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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE SYAM KUMAR V.M.

TUESDAY, THE 18TH DAY OF FEBRUARY 2025 / 29TH MAGHA, 1946

AR NO. 245 OF 2024

PETITIONER

M/S. INKEL LIMITED
AGED 33 YEARS
REPRESENTED BY ITS SENIOR MANAGER (LEGAL AND
ADMINISTRATION) DOOR NO. 7/473 ZA- 5&6, AJIYAL
COMPLEX, POST OFFICE ROAD, KAKKANAD, COCHIN,
PIN - 682030

BY ADVS.

AMITH KRISHNAN H.
P.DEVIKRISHNA
GAYATHRI C.H.
ANNA MARY MATHEW
B.G.HARINDRANATH (SR.)

RESPONDENTS

- 1 M/S. MANSIONS
RAGHU BHAVAN, TAGORE NAGAR, VAZHUTHAKKADU,
THIRUVANANTHAPURAM, PIN - 695014
- 2 COCHIN SMART MISSION LIMITED
9TH FLOOR, REVENUE TOWER, PARK AVENUE ROAD,
KOCHI, PIN - 682011



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BY ADVS.

Ranjith Varghese

RAHUL VARGHESE (K/000851/2010)

SANTHA VARGHESE (K/000450/1976)

GEO KENNEDY K. (K/003663/2022)

RANJAN BABU JOSEPH (K/003379/2023)

K.L.VARGHESE (SR.) (K/000208/1974)

THIS ARBITRATION REQUEST HAVING COME UP FOR ADMISSION
ON 18.02.2025, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

**ORDER**

The petitioner has filed this Arbitration Request invoking Section 11 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as “the Act”) seeking to appoint an Arbitrator to resolve the disputes that have arisen between the petitioner and the respondents.

2. The petitioner entered into Annexure A1 consultancy contract dated 08.07.2019 with the 2nd respondent, Cochin Smart Mission Ltd., for the project “Extension of Cancer Specialty Block for General Hospital, Ernakulam under Smart City Mission, General Hospital, Ernakulam.” In furtherance thereof, petitioner invited tenders vide Annexure A2, and the 1st respondent placed a bid. Being the successful bidder, Annexure A3 letter of acceptance was issued to the 1st respondent and Annexure A4 agreement was executed with the 1st respondent. Later disputes arose between the petitioner and 1st respondent and a reference was made to the Dispute Redressal Committee which rendered Annexure A5 . The 1st respondent was not agreeable to Annexure A5 and hence it invoked the arbitration clause viz, Clause 25 of Annexure A4 vide Annexure A6. The relevant arbitration clause



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envisaged a unilateral appointment of the Arbitrator by the Managing Director. As per the dictum in **Central Organisation for Railway Electrification v. ECI SPIC SMO MCML (JV) a joint venture company** [2024 SCC Online SC 3219] clauses enabling unilateral appointment of Arbitrators are invalid. Hence this Arbitration Request invoking Section 11 of the Act.

3. A counter affidavit has been filed by the 1st respondent. Averments in the Arbitration Request have been controverted therein and in paragraph 10 thereof, it has been stated that the relevant clause for appointment of the Arbitrator as per the Construction Contract Agreement is Clause 25 of 'General Conditions of Contract' which forms part of Annexure A4 'Construction Agreement' as stated in Clause 4 (viii) of the said agreement and not in the tender document referred to under Annexure A2. The extract of the General Conditions of Contract containing Clause 25 regarding the Settlement of Disputes and Arbitration has been produced as Annexure R1 (f). It is further stated in the counter affidavit that the 1st respondent is *"agreeable for appointment of an impartial Arbitrator by this Hon'ble Court with reference to all disputes between the petitioner herein, 1st respondent and 2nd*



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respondent under Annexure A4 Construction Agreement and Annexure R1 (a) Tripartite Agreement to Arbitration by a sole Arbitrator for adjudication of all disputes in terms of Annexure A6 notice and Annexure R1(e) notice.” No reply affidavit has been filed by the petitioner to the said counter affidavit by the 1st respondent. The 2nd respondent has not filed any counter-affidavit or objection to the prayers sought in the Arbitration Request or to the counter-affidavit filed by 1st respondent.

4. Heard Sri. B. G. Harindranath, Senior Advocate, instructed by Sri. Amith Krishna Advocate for the petitioner, Sri.Ranjith Varghese, Advocate for the 1st respondent and Smt. M.U. Vijayalakshmi Advocate for the 2nd respondent.

5. I note that the petitioner and the 1st respondent are at *ad idem* regarding the existence of a clause binding them to arbitrate the disputes and differences arising between them under Annexure A2 and Annexure A4. They are also in unison regarding the due invocation of the arbitration clause vide Annexure A6. Hence, I deem it fit and proper to allow the Arbitration Request and to appoint a retired District Judge from the panel of Arbitrators maintained by this Court as the Arbitrator to resolve the disputes/differences between the petitioner and the 1st respondent under Annexures A2 and A4.



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As regards Annexure A1 consultancy agreement between the petitioner and the 2nd respondent is concerned, the same does not contain an arbitration clause. Further the Arbitration Request does not state that any dispute or difference exists between the petitioner and the 2nd respondent. Moreover the Arbitration Request does not reveal that the dual test for compelling a non signatory to arbitration proceedings as laid down by the Honourable Supreme Court in **Ajay Madhusudan Patel v. Jyotrindra S Patel** [(2025) 2 SCC 147] has been satisfied as regards the 2nd respondent. Hence, arbitration under Annexure A2/A4 can only be between the petitioner and the 1st respondent. Though the 1st respondent has along with the counter affidavit produced a tripartite agreement (Annexure R1(a)) and a notice of invocation (Annexure R1(e)) issued to the 2nd respondent, there is no invocation of Section 11 by the 1st respondent. Hence, the mandates to direct the 2nd respondent to join in as a party to the arbitration proceedings sought vide this Arbitration Request are not seen met.

Accordingly, this Arbitration Request stands allowed as follows :

- (i) Sri.S.Jagadees (retired District Judge),
'Thoppil House', A.C.George Lane, Unichira,



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Thrikkakara P.O., Ernakulam, is nominated as the sole Arbitrator to resolve the disputes that have arisen between the petitioner and the 1st respondent under Annexure 2 and Annexure 4.

(ii) The learned Arbitrator may entertain all disputes/issues between the parties in connection with the said agreement, including questions of arbitrability, jurisdiction and limitation, if any, raised by the parties.

(iii) The Registry shall communicate a copy of this order to the learned Arbitrator within ten days from today and obtain a Statement of Disclosure from the learned Arbitrator as stipulated under Section 11(8) read with Section 12(1) of the Act.

(iv) Upon receipt of the Disclosure Statement, the Registry shall issue to the learned Arbitrator a certified copy of this order with a copy of the Disclosure Statement appended. The Original of the Disclosure Statement shall be retained in Court.

(v) The fees of the learned Arbitrator shall be



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governed by the Fourth Schedule of the Act.

Sd/-

SYAM KUMAR V.M.
JUDGE

smm

**APPENDIX OF AR 245/2024****PETITIONER ANNEXURES**

Annexure A1	A TRUE COPY OF THE CONSULTANCY CONTRACT DATED 08.07.2019
Annexure A2	A TRUE COPY OF THE TENDER DOCUMENT FLOATED BY THE PETITIONER
Annexure A3	A TRUE COPY OF THE LETTER OF ACCEPTANCE DATED 11.10.2019
Annexure A4	A TRUE COPY OF THE AGREEMENT EXECUTED BY THE 1ST RESPONDENT PURSUANT TO THE BID NO.46/GH-CSML/INKEL/2019-20 DATED 05.11.2019
Annexure A5	A TRUE COPY OF THE PROCEEDINGS OF THE DISPUTE REDRESSAL COMMITTEE DATED 07.10.2024
Annexure A6	A TRUE COPY OF THE LETTER DATED 04.11.2024 OF THE 1ST RESPONDENT GIVING NOTICE FOR APPOINTMENT OF ARBITRATOR

RESPONDENT ANNEXURES

Annexure - R1 (b)	True copy of statement filed before the Writ Court
Annexure - R1 (c)	True copy of letter dt. 22.09.2023
Annexure - R1 (d)	True copy of letter dt. 21.02.2024
Annexure - R1 (e)	True copy of the Notice for Arbitration issued by the 1st Respondent to the 2nd Respondent.
Annexure - R1 (f)	True copy of clause 25 of General Conditions of Contract
Annexure - R1 (a)	True copy of Tripartite Agreement entered into between the Petitioner, the 1st Respondent and the 2nd Respondent

