



2025:KER:38884

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE M.A.ABDUL HAKHIM

TUESDAY, THE 3RD DAY OF JUNE 2025 / 13TH JYAISHTA, 1947

AR NO. 95 OF 2025

PETITIONER:

M.I. MOHAMMED
AGED 66 YEARS
GOVERNMENT CONTRACTOR, MANATH BUILDING, THRIKKAKARA
P.O., KOCHI,
PIN - 682 021

BY ADVS.
SRI.K.BABU THOMAS
SMT.MARYKUTTY BABU
SMT.DRISYA DILEEP

RESPONDENTS:

- 1 M/S. HLL LIFE CARE LTD.
A GOVERNMENT OF INDIA ENTERPRISE, B-14A, SECTOR -
62,NOIDA, UTTAR PRADESH, REPRESENTED BY ITS CHAIRMAN
& MANAGING DIRECTOR, PIN - 201 307
- 2 THE DEPUTY VICE PRESIDENT
HLL BHAVAN, HLL LIFE CARE LTD., HLL INFRA TECH
SERVICES LTD., GOLDEN JUBILEE BLOCK, POOJAPPURA P.O.,
THIRUVANNTHAPURAM, PIN - 695012



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**3 THE ENGINEER-IN-CHARGE
HLL BHAVAN, HLL LIFE CARE LTD.,
HLL INFRA TECH SERVICES LTD., GOLDEN JUBILEE BLOCK,
POOJAPPURA P.O., THIRUVANANTHAPURAM, PIN - 695 012**

**BY ADVS.
SRI.AJU MATHEW
SHRI.NIKHILESH KRISHNAN
SRI.ABU MATHEW**

**THIS ARBITRATION REQUEST HAVING COME UP FOR ADMISSION ON
03.06.2025, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

**HIGH COURT OF KERALA
CERTIFIED COPY**



JUDGMENT

1. This Arbitration Request is filed by one of the parties to Annexure A1 agreement. Earlier, invoking the Arbitration Clause in Annexure A1 Agreement, the Managing Director of the 1st respondent had appointed an arbitrator, which was permitted therein. The Arbitrator completed the proceedings and passed Annexure A4 Award. Thereafter, the respondent who appointed the Arbitrator challenged the Award before the Commercial Court under Section 34 of the Arbitration and Conciliation Act, on the ground that the Arbitrator is nominated by one of the parties to the agreement without the written agreement of the other party and it is against the law settled by the Hon'ble Supreme Court. The said Award was set aside by the Commercial Court as per Annexure A5 order in A.O.P. No. 127/2021, finding that the ground raised is sustainable. Though



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the Petitioner herein has challenged the said order before this Court, the same was confirmed as per Annexure A6 order in O.P.(C) No.316/2024. Hence, the present Request is made for the appointment of a new Arbitrator by this Court.

2. The respondents have filed Objection opposing the prayers in the Arbitration Request. The Petitioner has filed a reply to the counter affidavit also.
3. I heard the learned counsel for the Petitioner Sri.Babu Thomas K and the learned counsel for the respondent Sri.Nikhilesh Krishnan.
4. The learned counsel for the Petitioner prayed that on appointment of the new arbitrator, the new Arbitrator may commence proceedings from the point where the evidence was concluded, since voluminous evidence had been recorded before the Arbitrator. The learned counsel invited my attention to the voluminous number of documents produced before the Arbitrator and the evidence of three witnesses examined before



the Arbitrator.

5. The said prayer was strongly opposed by the learned counsel for the respondent contending that in the order by which the award is set aside, it is specifically held that the award is *void ab initio* and all the proceedings are "*non est*". In view of the said finding, the evidence already recorded by the Arbitrator cannot be looked into and the Arbitration proceedings have to be commenced afresh from the very beginning. The learned counsel submitted that he has no objection to appointing a fresh Arbitrator by this Court.
6. Both the counsels relied on Section 43(4) of the Arbitration and Conciliation Act.
7. I have considered the rival contentions.
8. As rightly pointed out by the learned counsel for the respondents, there is an *inter partes* judgment binding on the parties, setting aside the Arbitration award finding that the appointment of the arbitrator is *void ab initio*; that the arbitral



proceedings was non est and that the Arbitration award is non est/ void. In such a case, the entire proceedings, which already took place before the arbitrator, are effaced. The fresh Arbitrator has to initiate the proceedings afresh. The question whether the evidence already tendered before the earlier Arbitrator is admissible before the fresh Arbitrator or not, is a matter for the fresh Arbitrator to consider, when such evidence is produced before the Fresh Arbitrator. While considering an Application under Section 11(6) of the Arbitration and Conciliation Act, this Court is not expected to give any direction with respect to the proceedings and admissibility of any document or evidence to the Arbitrator. Such questions are left open to be decided by the Arbitrator.

9. In view of the arbitration clause provided in the aforesaid Agreement and in view of the no objection submitted by the respondents, this Arbitration Request is allowed and it is ordered as follows:



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- 1. Justice Mrs. Sophy Thomas, Former Judge of this Court, Thannikkottil House (Prannoy Villa), Market Road, Trippunithura, Cochin-682301, Email:sophyjudge@gmail.com, Mob:9447328883** is nominated as the sole Arbitrator to resolve the disputes that have arisen between the petitioners and the respondents under the aforesaid Agreement.
2. The learned Arbitrator may entertain all issues between the parties in connection with the said aforesaid Agreement, including questions of jurisdiction and limitation, if any, raised by the parties. All contentions of the parties are left open and they are at liberty to raise their claims and counter-claims, if any, before the learned Arbitrator, in accordance with law.
3. The Registry shall communicate a copy of this order to the learned Arbitrator within ten days from today and



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obtain a Statement of Disclosure from the learned Arbitrator as stipulated under Section 11(8) read with Section 12(1) of the Arbitration and Conciliation Act, 1996. 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.

4. The fees of the learned Arbitrator shall be governed by the Fourth Schedule of the Act.
5. If the learned Arbitrator needs the assistance of an expert, such assistance can be sought from an expert in the course of the arbitration proceedings.

Sd/-

**M.A.ABDUL HAKHIM
JUDGE**

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APPENDIX OF AR 95/2025

PETITIONER ANNEXURES

- | | |
|--------------------|---|
| ANNEXURE A1 | TRUE COPY OF THE RELEVANT PORTION OF THE AGREEMENT DATED 31-7-2013 |
| ANNEXURE A2 | TRUE COPY OF NOTICE DATED 31-1-2020 |
| ANNEXURE A3 | TRUE COPY OF LETTER OF THE MANAGING DIRECTOR OF THE FIRST OPPOSITE PARTY DATED 16-3-2020 |
| ANNEXURE A4 | TRUE COPY OF THE AWARD DATED 18-8-2021 |
| ANNEXURE A5 | TRUE COPY OF ORDER PASSED IN A .O.P. NO.127 OF 2021 DATED 29-11-2023 |
| ANNEXURE A6 | TRUE COPY OF JUDGMENT IN O.P.(C) NO.316 OF 2024 DATED 26-3-2025 |

HIGH COURT OF KERALA
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**HIGH COURT OF KERALA
AT ERNAKULAM**

Number and Year of the Case : AR 95/2025
Name Of Applicant : AJU MATHEW
Number and Date of Application : B 4707/2025 , 03-06-2025
Date when the copy was delivered : 16-06-2025

Examiner



ONLINE COPY APPLICATION