



AR NO. 121 OF 2026

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE S.MANU

FRIDAY, THE 17TH DAY OF JULY 2026 / 26TH ASHADHA, 1948

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AGAINST THE ORDER DATED 09.10.2024 IN OP(ARB)NO.16/2022
OF THE COMMERCIAL COURT, ERNAKULAM

PETITIONER/CLAIMANT:

M/S.KLM AXIVA FINVEST LIMITED
HAVING ITS CORPORATE OFFICE AT KLM GRAND ESTATE,
BYPASS ROAD, EDAPPALLY, ERNAKULAM, REPRESENTED BY
ITS POWER OF ATTORNEY HOLDER MR.DHANESH K.S,
PIN - 682024

BY ADV SHRI.G.RENJITH

RESPONDENTS/RESPONDENTS:

- 1 SHINOY V.C.
S/O.CLEETUS, VAIKATHUSSERY HOUSE, ANGAMALY P.O,
MYTHRI NAGAR, ERNAKULAM, PIN - 683572
- 2 VARGHESE CLEETUS (DIED)
VAIKATHUSSERY HOUSE, ANGAMALY P.O, MYTHRI NAGAR,
ERNAKULAM., PIN - 683572
- 3 SHIBIN CLEETUS
S/O.VARGHESE CLEETUS, VAIKATHUSSERY HOUSE,
ANGAMALY P.O, MYTHRI NAGAR, ERNAKULAM,
PIN - 683572
- 4 SHINTO CLEETUS
S/O.VARGHESE CLEETUS, VAIKATHUSSERY HOUSE,



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ANGAMALY P.O, MYTHRI NAGAR,
ERNAKULAM, PIN - 683572

BY ADVS.

SMT.KHADEEJA RISHBATH KALLINGAL
SRI.ABHILASH AKBAR
SHRI.ASHISH GOPAL K G
SMT.NAMITHA PRASAD
SMT.VINIMOL V.S.
SHRI.SYAM K.P.
SHRI.P.MUHAMMED SHIYAS
SHRI.ARSHAD S.

THIS ARBITRATION REQUEST HAVING COME UP FOR ADMISSION ON
17.07.2026, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:



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ORDER

The petitioner is a Non-Banking Financial Company engaged in the business of extending financial services. The 1st respondent availed a loan of Rs.10 lakhs from the petitioner and Annexure-2 agreement was executed on 20.08.2015. Respondents 2 to 4 were the guarantors. The agreement contains an arbitration clause.

2. According to the petitioner the respondents failed to repay the loan as agreed. Hence the arbitration clause in the agreement was invoked and an arbitrator was appointed. The arbitrator passed Annexure-3 award on 20.11.2021 allowing the claims of the petitioner. Aggrieved by the award, the 1st respondent approached the Commercial Court, Ernakulam in O.P(Arbitration) No.16 of 2022. The prime contention raised by the 1st respondent was that the appointment of the arbitrator was unilateral and therefore illegal. The Commercial Court accepted the contentions of the 1st respondent and allowed the O.P(Arbitration) by setting aside the award. The O.P(Arbitration) was allowed by Annexure-4 order dated 09.10.2024. Thereafter the petitioner approached this Court in AR No.257 of 2025 seeking nomination of



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another arbitrator. This Court rejected the arbitration request as premature since no fresh notice was issued to the respondents after disposal of the O.P(Arbitration). In view of the order passed by this Court Annexure-6 notice was issued on 05.03.2026 and as there was no response from the respondents, this arbitration request was filed.

3. Respondents entered appearance.

4. Heard the learned counsel for the petitioner and the learned counsel for the respondents.

5. The learned counsel for the petitioner submitted that the initial round of arbitral proceedings culminated in Annexure-3 award. However the same was set aside by the Commercial Court vide Annexure-4 order and therefore the only remedy available to the petitioner is to nominate another arbitrator and to commence fresh arbitral proceedings. He submitted that the respondents committed default in repayment of the loan amount and the petitioner Company therefore sustained huge loss. He further submitted that the only option available to the petitioner Company to recover the amounts is to proceed with arbitration and hence this arbitration request may be allowed.



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6. The learned counsel for the respondents on the other hand submitted that the arbitration request is not maintainable. She submitted that the petitioner Company initiated arbitral proceedings by issuing a notice in the year 2020 after the Hon'ble Supreme Court rendered judgment in **Perkins Eastman Architects DPC and Another v. HSCC (India) Limited** [(2020) 20 SCC 760]. The petitioner Company unilaterally nominated an arbitrator and the said arbitrator proceeded with arbitration. She submitted that the nomination of the arbitrator itself being against the law declared by the Hon'ble Supreme Court, the entire duration of the arbitral proceedings as also period spent in prosecuting O.P(Arbitration) cannot be excluded for the purpose of limitation. She therefore submitted that the claims have become hopelessly time barred and therefore this arbitration request be dismissed.

7. The scope of adjudication of an application filed under Section 11 of the Arbitration and Conciliation Act, 1996 is constricted. This Court can consider only as to whether there is a valid arbitration agreement, in view of the provisions of Section 11(6)A of the Arbitration and Conciliation Act. If no elaborate enquiry is required and the claims



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are exfacie time barred, it may be open to a referral Court to reject the arbitration request.

8. However in the instant case the petitioner Company has a case that it was diligently prosecuting arbitration proceedings since 2020 and the arbitral award was set aside only in the year 2024. Further it is submitted that after the O.P(Arbitration) was allowed, an arbitration request was field before this Court which was rejected as premature clarifying the position of law that fresh notice shall be issued before commencement of fresh arbitral proceedings. It is submitted by the learned counsel for the petitioner that the Company thereafter issued a fresh notice and the instant arbitration request was filed after waiting for a period of 30 days from the date of receipt of notice by the respondents. To the contrary, the learned counsel for the respondents argued that the petitioner was not bonafidely prosecuting the arbitral proceedings and therefore periods spent on the previous arbitral proceedings and thereafter before the Commercial Court cannot be excluded for the purpose of considering whether the claims are time barred or not.

9. Section 43(4) of the Arbitration and Conciliation Act, 1996



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reads as under:

“43. Limitations.-

.....
(4) Where the Court orders that an arbitral award be set aside, the period between the commencement of the arbitration and the date of the order of the Court shall be excluded in computing the time prescribed by the Limitation Act, 1963 (36 of 1963), for the commencement of the proceedings (including arbitration) with respect to the dispute so submitted.”

10. It is clear from a reading of the provision that when a Court orders that an arbitral award is set aside, the period between the commencement of the arbitration and the date of the order of the Court shall be excluded in computing the time prescribed by the Limitation Act 1963. If the provision is strictly construed and applied to the facts of this case, the period from May 2020 to October 2024 would require to be excluded in computing the time prescribed by the Limitation Act.

11. Therefore the said issue is a contentious issue which is not within the province of this Court to analyse and decide in the instant proceeding, under Section 11 of the Arbitration and Conciliation Act. The said issue can be raised by the parties before the learned arbitrator as a preliminary issue. I find that the said issue can be therefore left for consideration by the arbitrator.



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12. In view of the submissions made by both sides, I am satisfied that serious disputes are pending between the parties pertaining to the obligations under Annexure-2 agreement. Annexure-2 indisputably contain an arbitration clause. Hence I am of the view that this arbitration request can be allowed and the following directions are issued:

- I. The Kerala High Court Arbitration Centre is directed to nominate an arbitrator from Panel – III, to resolve the disputes that have arisen between the petitioner and the respondents under Annexure-2 Agreement.
- II. The learned Arbitrator may entertain all issues between the parties in connection with the said 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 counterclaims, if any, before the learned Arbitrator, in accordance with law.
- III. The Registry shall communicate the substance of this order to the Kerala High Court Arbitration Centre within ten days and the Centre shall inform the learned Arbitrator within a further period of one week and shall obtain duly signed Form 3 as



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required under Rule 20(4) of the Kerala High Court (Arbitration Centre) Rules, 2025 and forward the same to this Court.

- IV. Upon receipt of the Form 3, the Registry shall issue a certified copy of this order with a copy of the Form 3 appended to the Kerala High Court Arbitration Centre. The original of the Disclosure Statement shall be retained by the Kerala High Court Arbitration Centre.
- V. The fees of the learned Arbitrator of the Kerala High Court Arbitration Centre shall be governed by Rule 28 of the Kerala High Court (Arbitration Centre) Rules, 2025. The manner in which the fees and costs payable by the parties shall be governed by Rule 27 of the Kerala High Court (Arbitration Centre) Rules, 2025.
- VI. If the learned Arbitrator needs the assistance of an expert, then he is at liberty to seek such assistance in the course of the arbitration proceedings.

Sd/-

**S . MANU
JUDGE**

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APPENDIX OF AR NO. 121 OF 2026

PETITIONER ANNEXURES

Annexure 1	TRUE COPY OF THE CERTIFIED COPY OF THE POWER OF ATTORNEY DATED 14.12.2019
Annexure 2	THE TRUE COPY OF THE LOAN AGREEMENT ENTERED BETWEEN THE PETITIONER BANK AND THE RESPONDENTS 1 TO 4 DATED 20.8.2015
Annexure 3	THE TRUE COPY OF THE ARBITRATION AWARD PASSED IN ARBITRATION REFERENCE BEARING NO. 33 OF 2020 (KLM) OF THE SOLE ARBITRATOR DATED 20.11.2021
Annexure 4	TRUE COPY OF THE ORDER OF THE HON'BLE COMMERCIAL COURT, ERNAKULAM IN OP (ARB) NO. 16 OF 2022 DATED 9.10.2024
Annexure 5	TRUE COPY OF THE JUDGEMENT IN ARBITRATION REQUEST. NO. 257 OF 2025 OF THE HON'BLE HIGH COURT OF KERALA DATED 22.1.2026
Annexure 6	TRUE COPY OF THE NOTICE INVOKING ARBITRATION SENT BY THE COUNSEL FOR THE PETITIONER TO THE RESPONDENT DATED 5.3.2026
Annexure 7	TRUE COPY OF THE ACKNOWLEDGEMENT CARDS RECEIVED BY THE COUNSEL FOR THE PETITIONER DATED 12.3.2026
Annexure 8	TRUE COPY OF THE ACKNOWLEDGEMENT CARDS RECEIVED BY THE COUNSEL FOR THE PETITIONER DATED 12.3.2026
Annexure 9	TRUE COPY OF THE ACKNOWLEDGEMENT CARDS RECEIVED BY THE COUNSEL FOR THE PETITIONER DATED 12.3.2026