours to get the lease renewed for such further period as the plaintiff no. 2 ADPL may require; however if the lease is not renewed, they will cause Ms. Madhu Kachhawa being a relative of the defendant no. 2 Dr. Rajendra Kachhawa and who is the owner of the first floor of an adjacent premises, to lease the said premises to the plaintiff no. 2 ADPL for a minimum period of 15 years; (vii) that the SPA will not adversely affect any contract entered into by the plaintiff no. 2 ADPL with any of its customers or continuance of the contracts with the customers nor will it trigger termination of contracts entered into by the plaintiff no. 2 ADPL with its customers; (viii) that the plaintiff no. 2 ADPL had purchased the business from Piramal Diagnostic Services Pvt. Ltd. on a Slump Sale basis; and, (ix) that the persons mentioned in Schedule-G of the SPA were the only employees of the plaintiff no. 2 ADPL and the plaintiff no. 2 ADPL had put in place an appropriate mechanism for ensuring continuation of employment of the said employees, especially those deemed to be important by the plaintiff no. 1 Company for continuing the operations of the plaintiff no. 2 ADPL; the said Schedule-G also contained the names of the defendants no. 1 & 2.

23. The defendants no. 1 & 2, in the SPA had agreed, (i) that in the event the plaintiff no. 2 ADPL fails to achieve the Target Gross Revenue, the Gross Purchase Price shall be reduced in the manner provided therein and in the event the plaintiff no. 2 ADPL failed to achieve the Target EBIDTA, the Gross Purchase Price shall be reduced in the manner provided therein and that in the event of the plaintiff no. 2 ADPL failing to achieve the Target Gross Revenue and the Target EBIDTA the Gross Purchase Price shall be reduced in the manner provided therein; (ii) that they "shall not, directly or indirectly, at any point of time, whether through partnership or as a shareholder, joint venture partner, collaborator, employee, consultant or agent or through relative or in any manner whatsoever, whether for profit or otherwise, carry on any business which competes directly or indirectly with the whole or any part of the business carried on" by the plaintiff no. 2 ADPL and that they "shall not engage in any business which competes directly or indirectly" with the plaintiff no. 2 ADPL

"whether during the continuance of the agreement for providing their services" to the plaintiff no. 2 ADPL "or thereafter"; (iii) that the aforesaid restrictions are fair and reasonable as to the subject matter, geographical scope and duration and are reasonably necessary to protect the interest of the plaintiff no. 2 ADPL and the plaintiff no. 1 Company and also to protect the value of the business of the plaintiff no. 2 ADPL; (iv) that the plaintiff no. 1 Company would be entitled to injunctive relief to prevent a breach of the defendants no. 1 & 2''s obligations; and, (v) that their experience and knowledge will enable them to be employed gainfully in a business which is not competing with the business of the plaintiff no. 2 ADPL and that injunctive relief will not prevent the defendants no. 1 & 2 from providing for themselves and their family.

24. In the Retainership Agreements also, both the defendants no. 1 & 2 agreed that for a period of five years immediately following the termination of the Retainership Agreement for any reason, they shall not directly or indirectly undertake any other activity of similar nature so as to give any sort of competition to the business of the plaintiff no. 2 ADPL and that the plaintiffs may enforce the said Agreement by injunctive relief against them.

25. Section 27 supra makes every agreement by which anyone is restrained from exercising a profession, trade or business of any kind is void. The agreements entered into by the two defendants with the plaintiffs, not to carry on business of the kind which they were till then carrying on through the medium of plaintiff no. 2 ADPL and which business they had vide the said agreements sold to the plaintiff no. 1 Company for a consideration of Rs. 14.25 crores, is certainly such an agreement and would be void thereunder. The only question for consideration is whether the same falls in the exception to Section 27. The said aspect would entail decision on, (i) whether the exception is applicable only to an Agreement of Sale of goodwill of a ''business'' and would not be applicable to an Agreement of Sale of goodwill of a ''profession'' and if so what is the distinction between ''business'' and ''profession''; (ii) whether the subject agreements are an Agreement of Sale of goodwill; (iii) what is the effect if any of such agreements not specifying the local limits within which the two defendants had agreed to refrain from carrying on similar business and whether in the absence of the agreements specifying such local limits, the Court can specify the same and if so what would be a reasonable limit, having regard to the business/profession, goodwill whereof was sold vide the said agreements.

26. Notwithstanding the observations of a Single Judge of this Court in LE Passage to India Tours & Travels Pvt. Ltd. (supra), I am unable to accept the proposition that the exception to Section 27 is applicable only to agreements of sale of goodwill of business and not to agreements of sale of goodwill of a profession. Though so disagreeing with the view already taken by the learned Single Judge of this Court, I do not feel the need to refer the matter to a larger Bench for two reasons. Firstly, a research on the website of this Court reveals FAO(OS)142/2014 preferred

thereagainst to be pending consideration before a Division Bench of this Court and to be listed next on 13th October, 2014. Secondly, LE Passage to India Tours & Travels Pvt. Ltd. was a case of sale of business of an inbound travel agent. It was by no means a case relating to a profession like medicine or law or accountancy or the like. It is a settled proposition of law that a legal question even if decided in a judgment, but not arising in the facts of the case and decision whereof was not necessary, does not constitute a precedent. In fact, the expression ''obiter dictum'' was defined by M.C. Chagla, C.J. speaking for the Division Bench of the Bombay High Court in Mohandas Issardas and Others Vs. A.N. Sattanathan and Others, as, an expression of opinion on a point which is not necessary for the decision of a case or, statements by the way and it was held that the same does not have the binding weight of the decision of the case and the reasons for the decision. The Supreme Court in Ranchhoddas Atmaram Vs. The Union of India (UOI), held that the question which was never required to be decided even though decided, cannot be treated as decided. Recently also the Supreme Court in Arun Kumar Aggarwal Vs. State of Madhya Pradesh and Others, on a conspectus of the earlier decisions reiterated that a statement in a dicta not essential to decide the issue in hand does not form part of the judgment of the Court and has no authoritative value. Mention may also be made of the judgment of the Full Bench of the Gujarat High Court in Hitesh Bhanuprasad Soni and Chatursinh Halubha Jadeja Vs. Union of India and Others, laying down that what is binding is the ratio of the decision and not the opinion of the Court on any question which was not required to be decided in a particular case. It was explained that the same is not binding as a precedent because the observation was unnecessary for the decision pronounced. A reading of the judgment in LE Passage to India Tours & Travels Pvt. Ltd. also does not disclose any discussion on the said aspect. If carrying on activity as a travel agent is a profession and not a business, carrying on of any other activity would also not qualify to be carrying on a business and would be carrying on of a profession only in as much as carrying on of business in any field/commodity also requires a skill.

27. In my view the meaning of the words, "profession, trade or business" used in Section 27 is in one context only and the said words have to be read ejusdem generis, and not as carving out any distinction between profession, trade and business. The heading of the Section in fact describes it only as "Agreement in restraint of trade, void" and does not even use the three expressions as would have been the case had the legislature intended the same to be conveying separate meanings or to treat them separately. The Supreme Court in Raichurmatham Prabhakar and Another Vs. Rawatmal Dugar, , while holding that heading or the title of a Section has a role, though limited, in construction of statutes, observed that the heading or the title of a Section may be taken as very broad and general indicators of the nature of the subject-matter dealt with thereunder and as a condensed name assigned to indicate collectively the characteristics of the subject-matter dealt with underneath; though the name would always be brief having its own limitations.

Again, though the heading of the Section uses only the expression "trade" and not the expressions "business" or "profession", the heading of the exception to the Section namely "Saving of agreement not to carry on business of which goodwill is sold" uses only the expression "business" and not even the expression "trade". It will be incongruous to hold that while the heading of the main body of Section is with respect to three things, the heading of the exception thereto is with respect to one only of those three things. The Supreme Court, in Alloy Steel Project Vs. The Workmen, , while interpreting Section 3 of the Payment of Bonus Act, 1965, held that it would be a strange method of construction of language to hold that ''establishment'' referred to in the main part of the Section will include all different departments, undertakings and branches of a Company, while it will not do so in the proviso to the same Section and that such different meanings in the same Section in respect of the same words or expression cannot be accepted.

28. The counsels, besides LE Passage to India Tours & Travels Pvt. Ltd. have not cited any other judgment on the said aspect. My research also has not unearthed any case in which such contention may have been taken or adjudicated upon; rather in all cases, all the three expressions are found to have been used in one breath only, again conveying an impression that the same are not intended to convey different meanings so as to make a profession different from trade or business or trade different from profession or business or business different from profession and trade. I have also considered that even if the three expressions were intended to have different connotations, whether there could be any reason for carving out an exception in the matter of sale of goodwill of business only and not carving out such an exception to sale of goodwill of trade or profession. There is no indication for the same in the statute and I have not been able to think of any. No distinction, in my view, can be carved out between the consequences of sale of a goodwill of a business from that of sale of goodwill of a profession. The best example of the same can be given from LE Passage to India Tours & Travels Pvt. Ltd. itself, where the opinion that the exception relates to sale of goodwill of business and not to sale of goodwill of a profession came to be given in the context of sale of goodwill of an activity of travel agent, treating the same to be involving a skill. It would be a great affront and injustice to tradesmen and businessmen to say that they carry on their respective activities without being possessed of any skill or that their skill is any less than that of a person who may claim himself to be a professional instead of a tradesman or a businessman. Moreover though at the time of enactment of the Indian Contract Act, 1872, the skill required and demanded for carrying on trade and business may have been much less than the skill required to practice the profession as of a lawyer or a doctor or an accountant but the same, with trade and business in the fields, say of electronics and information technology having developed, no longer holds good. Today, admissions to a Bachelor and Master of Business Administration Educational Programmes/Courses are no less tougher than admissions to Law Schools or Medical Schools.

29. The Supreme Court in S. Mohan Lal Vs. R. Kondiah, , concerned with the provision of the Andhra Pradesh Buildings (Lease Rent and Eviction) Control Act, 1960 permitting the landlord to seek eviction of the tenant if proved to be requiring the premises for the purpose of his business and faced with the question whether an Advocate could seek eviction on the said ground for the purpose of his profession, observed that business is a common expression which is sometimes used by itself in a collocation of words as in "business, trade or profession". Of course, the High Court of Kerala in Dr. M.M. Hassan (supra) cited by the counsel for the defendant no. 1 did not consider itself to be bound by the said dicta of the Supreme Court, observing that the word used in the Andhra Act was business alone while the words used in the Kerala Act were "trade or business" and held that the expression "trade or business" would not include a profession. However, what is relevant for us is the observation of the Supreme Court that the word business and the collocation of words "business, trade or profession" are used interchangeably. I may add that the Monopolies and Restrictive Trade Practices Act, 1969 and its successor legislation namely the Competition Act, 2002 both define trade inter alia as meaning business, profession or occupation relating inter alia to provision of any services. Similarly, the Indian Partnership Act, 1932 also defines business as including trade and profession. The Division Bench of this Court also in The Institute of Chartered Accountants of India and Another Vs. The Director General of Income Tax (Exemptions) and Others, cited with approval Christopher Barker and Sons Vs. IRC [1919] 2 KB 222 holding "All professions are businesses, but all businesses are not professions".

30. The nature of the profession has also over the years undergone a change, as would be quite evident from the activities of the defendants no. 1 & 2 themselves. The defendants no. 1&2, though qualified to practice the profession of medicine, as would be evident from the aforesaid narrative, were carrying on an organized activity intended for profit and; though the value of the tangible assets of said activity was only Rs. 2.27 crores but the said activity, called by the defendants no. 1 & 2 themselves as "business" was sold as a "going concern" for a price nearly seven times thereof. It can hardly be said that the activities of the defendants no. 1&2 were without any profit motive. Though the professions such as law and medicine may in earlier times have been practiced, at least in this country, without any organized activity and merely on the basis of the practitioners own acumen but the same can no longer be said to be true of today when we have, at least in the metropolitan cities, a number of say lawyers associating together to form a firm or an association to provide services to the clients having work spanning before ever increasing courts (with bifurcation) and tribunals and other foras. Today in my view, it is neither possible nor correct to carve out a distinction labeling an activity of a lawyer, if working alone, as a profession and of a lawyer if part of a group, as a business. The same can be said to be true of the medical profession also, with large hospitals and nursing homes and clinics entering the healthcare activity. The

Division bench of this Court in Vipul Medcorp Tpa Pvt. Ltd. and Others Vs. Central Board of Direct Taxes and Another, rejecting the contention that tax was not required to be deducted at source when the payment was made to a corporate hospital which being an artificial person could not render professional services and was in fact carrying on business, held that the reality that services in the field of medicine are not confined and rendered by individuals but in most cases rendered in hospitals which may be corporate or juristic entities, cannot be ignored.

31. I find the Privy Council as far back in Weinberger v. Romero-Barcelo, 456 U.S. 305, 312, 102 S. Ct. 1798, 1803, 72 L. Ed. 2d 91 (1982) to have held an agreement not to practice the profession of law at a particular place and for a reasonable time to be valid, though not on the anvil of Section 27.

32. I therefore conclude that the rigors of Section 27 are equally applicable to any activity whether it be profession or a trade or a business and similarly the exception thereto is also applicable to the sale of goodwill of any activity whether labelled as a business or a trade or as a profession. I also hold that there is no reason to, qua the applicability of Section 27 and exception thereto, discriminate between a business or a trade on the one hand and a profession on the other hand.

33. Alternatively, even if it were to be held that the exception to Section 27 is applicable only to sale of goodwill of a business and not to sale of goodwill of a profession, I also hold that the activity being carried on by the defendants no. 1 & 2 through the medium of the plaintiff no. 1 ADPL was definitely a business as admitted by them in the SPA also and was not a profession. The defendants no. 1 & 2 in the agreement, executed by them for consideration, having described the said activity as a business, cannot now be permitted to contend the same to be an agreement relating to profession.

34. Before leaving the said subject I may deal with another aspect. The counsels for the defendants during the arguments sought to carve out a difference between the activities of the defendants no. 1 & 2 as shareholders and directors of the plaintiff no. 2 ADPL and as doctors. The said distinction also in my view is illusory. A business as that of the plaintiff no. 2 ADPL i.e. of providing diagnostics services in the field of medicine/healthcare is not dependent upon trading in any goods or commodities but on the professional skills of the doctors providing the said services. It cannot be said that the defendants no. 1 & 2 were wearing separate hats, while carrying out the medical tests and while collecting payments therefor. Thus if the agreement entered into by them is found to fall in the exception to Section 27, their agreement to refrain from doing the same business would be deemed to be, not to carry on the same activity which they were earlier carrying on, neither on an individual basis nor as an employee of any other company or juristic entity providing such services or in any other manner.

35. A business such as of providing diagnostic services, besides of course being dependent upon machines and equipment for carrying out the tests, is dependent again on the acumen of the doctors operating and reading the said machines and equipment. A better radiologist is always able to detect, say a fracture, in the same X-ray in which others have missed. It is more so applicable to reading and interpretation of other more complicated views and analysis appearing of human organs and their excretions and contents.

36. Thus if a doctor carrying on his profession in an organized manner so as to qualify to be a business would agree to sell the said business and to refrain from carrying on similar business, he cannot be heard to say that he has agreed to refrain from carrying on such organized activity but is not to be injuncted from setting up shop next door, to render the same services as a professional. The patients in whom the said doctor has inculcated faith over a period of time and built a goodwill which he has sold, would still, on seeing the same doctor, flock to him rather than to his erstwhile seat. The patients are primarily attracted to skills of a doctor or a lawyer and not to the office premises which that doctor or lawyer occupies.

37. Though the documents executed at the time of transaction though of sale and purchase of shares only, but leave no manner of doubt that they are of sale of goodwill also. The goodwill of a business, as that of a diagnostic centre, is the reputation built by it over the years of accurate results on the basis of which the patient/consumer is able to receive appropriate treatment and recover early from the ailment. Such accuracy is dependent upon the quality of the machines and other equipments to conduct the test as well as the efficiency and skill of the paramedical staff operating the said machines and equipments and the doctors reporting thereon. The consumers/customers of such a diagnostic centre are not likely to immediately come to know of change of management of the company owning the diagnostic centre and, finding familiar faces and receiving satisfactory results as before, may continue going there even if subsequently come to know of change of management. The clauses in the agreement whereunder the defendants no. 1 & 2 assured and represented as sellers to the plaintiff no. 1 purchaser that the consumers i.e. the patients and the employees and doctors would remain unaffected and the plaintiff no. 1 Company would also be assured use of the place where the said diagnostic centre had been running for the past several years, are all indicative of the intent and agreement of the parties to provide a transition period to ensure continuity of footfalls in the said centre and upon which the generation of revenue therefrom was dependent, to enable the plaintiff no. 1 Company to take hold of the business. As part of the same, the defendants no. 1 & 2 also agreed to serve the said diagnostic centre as retainers for a period of at least three years. If the defendants no. 1 & 2, after the said three years or even prior thereto were to set up another diagnostic centre in close vicinity as they have done, the possibility of the patients/consumers shifting their loyalties to the new diagnostic centre set up by the defendants no. 1 & 2 or to a diagnostic centre with which they were

associated and it is for this reason only that the plaintiff no. 1 Company had insisted and the defendants no. 1 & 2 had agreed not to carry on the said activity. Once the case is found to fall within the exception to Section 27, the said agreement would not be void and the plaintiff no. 1 Company would be entitled to enforce the same.

38. In my view, it matters not whether the local limits within which the defendants no. 1 & 2 had so agreed to refrain themselves, are specified or not in as much as whether the said local limits are reasonable or not is for the Court to adjudicate. Even if the defendants, while so agreeing have not specified the local limits, the Court can always define the said local limits. In fact the senior counsel for the plaintiffs had fairly stated that the plaintiffs are concerned with the defendants carrying on the said activity in the city of Udaipur only and the defendants are free to carry on the said activity anywhere else in the country. In fact as far as the said limit of the city of Udaipur is concerned, the defendants rather than contending that the same would be too wide, have themselves pleaded and argued that the city of Udaipur and its growing demands and the limited numbers of professionals has the tendency of leading to monopoly. Thus it cannot be said that the limits of the city of Udaipur would be unreasonable to so restrain the defendants.

39. Though, vide exception to Section 27 the defendants are to be restrained for so long as the plaintiff no. 1 as buyer carries on business in Udaipur, but I find the parties to have in the Retainership Agreements which is part and parcel of the same transaction as the SPA, to have provided a limit of five years only from the expiry of the Retainership Agreement the life whereof was for a period of three years i.e. from 21st January, 2011 to 21st January, 2014. Though the SPA does not contain any such limitation but the plaintiff no. 1 Company having provided the said limitation of five years in the Retainership Agreement, is to be bound by the same. I am therefore of the view that the restriction on the defendants no. 1 & 2 for a period of five years from the expiry of the Retainership Agreement would be reasonable. Accordingly, the defendants no. 1 & 2 are to be so restrained from rendering services as they were rendering through the medium of the plaintiff no. 2 ADPL, till 21st January, 2019.

40. In so far as the pleas of the defendant no. 3, of this Court having no territorial jurisdiction against it and the plaint not disclosing any cause of action against it and its name being liable to be deleted, are concerned, the case with which the plaintiffs have approached this Court is of the defendant no. 3 being a front of the defendants no. 1 & 2. The payments admittedly made by the defendants no. 1 & 2 to Mr. Satyendra Singh Panwar at about the contemporaneous time are sufficient to hold that the said case of the plaintiffs cannot be thrown out as bogus at this preliminary stage and is required to be put to trial. This Court having been found to have territorial jurisdiction to entertain the suit against the defendants no. 1 & 2, would axiomatically have territorial jurisdiction to entertain the suit against the defendant no. 3 also which is alleged to be alter ego of the defendants no. 1 & 2. The doctrine

of piercing the corporate veil is certainly applicable where case of fraud and deceit is made out. If indeed it is found that the defendant no. 3 is an enterprise of the defendants no. 1 & 2 only, it would certainly be a case for piercing of corporate veil.

41. Today, India is putting full thrust to developing its economy and to transition from a developing to a developed nation status. The present as well as the last several governments have been in this regard making attempts to invite multinational and other foreign corporations to invest in the country. Mergers, acquisitions, takeover of running/growing business so as to have a foot-hold in the country are well known modes of such investments. We already have international health providers in the field of dentistry setting base in the country including by acquisition of some Indian dentistry practices. Such non-compete clauses are an essential part of such mergers and acquisitions, to ensure the success thereof. If the Courts today were to take a view that such clauses are non-enforceable, the same in my view would be a serious impediment and run counter to the thrust on inviting such investments. The Supreme Court in Union of India (UOI) and Another Vs. Raghubir Singh (Dead) by Lrs. Etc., held that the doctrine of binding precedent is circumscribed in its governance by perceptible limitations, limitations arising by reference to the need for readjustment in a changing society, a readjustment of legal norms demanded by a changed social context and changing social, economic and technological conditions. It was further held that it is the profound responsibility of the Court to recognize that the times are changing and that there is occasion for a new jurisprudence to take birth. The same thought was echoed in State of Punjab and Others Vs. Amritsar Beverages Ltd. and Others, . A Division Bench of this Court in Rohit Shekhar Vs. Narayan Dutt Tiwari and Another, held that the language of a statute though necessarily embedded in its own time, is nevertheless to be construed in accordance with the need to treat it as a current law.

42. Of course the defendant no. 3, till a case for piercing the corporate veil is established and proved, cannot be injuncted from providing the services. However, the defendants no. 1 & 2 can always be injuncted from associating themselves in any manner whatsoever with the defendant no. 3.

43. As far as the argument, of the plaintiffs creating a monopoly is concerned, the defendants have separate forums available for the same. Moreover this is only a interim stage.

44. Accordingly:-

(i) IA No. 20267/2013 of the plaintiffs is allowed to the extent that the defendants no. 1 & 2, till 21st January, 2019 are restrained from carrying on practice/business/profession as a Pathologist or as a Radiologist in the city of Udaipur in any manner whatsoever including by providing consultancy services or by associating with any other person or body providing such services;

(ii) The application being IA No. 20268/2013 of the plaintiffs under Order II Rule 2 CPC is allowed and the plaintiffs are granted permission to sue the defendants separately for the relief of damages;

(iii) IA No. 3848/2014 of the defendants under Order XXXIX Rule 4 of the CPC is dismissed; and,

(iv) IA No. 3849/2014 and IA No. 3850/2014 under Order VII Rule 11 of the CPC and under Order I Rules 10 & 13 of the CPC are dismissed.

45. As far as the application of the plaintiffs under Order XXXIX Rule 2A of the CPC is concerned I am of the view that from the mere factum of the defendant no. 2 having joined the employment of the defendant no. 3, it cannot be said that the defendant no. 2 has divulged any proprietary information of the plaintiffs to the defendant no. 3 or has solicited and recruited employees and doctors of the plaintiffs. The defendant no. 2 on the date of grant of the interim order is not stated to be an employee or doctor of the plaintiffs. The question, whether the defendant no. 2 by said employment has divulged any proprietary information or not cannot be decided without evidence and on which a issue is being framed vide separate order in today''s date. IA No. 2965/2014 is accordingly disposed of.