

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

TUESDAY, THE 21ST DAY OF JULY 2015/30TH ASHADHA, 1937

AR.No. 50 of 2014

**IN THE MATTER OF ARBITRATION BETWEEN KOTTAYAM GOLDEN MARINE
PRIVATE LIMITED AND BLUE OCEAN LOGISTIC PRIVATE LIMITED**

PETITIONER(S):

**M/S. KOTTAYAM GOLDEN MARINE PRIVATE LIMITED,
REPRESENTED BY ITS MANAGING DIRECTOR,
CAPTAIN JAMES JOSEPH,
HAVING OFFICE AT MADUKKANIL PCT CHAMBERS, 3RD FLOOR,
MUTTAMBALAM P.O, PIN- 686 004, KANJIKUZHI JUNCTION,
KOTTAYAM DISTRICT.**

**BY ADVS.SRI.K.C.ELDHO
SRI.JIJO THOMAS
SRI.SURAJ.S**

RESPONDENT(S) :

**M/S.BLUE OCEAN LOGISTICS PRIVATE LIMITED,
REPRESENTED BY ITS MANAGING DIRECTOR, S.P.SINGH,
HAVING OFFICE AT ROOM NO.9, 1ST FLOOR, RAM ARCADE,
DABA GARDENS, VISHAKAPATTANAM P.O., PIN - 530 001,
SEEMANDRA STATE (ERSTWHILE ANDHARA PRADESH).**

**THIS ARBITRATION REQUEST HAVING BEEN FINALLY HEARD
ON 21-07-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:**

Msd.

APPENDIX

PETITIONER(S)' ANNEXURES :

- ANNEXURE A1: A TRUE COPY OF THE CHARTER PARTY AGREEMENT
DATED 28.12.2007 EXECUTED BETWEEN PETITIONER AND
RESPONDENT.
- ANNEXURE A2: A TRUE COPY OF THE AWARD DATED 17.09.2011 PASSED
BY THE ARBITRATOR MR.N.S.BISWAS.
- ANNEXURE A3: A TRUE COPY OF THE AWARD DATED 17.09.2011 PASSED
BY THE ARBITRATOR JUSTICE ABDUL GAFOOR K.A.
- ANNEXURE A4: A TRUE COPY OF THE PROCEEDINGS OF
THE ARBITRATION SITTING ON 17.09.2011 ISSUED BY
THE ARBITRATORS.

RESPONDENT(S)' ANNEXURES :

NIL

//TRUE COPY//

P.A.TO JUDGE.

Msd.

B. KEMAL PASHA, J.

.....
Arbitration Request No.50 of 2014
.....

Dated this the 21st day of July, 2015

ORDER

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Heard learned counsel for the petitioner and learned counsel for the respondent.

2. This is a case wherein two Arbitrators were appointed in the matter, one each from both sides as per the arbitration clause contained in Annexure-A1 agreement.

The said clause says:-

“Any dispute arising under the charter to be referred to arbitration in Cochin, one Arbitrator to be nominated by the Owners and the other by the charterers, and in case the Arbitrators shall not agree then to the decision of the Umpire to be appointed by them, the award of the Arbitrators or the Umpire to be final and binding upon both parties.”

It seems that two divergent awards have been passed by the two Arbitrators as Annexure-A2 and A3. The Arbitrators

did not agree each other in the matter.

3. In such context, as per Section 11(6)(b) of the Arbitration and Conciliation Act, 1996, if the two appointed Arbitrators fail to reach an agreement expected of them, the party may request to the Chief Justice or any person or institution designated by him to take the necessary measures, unless the agreement on the appointment procedure provides other means for securing the appointment. Here, the arbitration clause in Annexure-A1 itself specifies that in case the Arbitrators shall not agree, then, the matter has to be referred to the decision of the Umpire to be appointed by them. Consequently, the parties have approached the Arbitrators for consensus in the matter of appointment of an Umpire being the 3rd Arbitrator.

4. Through Annexure-A4, both the Arbitrators have considered the request and there was no consensus from their part and, therefore, they have directed the parties to have recourse to the procedure contemplated under Section

11(6) of the Arbitration and Conciliation Act, 1996 in order to take necessary measures in the matter. It has been decided that the original file kept by Justice Abdul Gafoor shall be transferred to the Umpire to be appointed.

5. On hearing the learned counsel for the parties, this Court is of the view that Justice K.Padmanabhan Nair (Retired), can be appointed as Umpire in the matter under Section 11(6)(b) of the Arbitration and Conciliation Act, 1996.

In the result, this Arbitration Request is allowed and Justice K.Padmanabhan Nair (Retired) is appointed as Umpire in the matter.

Sd/-
(B.KEMAL PASHA, JUDGE)

aks/21/07

// True Copy //

PA to Judge