IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

THURSDAY, THE 18TH DAY OF JUNE 2015/28TH JYAISHTA, 1937

WP(C).No. 9592 of 2015 (Y)

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PETITIONER(S):

M/S.JOHNSON LIFTS PRIVATE LIMITED,
HAVING ITS REGISTERED OFFICE AT NO.1, EAST MAIN ROAD,
ANNA NAGAR, WESTERN EXTENSION, CHENNAI - 600 101,
HAVING A BRANCH OFFICE AT SEAPORT - AIRPORT ROAD,
COCHIN - 682 309,
REPRESENTED BY POWER OF ATTORNEY HOLDER
JOS.P.GEO (ZONAL MANAGER, KERALA),
AGED 41 YEARS,S/O.K.GEORGE, POWATHIL HOUSE,
EROOR WEST P.O., THRIPUNITHURA, PIN - 682 306.

BY ADVS.SMT.P.K.PRIYA
SMT.MONCY FRANCIS

RESPONDENT(S):

1. THE K.T.D.C. HOTELS & RESORTS LTD.,
REPRESENTED BY ITS MANAGING DIRECTOR, MASCOT SQUARE,
THIRUVANANTHAPURAM - 695 033.

2. THE K.I.T.C.O LTD.,
REPRESENTED BY ITS MANAGING DIRECTOR, P.B.NO.4407,
FERMITH'S, PUTHIYA ROAD, N.H. BYE PASS,
VENNALA, COCHIN - 682 028.

3. GOVERNMENT OF KERALA,
REPRESENTED BY THE SECRETARY, TOURISM DEPARTMENT,
SECRETARIAT, THIRUVANANTHAPURAM - 695 001.

R1 BY ADV. SRI.THOMAS MATHEW NELLIMOOTTIL, SC
R2 BY ADVS. SRI.M.GOPIKRISHNAN NAMBIAR
SRI.P.GOPINATH
SRI.P.BENNY THOMAS
SRI.K.JOHN MATHAI
R3 BY SENIOR GOVERNMENT PLEADER SRI.BIJU MEENATTOOR

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
18-06-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

msv/

WP(C).No. 9592 of 2015 (Y)
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## APPENDIX

PETITIONER(S)' EXHIBITS
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EXHIBIT P1. THE TRUE COPY OF THE POWER OF ATTORNEY ISSUED BY MANAGING DIRECTOR TO JOS P. GEO.

EXHIBIT P2. THE TRUE COPY OF THE LETTER OF AWARD OF WORK ISSUED BY THE SECOND RESPONDENT TO THE PETITIONER DATED 03.02.2010.

EXHIBIT P3. THE TRUE COPY OF THE LETTER OF AWARD OF WORK ISSUED BY THE SECOND RESPONDENT TO THE PETITIONER DATED 03.11.2010.

EXHIBIT P4 (4 IN NUMBER): THE TRUE COPY OF THE HANDING OVER CERTIFICATE.

EXHIBIT P5. THE TRUE COPY OF THE CONSOLIDATED STATEMENT.

EXHIBIT P6. THE TRUE COPY OF THE JUDGMENT DATED 09.12.2014 IN W.P.(C)14163/2014 ON THE FILES OF THIS HON'BLE HIGH COURT OF KERALA.

EXHIBIT P7. TRUE COPY OF THE JUDGMENT WRIT APPEAL NO.64/2015 DATED 13.01.2015.

EXHIBIT P8. THE TRUE COPY OF THE ORDER DTD.26.8.2014 IN WP(C) NO.14163/2014.

RESPONDENT(S)' EXHIBITS:
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EXT.R2(a): TRUE COPY OF THE MINUTES OF THE MEETING DTD.16.9.2014 PRODUCED BY THE 1ST RESPONDENT HEREIN ABOVE IN WP(C) NO.14163/2014 THROUGH MEMO DTD.18.9.2014.

EXT.R2(b): TRUE COPY OF THE LETTER DTD. 6.11.2014 ALONG WITH THE STATEMENT OF ACCOUNTS ISSUED BY THIS RESPONDENT TO THE 1ST RESPONDENT.

EXT.R2(c): TRUE COPY OF THE JUDGMENT DTD.9.12.2014 IN WP(C) NO.14163/2014 OF THE LEARNED SINGLE JUDGE.

EXT.R2(d): TRUE COPY OF THE JUDGMENT OF THE DIVISION BENCH DATED 13.1.2015 WA.NO.64/2015 PREFERRED BY THE 1ST RESPONDENT.

//TRUE COPY//

P.S.TO JUDGE

Msv/

**K. VINOD CHANDRAN, J.**

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W.P.(C) No. 9592 of 2015 (Y)

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Dated this the 18th day of June, 2015

## J U D G M E N T

The petitioner on the basis of the judgment of the learned Single Judge, as affirmed by the Division Bench in the case of another contractor, urges before this Court that the amounts due, as claimed in the writ petition, should be directed to be paid by respondents 1 and 2. Admittedly, the petitioner had been awarded a work by the 1st respondent through the 2nd respondent. The work has been completed and amounts are due under the contract, is the allegation raised herein.

2. The K.I.T.C.O., the 2nd respondent, has come on record contending that the amounts are to be disbursed by the 1st respondent, though the work was awarded through them. The 1st respondent has also filed a statement in which, according to the 1st respondent, the amount payable to the petitioner is admittedly Rs.16,09,933/-. In such

circumstance, it is claimed that, going by the proposition as laid down in the judgments produced at Exts.P6 and P7, this Court could invoke the extra ordinary powers under Article 226 of the Constitution of India, and direct payment of the admitted amounts.

3. This Court, on a reading of Exts.P6 and P7, does not discern any declaration of law as such but only the discretionary remedy having been invoked in the peculiar facts and circumstances of the case. A joint meeting was convened on the directions issued by the learned Single Judge in which certain decisions were taken. Primarily, it is to be noticed that the learned Single Judge invoked jurisdiction on the specific admission made by the respondents in the joint meeting held in pursuance of the directions. No such admission is made hereunder and reliance is placed on the admission that about Rs.16,09,933/-, after statutory recoveries, are admitted as dues towards the 1st respondent.

4. The said admission has to be read in the totality of the pleadings made in the statement. Paragraphs 5 and 6 of the statement are extracted hereunder:

> “5. It is pertinent to point out that since M/s. KITCO was the executing agency, all the tenders for the work were invited by M/s. KITCO and M/s.KITCO have directly placed work orders and executed agreements with the contractors. In the aforesaid DO letter No.8057/KTDC MD/2013 dated 27.03.2013, it was informed that the work order value is Rs.77,34,970/- (Rupees seventy seven lakhs thirty four thousand nine hundred and seventy only). Out of which the final bill amount is Rs.66,86,000/- (Rupees sixty six lakhs eighty six thousand only) and payment made was Rs.50,76,067/- (Rupees fifty lakhs seventy six thousand and sixty seven only). As intimated by M/s.KITCO, the balance amount payable to M/s.Johnson Lifts Pvt. Ltd. is Rs.16,09,933/- (Rupees sixteen lakhs nine thousand nine hundred and thirty three only) including statutory recoveries to be made. This is not the figure claimed by the petitioner in the writ petition. The figure available with KTDC is

only the statement given by M/s. KITCO and M/s.KITCO only knows the actual figures and position.

6. KTDC has released to M/s.KITCO the deposit amount of Rs.18.35 crores and M/s.KITCO has been distributing the amount as per their evaluation and the total final bill value comes only Rs.18,14,59,360/- (Rupees eighteen crores fourteen lakhs fifty nine thousand three hundred and sixty only). Therefore excess deposit amount of Rs.20,40,640/- (Rupees twenty lakhs forty thousand six hundred and forty only) is still with M/s.KITCO.”

5. Hence, it is clear that the 1st respondent has awarded the work through the 2nd respondent and payments are also to be made through the 2nd respondent. The clear stand of the 1st respondent is that they have already disbursed about Rs.18,14,59,360/- to the 2nd respondent and as per the re-conciliation of bills at their end, an amount of Rs.20,40,640/- is still remaining with the 2nd respondent which has to be paid to the petitioner. The 2nd respondent however, disputes the said computation.

6. In view of the disputes raised herein, it cannot, at all, be said that the claim made by the petitioner is an admitted amount. Further, the question of invocation of the extraordinary remedy under Article 226 of the Constitution of India, even when the respondent is an authority under Article 12 of the Constitution of India, had come up for consideration before the Hon'ble Supreme Court in **K.K. Saksena v. International Commission on Irrigation and Drainage and Others - (2015) 4 SCC 670** wherein the Hon'ble Supreme Court has held so in paragraph 43:

> "What follows from a minute and careful reading of the aforesaid judgments of this Court is that if a person or authority is "State" within the meaning of Article 12 of the Constitution, admittedly a writ petition under Article 226 would lie against such a person or body. However, we may add that even in such cases writ would not lie to enforce private law rights. There are a catena of judgments on this aspect and it is not necessary to refer to those judgments as

> that is the basic principle of judicial review of an action under the administrative law. The reason is obvious. A private law is that part of a legal system which is a part of common law that involves relationships between individuals, such as law of contract and torts. Therefore, even if writ petition would be maintainable against an authority, which is "State" under Article 12 of the Constitution, before issuing any writ, particularly writ of mandamus, the Court has to satisfy that action of such an authority, which is challenged, is in the domain of public law as distinguished from private law."

7. In such circumstance, going by the above binding precedent, the contract entered between the petitioner and the 1st respondent through the 2nd respondent cannot be said to be one in the public law domain. Further, on facts too there are disputes which cannot be resolved in a petition under Article 226 of the Constitution of India.

The writ petition would stand dismissed, however, leaving open the remedies of the petitioner before the appropriate civil forum.

Sd/-
K.VINOD CHANDRAN,
JUDGE

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