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AC-145-2025

IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE

BEFORE

HON'BLE SHRI JUSTICE PAVAN KUMAR DWIVEDI

ON THE 20th OF JULY, 2026ARBITRATION CASE No. 145 of 2025*SMT. SHUSHILA**Versus**DR ARVIND LAL MS DR LAL PATHLEBS LIMITED AND OTHERS*

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Appearance:

Shri Vivek Dalal - Advocate for the applicant.

Shri Shantanu Sharma - Advocate for the respondents.

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Heard on : 15.04.2026

Pronounced on : 20.07.2026

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ORDER

This is an application filed under Section 11 of the the Arbitration and Conciliation Act, 1996 (for short 'Act of 1996') for appointment of sole Arbitrator.

2. The facts of the case are that the Central Lab, Indore (CL) a partnership firm through its partners Dr. Vineeta Kothari and Smt. Sushila Dalal (present applicant) entered into a Business Purchase Agreement (BPA) (Annexure P/1) with Centrapath Labs Pvt. Ltd. (respondent No.2) which is a company incorporated under the provisions of the Indian Companies Act, 2013. This was a business purchase agreement by virtue of which the Centrapath Labs took over the business of Central Lab, Indore of pathology and diagnostics with all rights, interest, assets, obligations including goodwill



attached thereto. The applicant after executing agreement transferred her 22.5% share in respondent No.2 Company to respondent No.3 in lieu of consideration on 07.08.2019 and the remaining 7.5% of share were thereafter transferred to Dr. Vineeta Kothari (daughter of the applicant) on 08.02.2021. Thus, according to the applicant she is no more the shareholder of the respondent No.2 Company.

3. In view of the above, in respondent No.2 Company, 70% shares are held by respondent No.3 Company and rest 30% shares are held by Dr. Vineeta Kothari. As such, the respondent No. 1 has appointed two Directors in the Board of Directors of the said company and Dr. Vineeta Kothari is the third Director of the Company. She is acting as Executive Director of the said Company.

4. As the applicant has transferred her entire share holding to respondent No.2 Company thus, she is no more a shareholder of the Company still the respondents are restraining her from starting her own pathology business based on the above said agreement (Annexure P/1) particularly Clause 9.3 and 9.4 of the same.

5. It has further been stated that M/s Central Lab was the firm in which the applicant was one of the partners and sold its Trade Mark to respondent No.2 which now the respondent No.2 is using for its business however, the name Central Lab being a common name, the applicant cannot be restrained using the same in view of Clause 9.5 of the BPA (Annexure P/1). It has further been stated that pursuant to the agreement, the respondents are using the trademark and the name of partnership firm of the



applicant which they could not have done without permission of the partnership firm in view of Clause 13.1 of the agreement (Annexure P/1). In view of the above facts, notice dated 21.10.2025 was issued by the applicant raising dispute and invoking the arbitration clause in BPA (Annexure P/1) which was replied by the respondents on 10.11.2025 by raising false and frivolous grounds in the same. In view of the above facts, the applicant sent notice (Annexure P/2) on 21.10.2025 for appointment of Arbitrator. However, as the respondents failed to give consent, the present application for appointment of Arbitrator in terms of Section 11 of the Act of 1996 has been filed.

6. The respondents No. 2 and 3 filed their reply to the present application on 16.02.2026. They further filed application under Section 42 of the Act of 1992 on 08.04.2026. In their reply, respondents No. 2 and 3 stated that the application for appointment of Arbitrator is fraught with concealment and misstatement. It is stated that material facts have been suppressed by the applicant. As to the facts of the case, it is stated that the Business Purchase Agreement was indeed executed on 06.08.2019 with Central Lab, Indore whereby applicant's pathology and diagnostic was taken over as ongoing concern. Apart from the Business Purchase Agreement, two other agreements namely Subscription and Share Purchase Agreement (SSPA) and Share Holders Agreement (SA) were executed on 07.08.2019. It is submitted that in all three agreements, non-compete clauses were provided and present is a case of breach of those clauses in all three agreements. It is thus submitted that had it been a case where dispute was only with respect to



Business Purchase Agreement, undisputedly the jurisdiction would have lied before this Court however, in the present case, all three agreements are involved as non-compete clause of all three agreements have been violated. Thus, in terms of clause 7.2 of the Share Holders Agreement, the jurisdiction will lie at Delhi. It has further been stated that even as per Clause 14 of the SSPA, the jurisdiction lies at Delhi. Thus, it is submitted that jurisdiction for entertaining application under Section 11 does not lie to this Court and on this ground alone, the application deserves to be dismissed.

7. Apart from this, by filing application under Section 42, it has also been stated by the respondents No. 2 and 3 that they have already filed a petition under Section 9 of the Act of 1996 at Delhi which is registered at OMP(I) COMM No. 450/2025. Thus, in terms of Section 42, now the jurisdiction for all the subsequent proceedings would lie at Delhi. Based on these submissions, learned counsel for the respondent prayed for dismissal of the application.

8. In rejoinder to the return and Section 42 application, the applicant stated that in fact the applicant had resigned from M/s Kothari Diagnostic on 31.03.2025 which fact has been concealed by the respondents from the Court. It has also been stated that the applicant has already transferred all her shares in M/s Centrapath Pvt. Ltd. in favour of Dr. Vineeta Kothari on 08.02.2024. This information was also concealed. Apart from this, it has also been stated that Section 9 proceedings filed by the respondents No. 2 and 3 before the Delhi High Court have effectively been filed on 27.10.2025 as the same was filed through e-filing on 17.10.2025 at around 8:17 in the



night and the next working day was 27.10.2025 as from 18.10.2025 to 26.10.2025 the Court was closed. It is further submitted that in fact on 24.10.2025, the applicant has filed an application under Section 9 of the Act of 1996 before the Commercial Court, Indore. Thus, by applying the provisions of Section 42, it is this Court which has the jurisdiction.

9. It has further been stated that in view of the fact as narrated above, there is no dispute regarding existence of arbitration clause and even the dispute between the parties. As regards the other two agreements i.e. the SSAP (Annexure R/1) and SA (Annexure R/2), the applicant has stated that she is not even a signatory in those agreements therefore, she cannot be bound by the said agreements.

10. In the backdrop of the above recorded facts, learned counsel for the applicant submits that Clause 13.4 is the arbitration agreement in BPA (Annexure P/1). He thus submits that as per the said clause, jurisdiction lies before this Court. His contention is that present is a dispute of violation of non-compete clause and by no stretch of imagination this dispute can be termed as a dispute regarding shares thus, the other two agreements would not come into play. It is only the Business Purchase Agreement which has to be considered. For this reason, the jurisdiction will lie to this Court only.

11. It has further been argued by the learned counsel for the applicant that in view of the fact that the applicant had sold her shares in respondent No.2 Company on 08.02.2021, SSPA (Annexure R/1) will not come into picture. For this reason also the jurisdiction will lie to this Court. Apart from this, learned counsel for the applicant submits that the applicant



is not a signatory in SSPA (Annexure R/1) thus, she cannot be bound by the terms of that agreement and in any case, the dispute is that the son of Dr. Vineeta Kothari namely Arpit Kothari is doing business of diagnostics. He submits that first of all the business of diagnostics is different from the business being conducted by the respondents and secondly, an agreement binding third party cannot be sustained for which the said person has already filed a civil suit before the trial Court for the relief of declaring the clause binding him under the contract as null and void. He thus submits that this Court is having jurisdiction, as such, an Arbitrator should be appointed considering the dispute between the parties in view of the fact that the respondents failed to consent on the names proposed by the applicant.

12. Per contra, learned counsel for the respondents submit that a perusal of Clause 4 of Schedule 3 of SSPA agreement would show that non-compete clause is also included in the said agreement. He submits that in fact a perusal of the same would show that this was condition precedent for execution of SSPA. Thus, the applicant cannot now turn her back and say that the said condition will not apply in the present dispute. Similarly, in Share Holders Agreement also non-compete and non-solicitation clause were available in Clause 11.1 and 11.2. He thus submits that a cumulative reading of all three agreements would show that the applicant has breached all three agreements. The jurisdiction as per Clause 17.2 of the SSPA and Clause 14 of SA will lie before the Court at Delhi. He further submits that in fact the application under Section 11 before this Court has only been filed as a counter blast to the proceedings initiated by the respondents No. 2 and 3



before the Delhi High Court. He submits that the respondents No. 2 and 3 filed petition under Section 9 before the Delhi High Court on 17.10.2025 and on the same date, notice was sent through e-mail to Dr. Vineeta Kothari, who reverted the service e-mail on 17.10.2025 itself. Thus, they were aware of Section 9 petition filed by the respondents before the Court at Delhi on 17.10.2025. It is only after that the notices were issued on 25.10.2025 and instituted proceeding under Section 9 of the Act of 1996 before the District Court/Commercial Court Indore on 24.10.2025. He thus submits that present proceedings are nothing but a counterblast to the proceeding instituted by respondents No. 2 and 3. He thus prays for dismissal of the present application.

Heard learned counsel for the parties. Perused the case file.

13. In order to understand the nature of dispute between the parties, it will be apposite to record the exact dispute between the parties. The same would come to the fore on reading of Section 9 petition filed before the Delhi High Court by respondents No. 2 and 3 on 17.10.2025 which in sum and substance provides that applicant and her daughter Dr. Vineeta Kothari are associated with Kothari Diagnostics Pvt. Ltd. which is a competing business. In the said firm, the applicant was Director along with Mr. Arpit Kothari who is the grand son of the applicant and son of Dr. Vineeta Kothari. As such, the dispute is regarding operating a competing business which is in violation of non-compete and non-solicitation clauses of the above three agreement i.e. BPA, SSPA and SA.

14. Now the restriction under BPA for non-compete non-solicitation



is provided under Clause 9.3 and 9.4 which provides as under :

9.3 The Seller, Dr. Kothari, Mrs. Sushila represent that as on the Effective Date and as at the Closing, they by themselves or through any of their Affiliates/ Relatives does not: i. directly or indirectly, whether through partnership or as a shareholder (excluding any financial investment or minority investment made in any initial public offerings or mutual funds), joint venture partner, proprietor, collaborator, employee, consultant or agent or through Relative or in any manner whatsoever, whether for profit or otherwise, carry on the pathology related business in any part of India which competes directly or indirectly with the whole or any part of the pathology related business carried on by the Buyer and/or its then Affiliates.”

9.4 Non-compete, Non-solicitation, etc.

The Seller, Dr. Kothari, Mrs. Sushila and their Relatives/ Affiliates shall not at any point in time:

(a) Till either Dr. Kothari or Mrs. Sushila are shareholders in the Buyer; or

(b) Till Dr. Kothari has an employment/ retainership/consultancy agreement with the Buyer; and

(c) For a period of 5 (five) years following the cessation of Dr. Kothari and Mrs. Sushila as shareholders or termination of Dr. Kothari's employment/ retainership/consultancy agreement with the Buyer, whichever is later in (a) and (b) above (together the "Non-Compete Period")

i. directly or indirectly, whether through partnership or as a shareholder (excluding any financial investment or minority investment made in any initial public offerings or mutual funds), joint venture partner, proprietor, collaborator, employee, consultant or agent or through Relative or in any manner whatsoever, whether for profit or otherwise, even after their resignation or retirement from the Buyer carry on business and/or employment in any part of India which (a) involves the business and/or

profession of Radiology; and/or (b) competes directly or indirectly with the whole or any part of the Business carried on by the Buyer and/or its then Affiliates....”

15. The Clause 4 of Schedule 3 Conditions Precedent of the SSPA provides as under :

“4.As of the Closing Date neither VK and SD, nor any of their Affiliates directly or indirectly (i) engage in, conduct, carry on, own, manage, operate, join, assist, provide any services to, have an interest or control in, participate as investor, employee or director or in any other capacity, directly or indirectly, whether through partnership or as a shareholder, joint venture partner, collaborator, employee, consultant or agent or through a Relative or an Affiliate or in any manner whatsoever, whether for profit or otherwise carry



on, any business, trade or commercial activity that is similar to, or directly or indirectly competes with, the whole or part of the Business of the Company; and/ or (ii) engaged in the Business, other than through the Company.”

16. Similarly, Clause 11. and 11.2 of the SA provides as under :

1. NON COMPETE AND NON-SOLICITATION CLAUSE -

11.1 VK and SD represent that as on the Signature Date and as at Closing, they by themselves or through any of their Affiliates/Relatives does not;

i. directly or indirectly, whether through partnership or as a shareholder (excluding any financial investment or minority investment made in any initial public offerings or mutual funds), joint venture partner, proprietor, collaborator, employee, consultant or agent or through Relative or in any manner whatsoever, whether for profit or otherwise, carry on the pathology related business in any part of India which competes directly or indirectly with the whole or any part of the pathology related business carried on by the Buyer and/or its then Affiliates.

11.2 VK and SD and their Relatives/Affiliates shall not at any point in time

(a) till either VK and SD are shareholders in the Company; or

(b) Till VK has an employment/retainership/consultancy agreement with the Company; and

(c) For a period of 5(five) years following the cessation of VK or SD as shareholders or termination of VKs employment/retainership/consultancy agreement with the Company, whichever is later in (a) and (b) above (together the “Non-Compete Period”).

i. directly or indirectly, whether through partnership or as a shareholder (excluding any financial investment or minority investment made in any initial public offerings or mutual funds), joint venture partner, proprietor, collaborator, employee, consultant or agent or through Relative or in any manner whatsoever, whether for profit or otherwise, even after their resignation or retirement from the Buyer carry on business and/or employment in any part of India which

(a) involves the business and/or profession of Radiology; and/or

(b) competes directly or indirectly with the whole or any part of the Business carried on by the Buyer and/or its then Affiliates”

(ii) directly or indirectly, either on their own account or as an agent of any Person canvass or solicit any business from any Person or entity that has been a customer, distributor, supplier, dealer or agent of VK and SD with respect to the Business or influence any customer, supplier or any other Person that has had a business relationship with Central Lab, Indore (partnership firm with VK and SD) and Vineeta Kothari (sole-proprietorship of VK) with respect to the Business to discontinue or not enter into or not renew or reduce or adversely modify the extent of its relationship with the Company (whether existing now or after the Closing Date); or either alone or in conjunction with any other Person, partnership or business, directly or indirectly, solicit or divert or entice away or attempt to solicit or divert or entice away any of the



- *Employees;*
- *other employees of the Company*
- *persons who were previously employed by Central Lab Indore (partnership firm with VK and SD) and Vineeta Kothari (sole-proprietorship of VK) and/or the Company, for a period of three (3) years from the date of the cessation of their respective employment with Central Lab, Indore (partnership firm with VK and SD) and/or Vineeta Kothari (sole-proprietorship of VK) and/or the Company,*
- *contract labour, directors, officers, executives or agents of the Buyer or their Affiliates including without limitation,*

to work for or be involved with or represent any business competitive with or prejudicial or similar to the Business of the Company (as conducted by the Company and/or its Affiliates), or directly or indirectly have any financial interest as shareholder, partner, agent or otherwise in any business competing with or prejudicial or similar to the Business of the Company (as conducted by the Company and/or its Affiliates)"

17. Now, in view of the above Clauses of all three agreements and the allegations raised by respondents No. 2 and 3, it is clear that *prima facie*, the dispute is with respect to breach of above conditions in all three agreements. It leads us to the dispute resolution clause in all three agreements. In the BPA (Annexure A/1) Clause 13.4 provides for arbitration which reads as under :

"13.4 Arbitration: The parties hereto irrevocably agree that any dispute, controversy or claim arising out of, relating to or in connection with this Agreement (including any provision of any exhibit, annex or schedule hereto) or the existence, breach of misrepresentation or inaccuracy, termination or validity hereof shall be amicably and jointly discussed and settled inter se between the Parties. In the event the dispute is not resolved within thirty (30) days of any party having notified the other regarding the existence of such dispute, the Parties shall refer the matter to arbitration under the provisions of the Arbitration and Conciliation Act, 1996. The arbitration shall be conducted by an arbitral tribunal comprising three arbitrators, one to be appointed by the Buyer and the other to be jointly appointed by Dr. Kothari and Mrs. Sushila, while the third arbitrator shall be appointed by the two appointed arbitrators. The Arbitration shall be conducted in English language and the award of the arbitrator shall be final and



binding on the Parties. It is agreed and understood between the Parties that in the event the disputes arise exclusively under this Agreement, the seat of arbitration shall be Indore, Madhya Pradesh and in that event the courts at Madhya Pradesh shall be exclusive jurisdiction."

[Emphasis supplied]

18. However, as the clause itself would show it provides that in the event a dispute arise exclusively under this agreement (BPA), only then the seat of arbitration shall be at Indore. However, Clause 17.2 of the SA provides as under :

"17.2 Dispute Resolution: The Parties hereto irrevocably agree that any dispute, controversy or claim arising out of, relating to or in connection with this Agreement (including any provision of any exhibit, annex or schedule hereto) or the existence, breach or misrepresentation or inaccuracy, termination or validity hereof shall be amicably and jointly discussed and settled inter se between the Parties. In the event the dispute is not resolved within thirty (30) days of any party having notified the other regarding the existence of such dispute, the Parties shall refer the matter to arbitration under the provisions of the Arbitration and Conciliation Act, 1996. Subject to the provisos hereinafter provided, the seat of arbitration shall be Delhi, India. The arbitration shall be conducted by an arbitral tribunal comprising of three arbitrators, one to be jointly appointed by the Company and PUPL and the other to be jointly appointed by VK and SD, while the third arbitrator shall be appointed by the two appointed arbitrators. The arbitration shall be conducted in English language and the award of the arbitrator shall be final and binding on the Parties. Provided however, it is agreed and understood between the Parties that in the event that disputes arise between the Parties under this Agreement and the SSPA and/or the Business Purchase Agreements and/or any of the Transaction Documents, the seat of arbitration shall be Delhi and in that event the courts at Delhi shall have exclusive jurisdiction. In the event that disputes arise between the Parties, exclusively under the Business Purchase Agreements, the courts at Indore, Madhya Pradesh shall have exclusive jurisdiction and the appointment of arbitrators therein shall be in accordance with the provisions of the Business Purchase Agreements. Further, it is expressly understood and agreed between the Parties, that the right to determine/ decide whether a particular dispute relates solely to this Agreement or the Business Purchase Agreements / SSPA / Transaction Documents (as the case may be), as well, shall exclusively vest with PUPL. Provided further, it is agreed and understood between the Parties that in the event that disputes arise between the Parties under more than one of the Transaction Documents, then all the above disputes shall be referred to adjudication or decision by a single arbitral tribunal as a single proceeding and there shall be a consolidation of all such proceedings."

[Emphasis supplied]



19. Similar is the Clause 14 of the SSPA which provides as under:

*"The Parties hereto irrevocably agree that any dispute, controversy or claim arising out of, relating to or in connection with this Agreement (including any provision of any exhibit, annex or schedule thereto) or the existence, breach or misrepresentation or inaccuracy, termination or validity hereof shall be amicably and jointly discussed and settled inter se between the Parties. In the event the dispute is not resolved within thirty (30) days of any Party having notified the other regarding the existence of such dispute, the Parties shall refer the matter to arbitration under the provisions of the Arbitration and Conciliation Act, 1996. **Subject to the provisos hereinafter provided, the seat of arbitration shall be Delhi, India.** The arbitration shall be conducted by an arbitral tribunal comprising of three arbitrators, one to be jointly appointed by the Company and PUPL and the other to be jointly appointed by VK and SD, while the third arbitrator shall be appointed by the two appointed arbitrators. The arbitration shall be conducted in English language and the award of the arbitrator shall be final and binding on the Parties. **Provided, however it is agreed and understood between the Parties that in the event that disputes arise between the Parties under this Agreement and Shareholders Agreement and/or the Business Purchase Agreements and/or any of the Transaction Documents, the seat of arbitration shall be Delhi and in that event the courts at Delhi shall have exclusive jurisdiction.** In the event the disputes arise between Parties, exclusively under the Business Purchase Agreements, the courts at Indore, Madhya Pradesh shall have exclusive jurisdiction and the appointment of arbitrators shall be in accordance with the provisions of the Business Purchase Agreements. **Further, it is expressly understood and agreed between the Parties, that the right to determine/decide whether a particular dispute relates solely to this Agreement or the Business Purchase Agreements/Shareholders Agreement/Transaction Documents (as the case maybe), as well, shall exclusively vest with PUPL.** Provided further, it is agreed and understood between the Parties that in the event that disputes arise between the Parties under more than one of the Transaction Documents, then all the above disputes shall be referred to adjudication or decision by a single arbitral tribunal as a single proceeding and there shall be a consolidation of all such proceedings."*

[Emphasis Supplied]

20. It is thus clear that all three agreements are in coordination with each other. While the Business Purchase Agreement provides in Clause 13 that only in case of dispute exclusively under that agreement, the jurisdiction will lie to this Court however, the Clauses in other two agreements as quoted above would provide that in case the dispute arise between the parties under these agreement i.e. SA and SSPA as well as BPA, then the seat of arbitration shall be Delhi and in that event the Courts at Delhi shall have



exclusive jurisdiction. Thus, in the considered view of this Court, the jurisdiction in the present case looking to the allegation, lies before the Court at Delhi.

21. As far as the question of Section 42 application is concerned, there is no finality of that issue for the reason that the applicant before the Delhi High Court is raising issue of jurisdiction and the respondent No. 2 and 3 are doing the same before the Commercial Court at Indore. Thus, by mere filing of application under Section 9, the provisions of Section 42 of the Act of 1996 will not apply for the reason that in case the objection regarding jurisdiction is upheld in those Section 9 petitions, then the proceeding will be closed and it will be *non est* in the eye of law. Thus, this arbitration case is being decided independent of those Section 9 proceedings.

22. So far as the question of absence of signatures of the applicant on the Annexure R/1 is concerned, it would suffice to say that not only she enured the benefits under the agreement but has also taken steps for example, the applicant has exercised her right to nominate Director to the Board of Director of respondent No. 2 by nominating Dr. Vineeta Kothari as Executive Director. Not only this, the applicant in her notice dated 21.10.25 has acknowledged the execution of SSPA. She also relied upon 11.2 of the same. As such, this Court is of the *prima facie* view that in Section 11 proceedings, this issue cannot be gone into and for the above reasons, *prima facie* it appears that the conduct of the applicant would bind her with the terms of the agreements SSPA (Annexure R/1) and SA (Annexure R/2). Apart from this, the BPA agreement itself refers to the other two agreements



and makes the jurisdiction of Courts at Indore conditional, thus in any case all three agreements are inseparably connected to each other.

23. As regards the issue raised by the applicant regarding the fact that the she has already resigned from the business of Kothari Diagnostics Pvt. Ltd. and that the agreement cannot bind a third person namely Arpit Kothari are the issues which are to be considered by the Arbitrator and not by this Court in an application filed under Section 11. The limited jurisdiction this Court is having restricts it to a limited inquiry regarding arbitration agreement, a live dispute and jurisdiction of this Court.

24. As analysed above, the Court is of the considered view that a cumulative reading of all three above referred agreements would suggest that the dispute involved is covered across the three agreements, thus Clause 13 of BPA would not apply and Clause 17.2 of SSPA and 14 of SA will have their full application in the dispute in hand as far as the jurisdiction of this Court is concerned.

25. Resultantly, this Court is not having jurisdiction to entertain this application. Thus, the same is hereby rejected. Applicant is free to institute proceedings before the competent Court.

(PAVAN KUMAR DWIVEDI)
JUDGE

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