

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

TUESDAY, THE 6TH DAY OF JANUARY 2015/16TH POUSHA, 19361

AR. No. 51 of 2014

PETITIONER :

**M/S.Q-RAILING INDIA PRIVATE LIMITED,
(FORMERLY M/S. CARL F INTERNATIONAL PRIVATE LIMITED),
PLOT NO C-239, T.T.C INDUSTRIAL AREA,
M.I.D.C., PAWANE VILLAGE,
NAVI MUMBAI 400 705, REPRESENTED BY ITS
CREDIT CONTROLLER DARSHAN PANSARE.**

**BY ADVS.SRI.K.P.BALAGOPAL
SRI.DERYCK ALMEIDA**

RESPONDENT :

**M/S.K.G.A.HOTELS & RESORTS PRIVATE LIMITED,
REGISTERED OFFICE VII/311-C, KUNDANOOR,
NH 17 BYEPASS, MARADU P.O.,
ERNAKULAM, KERALA - 682 304.**

**BY ADVS. SRI.T.A.SHAJI (SR.)
SRI.M.A.ASIF
SMT.K.P.SHEEBA**

**THIS ARBITRATION REQUEST HAVING BEEN FINALLY HEARD
ON 06-01-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:**

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APPENDIX

PETITIONER(S)' EXHIBITS :-

- ANNEXURE 1 :- TRUE COPY OF THE CERTIFICATE OF INCORPORATION
CONSEQUENT UPON CHANGE OF NAME DATED 26.06.2012
OF THE PETITIONER COMPANY.**
- ANNEXURE 2 :- TRUE COPY OF THE CERTIFIED COPY OF THE RESOLUTION
DATED 10.10.2013.**
- ANNEXURE 3 :- TRUE COPY OF THE WORK ORDER DATED 18.10.2011 MADE
BETWEEN THE PETITIONER AND THE RESPONDENT.**
- ANNEXURE 4 :- TRUE COPY OF THE INVOICE BEARING NO.389 DATED
12.11.2011.**
- ANNEXURE 5 :- TRUE COPY OF THE INVOICE BEARING NO.401 DATED
28.11.2011.**
- ANNEXURE 6 :- TRUE COPY OF THE PAYMENT CERTIFICATE DATED 17.02.2012.**
- ANNEXURE 7 :- TRUE COPY OF THE LETTER DATED 08.03.2012 ISSUED BY
THE RESPONDENT.**
- ANNEXURE 8 :- TRUE COPY OF THE LETTER DATED 09.03.2012 ISSUED BY
THE PETITIONER.**
- ANNEXURE 9 :- TRUE COPY OF THE LETTER DATED 23.03.2012 ISSUED BY
THE RESPONDENT.**
- ANNEXURE 10 :- TRUE COPY OF THE NOTICE DATED 11.04.2012 ISSUED BY
THE PETITIONER'S ADVOCATE.**
- ANNEXURE 11 :- TRUE COPY OF THE REPLY DATED 24.04.2012 ISSUED BY
THE RESPONDENT'S ADVOCATE.**
- ANNEXURE 12 :- TRUE COPY OF THE REPLY NOTICE DATED 20.06.2012 SENT BY
THE PETITIONER'S ADVOCATE.**
- ANNEXURE 13 :- TRUE COPY OF THE NOTICE DATED 14.10.2013 ISSUED BY
THE PETITIONER.**

RESPONDENT(S)' EXHIBITS :- **NIL**

//TRUE COPY//

P.A. TO JUDGE

P. BHAVADASAN, J.

Arbitration Request No. 51 of 2014

Dated this the 6th day of January, 2015.

ORDER

This is a petition filed under Sections 11(4) and 11 (5) of the Arbitration and Conciliation Act seeking intervention of this Court for appointment of an Arbitrator. It is not in dispute that the parties in these proceedings entered into a contract, Annexure 3, for the purpose of doing certain works. The petitioner would say that the work has been completed, but the respondent disputed this fact.

2. It is not in dispute that Annexure 3 agreement contains a clause, namely, Clause 15 which reads as follows:

“15. Arbitration

In the event of any question or dispute arising under these conditions in connection with this contract (except as to any matters the decision of which is specially provided for by these conditions), whether during the progress of work or after their completion and whether before or after the termination, abandonment or breach of contract, the same shall be

referred to the award of an arbitrator to the nominated by the owner, and an arbitrator to be nominated by the Contractor or in case of the said arbitrators not agreeing then to the award of an umpire to be appointed by the arbitrators in writing before proceeding on the reference. The decision of the arbitrators, or in the event of their not agreeing the decision of the umpire appointed by them shall be final and conclusive and the Indian Arbitration Act, 1940, and of the Rules thereunder and statutory modification 1996 thereof shall be deemed to apply to and be incorporated in this Contract. Place of Arbitration procedures shall be at Ernakulam (Kochi).

It is agreed that the Contractor shall not delay the carrying out of the work by reason of any reference to arbitration and shall proceed with the work with all due diligence and shall, until the decision of the arbitrators or the umpire as the case may be, abide by the decision of the owner and its General Manager duly conveyed to him.”

3. It is not denied that the petitioner had also issued Annexure 12 notice staking his claim for the work done by him for the respondent Company. When there was no

response, he issued Annexure 13 notice invoking arbitration clause, to which also there is no reply.

4. All that this Court at this point of time needs to consider is whether there is any subsisting cause of action and whether there is an arbitration clause which can be invoked by the person concerned. There is no contention raised that the claim is barred or that there is no arbitration clause available to the parties concerned. Clause 15 is very clear that even after the termination of the contract or when the contract subsists, the dispute shall be referred for arbitration. Annexure 13 is the notice contemplated under the Act calling upon the respondent for appointment of an arbitrator. There is no response. Therefore this petition is allowed as follows:

Shri. D. Pappachan, District Judge (Retired), H.No. 32/1603, YMCA Road, Palarivattom P.O., Kochi – 682 025, is appointed as Arbitrator for deciding the issues. The Arbitrator will fix his remuneration after consultation with the parties

and arbitration proceedings may be terminated as expeditiously as possible at any rate, within six months from the date of commencement of arbitration.

P. BHAVADASAN,
JUDGE

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