

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE V.CHITAMBARESH

WEDNESDAY, THE 4TH DAY OF MARCH 2015/13TH PHALGUNA, 1936

WP(C).No. 16177 of 2013 (V)

PETITIONER:

**KESORAM INDUSTRIES LTD
BIRLA TYRES DIVISION, 9/1 R.N.MUKHERJEE ROAD
KOLKOTA-700 001
REPRESENTED BY ITS POWER OF
ATTORNEY HOLDER K.C.MADHUSUDANAN
S/O.K.P.CHELLAPPAN PILLAI, BIRLA TYRES
40/7035 JEW STREET, KOCHI-682 035.**

**BY ADVS.SRI.SAJI VARGHESE KAKKATTUMATTATHIL
SRI.P.BENJAMIN PAUL**

RESPONDENTS:

**1. KERALA STATE ROAD TRANSPORT CORPORATION
REPRESENTED BY THE MANAGING DIRECTOR
TRANSPORT BHAVAN, FORT, THIRUVANANTHAPURAM. 695 023.**

*** ADDL. R2 IS IMPEADED**

**2. THE DEPUTY TAHSILDAR (RR)
KANAYANNUR TALUK, ERNAKULAM, KOCHI 682 011.**

**ADDL. R2 IS IMPEADED AS PER ORDER DATED 03.03.2015 IN
IA.2794/2015**

**R1 BY ADVS. SRI.BABU JOSEPH KURUVATHAZHA,SC,KSRTC
SRI.M.GOPIKRISHNAN NAMBIAR, SC, KSRTC
DR. THUSHARA JAMES**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
04-03-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

DCS

APPENDIX

PETITIONER(S)' EXHIBITS

- P1- TRUE PHOTO COPY OF NOTARIZED POWER OF ATTORNEY DATED 28.9.2012.
- P2- PHOTO COPY OF THE PURCHASE ORDER NO.SRA1/1181/09 DATED 25.6.2009 ISSUED BY THE RESPONDENT.
- P3- TRUE COPY OF THE SUPPLY SCHEDULE OF THE PETITIONER AGAINST THE PURCHASE ORDER NO.SRA 1/1181/09 DATED 25.6.2009.
- P4- PHOTO COPY OF PURCHASE ORDER NO.SRA 1/001470/10 DATED 21.08.2010 ISSUED BY RESPONDENT.
- P5- TRUE COPY OF SUPPLY SCHEDULE OF THE PETITIONER AGAINST THE PURCHASE ORDER NO.SRA I/001470/10 DATED 21.08.2010.
- P6- PHOTO COPY OF PURCHASE ORDER NO.SRA1/036563/10 DATED 28.02.2011 ISSUED BY THE RESPONDENT.
- P7- PHOTO COPY OF LETTER NO.BT/EKM/KSRTC/85/2011-12 DATED 30.8.2011 ISSUED BY PETITIONER.
- P8- PHOTO COPY OF LETTER NO.SRAI/1181/09 DATED 01.08.2011.
- P9- PHOTO COPY OF THE JUDGMENT OF THE HON'BLE HIGH COURT OF KERALA IN W.P[C]NO.31483/2012 DATED 1.1.2013.
- P10- PHOTO COPY OF LETTER NO.SRAI/001470/2010 DATED 18.9.2010 ISSUED BY RESPONDENT.
- P11- PHOTO COPY OF ORDER NO.SRAI/1181/09 DATED 28.3.2013 ISSUED BY RESPONDENT.
- P16 (I.A. NO. 2794 OF 2015)- TRUE COPY OF THE DEMAND NOTICE DATED 09.02.2015 ISSUED BY THE 2ND RESPONDENT TO THE PETITIONER

RESPONDENT(S)' EXHIBITS:-

- R1(a)- COPY OF THE TENDER NOTICE DATED 28.06.2010 ISSUED BY THE RESPONDENT CORPORATION
- R1(b)- COPY OF THE CERTIFICATE DATED 14.07.2010 SUBMITTED ON BEHALF OF THE PETITIONER
- R1(c)- COPY OF THE LETTER DATED 31.07.2010 ISSUED BY M/S. BIRLA TYRES

/TRUE COPY/

P.A. TO JUDGE

DCS

V. CHITAMBARESH, J

W.P.(C). NO. 16177 OF 2013

Dated this the 04th day of March, 2015

JUDGMENT

It is trite law that one of the litigating parties cannot act as an arbitrator of the dispute. The petitioner claims a sum of Rs. 19,97,528/- towards the price of tyres, tubes and flaps supplied to the first respondent. The sum of Rs. 20,00,000/- furnished as bank guarantee and a sum of Rs. 2,00,000/- given as earnest money deposit is also sought to be realised from the first respondent.

2. The first respondent contends that there has been a short supply of material by the petitioner necessitating purchase from other quarters. The first respondent relies on Clauses 6 and 15 of the agreement entered into between the parties. The contention of the first respondent is that expenses incurred to the tune of Rs. 45,06,000/- for purchasing material from other quarters is liable to be recovered from the petitioner.

3. As to who has committed breach of the terms of the agreement is a matter to be established by evidence.

An independent forum has to assess the situation after extending opportunity to both the parties. The initiation of revenue recovery proceedings based on the rejection of a representation put in by the petitioner cannot be appreciated. Ext. P16 revenue recovery notice served on the petitioner without a proper adjudication of damages for alleged breach of contract cannot be sustained.

4. Ext. P16 revenue recovery notice is accordingly quashed leaving open the right of the parties to move the Civil Court for adjudication of their claims.

The writ petition is disposed of.

**V. CHITAMBARESH
JUDGE**

DCS