

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

FRIDAY, THE 13TH DAY OF MARCH 2015/22ND PHALGUNA, 1936

WP(C).No. 27217 of 2013 (B)

PETITIONER(S):

**GREEN METHOD ENGINEERING (P) LTD
REPRESENTED BY ITS EXECUTIVE DIRECTOR, ATC BUILDING
MOOLEPADOM NAGAR ROAD, H.M.T.JUNCTION, KALAMASSERY
KOCHI, PIN-683 104.**

**BY ADVS.SRI.C.V.MILTON
SRI.VIJAYAN. K.U.**

RESPONDENT(S):

**1. KITCO
REPRESENTED BY ITS CHAIRMAN AND MANAGING DIRECTOR
FEMITH'S P.B.NO.4407, PUTHIYA ROAD, N.H.BYPASS
VENNALA, KOCHI-682 028.**

**2. THE CHAIRMAN
COCHIN SPECIAL ECONOMIC ZONE AUTHORITY
GOVT. OF INDIA, MINISTRY OF COMMERCE AND INDUSTRY
KAKKANAD, COCHIN-682 037.**

**R1 BY ADVS. SRI.M.GOPIKRISHNAN NAMBIAR
SRI.P.GOPINATH
SRI.P.BENNY THOMAS
SRI.K.JOHN MATHAI
SRI.NITHIN GEORGE
R2 BY ADVS. SRI.JOSEPH MARKOSE (SR.)
SRI.V.ABRAHAM MARKOS
SRI.BINU MATHEW
SRI.TOM THOMAS (KAKKUZHIYIL)
SRI.ABRAHAM JOSEPH MARKOS
SRI.ABRAHAM VARGHESE THARAKAN
R2 BY SRI.N.NAGASRESH,ASG OF INDIA**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 12-01-2015
THE COURT ON 13-03-2015, DELIVERED THE FOLLOWING:**

PJ

APPENDIX

PETITIONER(S)' EXHIBITS

- P1- TRUE COPY OF THE AGREEMENT DATED 27.12.2010 BETWEEN THE RESPONDENTS 1 AND 2.**
- P2- TRUE COPY OF THE NOTICE INVITING THE TENDER.**
- P3- TRUE COPY OF THE AWARD OF WORK NO.8203/DP-529 SJN 2011 DATED 5.03.2011.**
- P4- TRUE COPY OF THE AGREEMENT DATED 18.03.2011 BETWEEN THE PETITIONER AND IST RESPONDENT.**
- P5- TRUE COPY OF THE COMPLETION REPORT NO.6576/DP.529 ANK 2012 DATED 16.10.2012.**
- P6- TRUE COPY OF THE LETTER NO.GME/CSEZ/KITCO/3210/2013 DATED 18.04.2013 AND 20.04.2013 WITH THE DEBIT CARD AND CREDIT A/C.**
- P7- TRUE COPY OF THE LAWYER NOTICE DATED 8.07.13 SENT TO THE IST RESPONDENT.**
- P8- TRUE COPY OF THE REPLY NOTICE DATED 8.07.2013 RECEIVED FROM THE IST RESPONDENT.**
- P9- TRUE COPY OF THE LETTER DATED 18.05.2011 RECEIVED FROM THE FEDERAL BANK LTD. SANCTIONING ONE CRORE RUPEES.**
- P10- TRUE COPY OF THE POWER OF ATTORNEY DATED 9.06.2011 GIVEN TO THE FEDERAL BANK LTD.**
- P11- TRUE COPIES OF THE PLANS AND DRAWINGS FOR THE TENDER PURPOSE ISUSED ALONG WITH THE TENDER FORM.**
- P12- TRUE COPIES OF THE ALTERED DRAWINGS APPROVED AND CERTIFIED BY THE ENGINEER-IN CHARGE.**
- P13- TRUE COPY OF THE CLAUSE 50 OF THE AGREEMENT DATED 18/3/11**
- P14- PAGE NOS.1,2,3,20,21,37 & 47 OF TENDER DOCUMENT VOLUME 1**

RESPONDENT(S)' EXHIBITS

- R1(A)- TRUE COPY OF AN EXTRACT FORM THE CONTRACT DATED 18/3/11 CONTAINING CLAUSE NO.55 WHICH PROVIDES FOR ARBITRATION**

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WP(C).No. 27217 of 2013 (B)

**R1(B)- TRUE COPY OF THE AGREEMENT DATED 28/2/11 EXECUTED BETWEEN THE
1ST RESPONDENT AND THE R2 WITHOUT ENCLOSURE**

**R1(C)- TRUE COPY OF THE SCOPE OF CONSULTANCY SERVICES WHICH IS
APPENDIX 1 TO THE AGREEMENT DATED 28/2/11 EXECUTED BETWEEN THE
R1 AND THE R2**

**R1(D)- TRUE COPY OF THE GENERAL CONDITIONS OF AGREEMENT WHICH IS
APPENDIX 1 TO THE AGREEMENT DATED 28/2/11 EXECUTED BETWEEN THE
R1 AND THE R2**

**R1(E)- TRUE COPY OF THE TERMS OF PAYMENT WHICH IS APPENDIX III TO THE
AGREEMENT DATED 28/2/11 EXECUTED BETWEEN THE R1 AND THE R2**

R2(A)- TRUE COPY OF R1 LETTER DATED 31/1/11

R2(B)- TRUE COPY OF THE LETTER DATED 22/2/11 OF THE R2

**R2(C)- TRUE COPY OF AGREEMENT EXECUTED BETWEEN THIS RESPONDENT AND
THE R1 KITCO APPOINTING THE R1 AS CONSULTANT**

R2(D)- TRUE COPY OF THE LETTER DATED 27/9/12 OF THE R1

**R2(E)- TRUE COPY OF THE LETTER DATED 14/12/12 SENT BY THIS RESPONDENT TO
THE R1**

/ TRUE COPY /

P.S. TO JUDGE

PJ

A.MUHAMED MUSTAQUE, J.

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**W.P.(C).No.27217 of 2013**  
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Dated this the 13th day of March, 2015

J U D G M E N T

This writ petition is filed by a contractor engaged by the first respondent for and on behalf of second respondent feeling aggrieved by non-payment of the balance amount of the work done to the tune of Rs.84,10,255/-. The first respondent was appointed as a Consultant and Maintenance Agency by the second respondent. The first respondent is a Public Sector Undertaking under the State and the second respondent is constituted by Government of India. The first respondent was given sanction to implement the work related to effluent treatment plant to discharge the treated water from the special economic zone to zero level by the second respondent. Based on the above

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sanction, the first respondent invited tenders for construction of the pond. The petitioner had quoted lower rate of Rs.1,82,84,150/-. The proposal of the petitioner was also acceptable to the second respondent. Accordingly, the petitioner and the first respondent entered into an agreement. The petitioner completed entire work. The petitioner claimed an amount of Rs.2,61,79,748/-. This amount is on account of variation of the works undertaken by the petitioner. The petitioner and the first respondent submit that the variation is due to insistence by the second respondent. Both refers to the various terms and conditions in the contract between the first and the second respondents to execute the additional work. The petitioner and the first respondent have no dispute regarding the additional work and the amount payable thereon. However, the second respondent disputes entitlement of the amount from them either to the petitioner or the first respondent.

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2. In contract, when there is a dispute, essentially, parties have to work out their remedy before the civil court or as agreed by arbitration. In the agreement entered into between the petitioner and the first respondent, there is an arbitration clause. The agreement entered into between the first and the second respondent also provides arbitration clause. However, there is no dispute between the petitioner and the first respondent. The dispute is referable to arbitration in terms of the agreement only in the event the parties have disagreement on issues referred in the arbitration clause. In the absence of any dispute between the petitioner and the first respondent, I do not find any need to relegate the petitioner to arbitration. The only point raised by the first respondent is that the second respondent is legally liable to pay the amount having benefited from the additional work executed by the petitioner. No doubt, if there is no dispute about entitlement, the petitioner's work having been benefited to the second

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respondent, the second respondent would have been liable under the law. The stranger to a contract can also sue if the contract enures to the benefit of the stranger as well. However, having disputed entitlement, this Court, invoking powers under the Article 226 of the Constitution cannot direct the second respondent to enforce the obligation under the contract.

3. In view of the facts and circumstances above, the first respondent is directed to pay the amount claimed by the petitioner within a period of three months. The first respondent is at liberty to proceed against the second respondent for recovery of the above amount in accordance with the law.

The writ petition is disposed of as above. No costs.

Sd/-

A.MUHAMED MUSTAQUE, JUDGE

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