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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE T.R.RAVI

THURSDAY, THE 21ST DAY OF MAY 2026 / 31ST VAISAKHA, 1948

OP(C) NO. 77 OF 2026

AGAINST THE ORDER DATED 20.11.2025 IN IA 3/2025 IN OPARB
NO.35 OF 2025 OF COMMERCIAL COURT-II, ERNAKULAM

PETITIONER/APPLICANT:

R. SAMPATHKUMAR
AGED 69 YEARS
NO.102, 2ND FLOOR, 4TH MAIN ROAD,
NGEF LAYOUT SANJAYNAGAR,
BANGALORE NORTH,
KARNATAKA,, PIN - 560094

BY ADVS.
SHRI. BEJOY JOSEPH P.J.
SRI.M.RAMESH CHANDER (SR.)
SHRI. GOVIND G. NAIR
SRI.BONNY BENNY
SRI.BALU TOM

RESPONDENTS/RESPONDENTS:

1 THE MARINE PRODUCTS EXPORT DEVELOPMENT AUTHORITY
REPRESENTED BY ITS CHAIRMAN MPEDA HOUSE,
PANAMPILLY AVENUE, COCHIN,
PIN - 682036



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- 2 RAMASWAMY MUKUND
11/2, SHER E. PUNJAB CHS LTD.,
M.C.ROAD, ANDHERI (EAST),
MUMBAI, PIN - 400093
- 3 SUBADRA SAMPATHKUMAR
11/2, SHER E. PUNJAB CHS LTD.,
M.C.ROAD, ANDHERI (EAST),
MUMBAI, PIN - 400093
- 4 M/S. SUDESH SEAFOODS LTD.,
11/1, SHER E. PUNJAB CHS LTD., M.C.ROAD, ANDHERI
(EAST), MUMBAI,, PIN - 400093

BY ADVS.
SHRI.C.S.AJITH PRAKASH
SHRI.AMALJITH
SRI.HAARIS MOOSA

THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON
28.01.2026, THE COURT ON 21.05.2026 DELIVERED THE
FOLLOWING:



T.R. RAVI, J.

O.P.(C)No.77 of 2026

Dated this the 21st day of May, 2026

JUDGMENT

The prayer in the original petition is to set aside Ext.P4 order passed by the Commercial Court II, Ernakulam in IA No.3 of 2025 in OP (Arb.) No.35 of 2025 and to allow IA No.3 of 2025 and stay the operation and execution of the arbitration award of the sole Arbitrator till the disposal of OP(Arb.)No.35 of 2025. The 1st respondent is a statutory body constituted under the Marine Products Export Development Authority Act. As per a scheme for promoting projects for seafood processing, etc., the 1st respondent participated in the equity capital by subscribing to the equity shares of the 4th respondent Company. A financial collaboration agreement was executed on 18.11.1993, as per which the 1st respondent was allotted 3,60,000 equity shares of ₹10/- each in the equity capital. The share value was paid by the 1st respondent on 16.03.1994.



2. As per the agreement between the parties, the respondents before the Arbitrator were given the option to buy the equity shares held by 1st respondent at any time. The agreement also said that they were bound to buy the equity shares allotted to 1st respondent on the expiry of 5 years from the date of commencement of commercial production by the 4th respondent. The price for the purchase of the shares was also to be calculated as per the provisions of the agreement.

3. The 4th respondent commenced commercial production on 01.10.1998. When the Promoters failed to buy back the shares from the 1st respondent, the 1st respondent initiated the arbitration proceedings. On 13.03.2008, Justice J.M. James (Former Judge), was appointed as the sole Arbitrator. The Arbitrator passed an award on 04.05.2009. The said award was sought to be challenged by filing OP Arbitration No.407 of 2025, after the passage of 16 years. An application was filed to stay the execution of the arbitral award, which was dismissed by the Commercial Court by order dated 20.11.2025, copy of which has been produced as Ext.P4. The order has been challenged in these proceedings.



4. The main ground that has been raised is that the 4th respondent Company was under liquidation and when a Company is under liquidation no claims against the Company or its Directors are maintainable before any court or Arbitrator. According to the petitioners, the Arbitrator could not have proceeded with the arbitration after the order of winding up was issued. Reference is made to Sections 278, 279, 242 and 430 of the Companies Act. It is also contended that once the Company is wound up, the execution cannot be proceeded in view of Section 34(2)(a) of the Arbitration and Conciliation Act.

5. The respondents contended that a petition under Section 36(2) of the Arbitration and Conciliation Act is a mandatory requirement for staying an arbitral award. The petitioners had filed an application under Section 151 of the Code of Civil Procedure and ingredients of Section 36(2) and 36(3) have not been made out in the affidavit in support of the petition. Reliance is placed on the judgment of the Hon'ble Supreme Court in **Lifestyle Equities C. V. & Anr. v. Amazon Technologies Inc. [2025 SCC OnLine SC 2153]**, wherein the Hon'ble Supreme Court held that the power of



the appellate court to order stay of execution of a decree is to be exercised after ascertaining whether there will be substantial loss to the party applying for the stay, whether the application has been made without unreasonable delay and whether security has been given by the applicant for due performance of the decree. The counsel points out that none of the above aspects have been referred to in the affidavit in support of the petition. It is hence submitted that the order rejecting the stay cannot be interfered with.

6. In reply, the counsel for the petitioner submitted that the reason for delay in approaching the court was that the petitioner became aware of the proceedings only when paper publication was taken out.

7. Section 242 of the Companies Act deals with the powers of the Tribunal. A reading of the provision would show that it does not deal with the obligations as between the petitioner and respondents before the Arbitrator. The obligation which was sought to be enforced in the arbitration proceedings was that of the promoters to buy back the equity shares from the 1st respondent



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which had been subscribed to under a scheme for promoting new projects. The claim of the 1st respondent is not against the Company. Sections 278 and 279 of the Companies Act can have operation only with regard to claims against the Company and a winding up order will not automatically operate as a stay of further proceedings before the Arbitrator. The petitioner sought to place reliance on Section 34(2)(a)(i) of the Arbitration and Conciliation Act to submit that since the Company was wound up, there is an incapacity. Section 34(2)(a)(i) only says that an arbitral award may be set aside by the court if the party making the application establishes on the basis of the record of arbitral tribunal that a party was under some incapacity. As already found, the incapacity of the Company will not in any manner affect an award against its promoters.

8. A Division Bench of this Court in its judgment dated 13.11.2019 in Arbitration Appeal No.7 of 2009, considered a similar contention and held that after finding that the agreement was between the promoters and the 1st respondent in the said appeal, the appointment of a sole Arbitrator cannot be held to be illegal.



9. In the impugned order, the court below has noted that an arbitral award can be stayed only if there are issues with the arbitration process itself such as lack of jurisdiction of the arbitral tribunal, the arbitration agreement being invalid or not adhering to the applicable law, a party being incapacitated or a party not being given proper notice or inability of a party to present its case. The court found that this was a case in which the petitioner had proper notice and he had not brought to the notice of the court any instance wherein the petitioner was unable to present his case. The court found that without any material to show the incapacity of the petitioner, the execution proceedings cannot be stayed. The court also found that an arbitral award can be stayed if it is in conflict with the fundamental public policy of the country, which includes, the making of the award being induced by fraud or corruption or the award being in contravention with the fundamental policy of Indian law or the award being in conflict with basic notions of morality or justice. The court found that the petitioner has not brought out any such circumstances as well. It is seen from the affidavit in support of the petition that all that is stated is that the



applicant and the 4th respondent Company were incapacitated and could not have been subjected to arbitration proceedings and that the award is against public policy. Apart from the above statements, nothing else is stated to show how it is against the public policy or how the petitioner and the 4th respondent Company were incapacitated. As already observed, the incapacity of the Company by itself will not render the arbitration proceedings invalid since the proceedings relate to obligations as between the promoters and the 1st respondent. Even though several other judgments were cited during the argument, I do not think it is necessary to go into the same in view of the above conclusions.

The original petition fails and is dismissed.

Sd/-
T.R. RAVI
JUDGE



APPENDIX OF OP(C) NO. 77 OF 2026

PETITIONER EXHIBITS

- Exhibit P1** TRUE COPY OF THE ARBITRATION AWARD DATED 04.05.2009.
- Exhibit P2** TRUE COPY OF THE APPLICATION FILED BY THE PETITIONER UNDER SECTION 34 OF THE ARBITRATION ACT WHEREIN OP (ARB) NO.407/25 DATED 16.08.2025.
- Exhibit P3** TRUE COPY OF THE APPLICATION IN IA 3/25 IN OP(ARB)NO.35/25 DATED 16.08.2025.
- Exhibit P4** TRUE COPY OF THE ORDER OF THE COMMERCIAL COURT-II, ERNAKULAM IN IA 3/25 IN OP(ARB) 35/2025 DATED 20.11.2025.