



AR No.47 of 2026

2026:KER:23083

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE S.MANU

FRIDAY, THE 13<sup>TH</sup> DAY OF MARCH 2026 / 22ND PHALGUNA, 1947

AR NO. 47 OF 2026

PETITIONER:

ANOOP NAMBIAR,  
AGED 53 YEARS  
S/O.T.V.SETHUMADHAVAN NAIR, YEARS12855  
RING ROSE ST, LAS VEGAS, NV 89141, AND HAVING HIS  
PERMANENT ADDRESS AT, 'HARISREE', M.G.ROAD,  
MATTANUR, KERALA, PIN - 670702

BY ADVS.  
SHRI.P.JAYABAL MENON  
SMT.REKHA AGARWAL

RESPONDENTS:

- 1 UNION OF INDIA,  
REPRESENTED BY ITS SECRETARY,  
MINISTRY OF COMMERCE AND INDUSTRY,  
VANIJYA BHAWAN, NEW DELHI, PIN - 110011
- 2 SPECIAL ECONOMIC ZONE (SEZ INFOPARK),  
KORATTY, KERALA, REPRESENTED BY THE DEVELOPMENT  
COMMISSIONER, COCHIN SPECIAL ECONOMIC ZONE,  
PIN - 680308



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3        WOXRO TECHNOLOGY SOLUTIONS PRIVATE LIMITED,  
          SPECIAL ECONOMIC ZONE (SEZ INFOPARK), KORATTY,  
          KERALA, REPRESENTED BY ITS CHIEF EXECUTIVE  
          OFFICER, PIN - 680308

          BY ADV SHRI.MANSOOR.B.H., CGC

          THIS ARBITRATION REQUEST HAVING COME UP FOR ADMISSION  
ON 13.03.2026, THE COURT ON THE SAME DAY DELIVERED THE  
FOLLOWING:



**S.MANU, J.**

**CR**

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AR No.47 of 2026  
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Dated this the 13<sup>th</sup> day of March, 2026

**ORDER**

The petitioner entered into Annexure 1 agreement with the 3<sup>rd</sup> respondent, a Company functioning in the Special Economic Zone, Koratty, engaged in the business of developing software. Substantial disputes have arisen between the petitioner and the 3<sup>rd</sup> respondent. The petitioner issued Annexure 3 notice through his lawyer requesting the 2<sup>nd</sup> respondent to appoint an arbitrator for resolution of disputes between him and the 3<sup>rd</sup> respondent. According to the petitioner, the request was made in view of Section 42(3) of the Special Economic Zones Act, 2005 ('SEZ Act' for short). There is no response from the 2<sup>nd</sup> respondent yet.



2. This arbitration request has been filed under Section 11 of the Arbitration and Conciliation Act, 1996, seeking appointment of a suitable person as arbitrator to settle the dispute between the petitioner and the 3<sup>rd</sup> respondent.

3. When the learned counsel for the petitioner was called upon to explain how this application can be maintained under Section 11 of the Arbitration and Conciliation Act since the indispensable requirements to invoke the jurisdiction of this Court are absent, the learned counsel submitted that the petitioner has approached this Court since the 2<sup>nd</sup> respondent has not appointed an arbitrator as provided under Section 42(3) of the SEZ Act. According to the learned counsel, since the competent Authority has not appointed an arbitrator the petitioner is justified in approaching this Court under Section 11 of the Arbitration and Conciliation Act, 1996.



4. The Special Economic Zones Act, 2005, contemplates designation of a Special Court under Section 23 of the SEZ Act to try all suits of a civil nature arising in the Special Economic Zone and to try notified offences committed in the Special Economic Zone. If no Court has been designated under Section 23(1) of the SEZ Act, disputes of civil nature shall be referred to arbitration. The arbitrator shall be appointed by the Central Government. Thus, in the matter of resolution of disputes of civil nature, the SEZ Act envisages a special forum and in the absence of it, resort can be made to arbitration.

5. For clarity, reference to the relevant provisions of the Special Economic Zones Act is essential.

Section 23 of the SEZ Act reads as under:

**"23. Designated Courts to try suits and notified offences** - (1) The State Government, in which the Special Economic Zone is situated, may, with the concurrence of the Chief Justice of the High Court of that State, designate one or more courts-



- (a) to try all suits of a civil nature arising in the Special Economic Zone; and
- (b) to try notified offences committed in the Special Economic Zone.

(2). No court, other than the court designated under subsection (1), shall try any suit or conduct the trial of any notified offence referred to in that sub-section:

Provided that the courts, in which any suit of a civil nature in a Special Economic Zone had been filed before the commencement of this Act, shall continue to try such suit after such commencement:

Provided further that the courts, in which any trial of any notified offence is being conducted before the commencement of this Act, shall continue to conduct the trial of such offence after the commencement of this Act:

Provided also that the courts competent to try any notified offence, before the commencement of this Act, shall conduct the trial in respect of such offence after the commencement of this Act until the Courts have been designated under sub-section (1) and all such cases relating to such trials shall thereafter be transferred to such Courts so designated which shall conduct the trial from the stage at which such cases were so transferred.

Section 42 of the SEZ Act is extracted hereunder:

"42. **Reference of dispute** - (1) Notwithstanding anything contained in any other law for the time being in force, if -



(a) any dispute of civil nature arises among two or more entrepreneurs or two or more Developers or between an entrepreneur and a Developer in the Special Economic Zone; and

(b) the court or the courts to try suits in respect of such dispute had not been designated under sub-section (1) of section 23, such dispute shall be referred to arbitration:

Provided that no dispute shall be referred to the arbitration on or after the date of the designation of Court or Courts under sub-section (1) of section 23.

(2) Where a dispute has been referred to arbitration under sub-section (1), the same shall be settled or decided by the arbitrator to be appointed by the Central Government.

(3) Save as otherwise provided under this Act, the provisions of the Arbitration and Conciliation Act, 1996 shall apply to all arbitration under this Act as if the proceedings for arbitration were referred in settlement or decision under provisions of the Arbitration and Conciliation Act, 1996."

6. According to the petitioner, the State Government has not designated any Court under Section 23 of the SEZ Act. Therefore, the petitioner submits that the dispute arisen between him and the 3<sup>rd</sup> respondent is liable to be referred to arbitration. It is also submitted that the



arbitrator needs to be appointed by the Central Government as provided under Section 42(2) of the SEZ Act. Further the petitioner contends that the 2<sup>nd</sup> respondent, despite the notice issued, has failed to appoint an arbitrator. Petitioner maintains that the situation as narrated above is sufficient to invoke the jurisdiction of this Court under Section 11 of the Arbitration and Conciliation Act, 1996.

7. The jurisdiction of the High Court under Section 11 of the Arbitration and Conciliation Act is constricted. The same can be invoked only if the conditions mentioned under the various Sub Sections of Section 11 of the Act are satisfied. The power of the Court under Section 11 of the Arbitration and Conciliation Act is conferred, to be exercised in cases where there is no consensus among the parties to the dispute regarding appointment of the arbitrator. The



said power is bestowed on the Court to put an end to the stalemate in the matter of choosing the arbitrator and proceeding with arbitration, on account of variance of opinion among the parties. The Court has to satisfy that a valid arbitration agreement exists and a request as contemplated under Section 21 of the Arbitration and Conciliation Act was made by the applicant. The jurisdiction of the Court can be exercised only upon fulfillment of the requirements stipulated and on the existence of the circumstances mentioned in the provisions of Section 11 of the Arbitration and Conciliation Act.

8. In the instant case, the circumstances under which the power of the High Court under Section 11 of the Arbitration and Conciliation Act can be exercised do not exist. No valid arbitration agreement has been produced. No request has been made by the petitioner to the 3<sup>rd</sup>



respondent for appointment of an arbitrator.

9. The actual grievance of the petitioner is that the 2<sup>nd</sup> respondent has not appointed an arbitrator under Section 42(2) of the SEZ Act in spite of the request made by the petitioner. Arbitration as provided under Section 42 of the SEZ Act is a remedy provided in the absence of Courts designated under Section 23 of the SEZ Act. It is a special remedy. The said remedy shall therefore be invoked only as provided under the SEZ Act. Power to appoint an arbitrator under Section 42 of the SEZ Act is vested with the Central Government as precisely provided under Section 42(2) of the Act. Even if the said power is not exercised by the Central Government despite being requested to do so, the same cannot be a reason for the High Court to usurp the said power and appoint an arbitrator in a proceeding under Section 11 of the



### Arbitration and Conciliation Act.

10. The learned counsel for the petitioner referred to Section 42(3) of the SEZ Act and submitted that the provisions of the Arbitration and Conciliation Act shall apply to all arbitration under the SEZ Act and therefore the power under Section 11 of the Arbitration and Conciliation Act can also be invoked. This contention is the result of a misreading of the provisions of Section 42(3) of the SEZ Act. By virtue of Section 42(3), provisions of the Arbitration and Conciliation Act have been made applicable to the arbitrations under the SEZ Act "as if the proceedings for arbitration were referred in settlement or decision under the provisions of the Arbitration and Conciliation Act, 1996." The intention is obvious. When an arbitrator is appointed by the Central Government under Section 42(2) of the SEZ Act and the dispute is referred for arbitration, the arbitration



proceedings shall be in accordance with the provisions of the Arbitration and Conciliation Act, 1996.

11. Section 42(3) of the SEZ Act opens with the words "save as otherwise provided under this Act." It is a common legal archaism found in various provisions of several enactments. The said expression is employed by the legislature to carve out exception to the general application of the provisions of the Arbitration and Conciliation Act and to limit its application where contrary provisions exist elsewhere in the SEZ Act. Mode of appointment of the arbitrator has been specifically provided under Section 42(2) of the SEZ Act. Therefore, the provisions of the Arbitration and Conciliation Act, 1996, pertaining to the appointment of arbitrator can have no application to the appointment of arbitrators under the SEZ Act. If the interpretation canvassed by the learned counsel



for the petitioner is accepted that would be in violation of the plain language of Section 42(3) of SEZ Act.

Summing up the discussion, I hold that this arbitration request is misconceived. It is accordingly rejected as not maintainable. However, the rejection of this arbitration request shall not preclude the petitioner from seeking appropriate remedies in accordance with law to compel the appropriate authorities of the Central Government to consider his request for appointment of an arbitrator.

Sd/-

**S.MANU  
JUDGE**

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APPENDIX OF AR NO. 47 OF 2026

**PETITIONER ANNEXURES**

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|-------------------|--|
| <b>Annexure-1</b> | TRUE COPY OF AGREEMENT STYLED AS 'PROGRESSIVE WEB APPLICATION DESIGN & DEVELOPMENT PROPOSAL', DATED 11/04/2025 |
| <b>Annexure-2</b> | TRUE COPY OF AGREEMENT STYLED 'SOFTWARE REQUIREMENT SPECIFICATION DOCUMENTATION', DATED 21/04/2025             |
| <b>Annexure-3</b> | TRUE COPY OF THE LAWYER NOTICE, DATED 15/11/2025   |
| <b>Annexure-4</b> | TRUE COPY OF THE POSTAL RECEIPT  |
| <b>Annexure-5</b> | TRUE PRINTOUT OF THE CONSIGNMENT TRACKING REPORT OF THE DEPARTMENT OF POSTS                                    |