

CNR : KLHC010275452026



2026:KER:62899

A.R.No.60 of 2026

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE S.MANU

FRIDAY, THE 14TH DAY OF AUGUST 2026 / 23RD SRAVANA, 1948

AR NO. 60 OF 2026

PETITIONER:

AVIRA THARAKAN
AGED 47 YEARS
S/O P A LALAN THARAKAN
RESIDING AT NAVAPURAM PARAYIL, EZHUPUNNA P.O.,
KERALA, PIN - 688537.

BY ADVS.
SHRI.PAUL JACOB
SMT.SHERU JOSEPH
SHRI.MATHEW THOMAS
SMT.NIKITTA TRESSY GEORGE
SHRI.DIPAK CHERIAN ABRAHAM
SHRI.KARAN JOSE THAYAMKERIL

RESPONDENT:

CYRIAC NJAVALLY
AGED 44 YEARS
S/O LATE ROY CYRIAC
RESIDING AT NJAVALLIL HOUSE, CHITTETHUKARA,
KAKKANAD, KOCHI, PIN - 682037.

BY ADVS.
SHRI.HARIKUMAR G. (GOPINATHAN NAIR)
SMT.IRENE BABU
SHRI.JAYASANKAR R.

THIS ARBITRATION REQUEST HAVING BEEN FINALLY HEARD ON
24.07.2026, THE COURT ON 14.08.2026 DELIVERED THE
FOLLOWING:



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S.MANU, J.

A.R.No.60 of 2026

Dated this the 14th day of August, 2026

ORDER

Annexure-A1 agreement dated 17.9.2019 was entered into between the petitioner and the respondent for transfer of 1803 equity shares in a company named Tharakan Web Innovations Private Limited. According to the petitioner, he became the sole legal and beneficial owner of the 'sale shares' mentioned in the agreement. On 23.10.2019, Annexure-A2 affidavit was executed by the respondent, wherein he acknowledged receipt of the full and final consideration in respect of the sale shares, that he does not have any right, title or interest remaining in respect of the shares transferred and also that he does not own any shares or any instruments convertible into shares in the company.



2. Petitioner states that the respondent subsequently raised a claim that he continues to hold 117 equity shares in the company and instituted proceedings under the provisions of Insolvency and Bankruptcy Code before the National Company Law Tribunal, Kochi Bench which was dismissed by this Court in W.P(C)No.27636/2020. Again, the respondent approached the NCLT under Section 241 of the Companies Act in Company Petition No.28/2022. Petitioner asserts that disputes have arisen between the petitioner and the respondent pertaining to the claim of the respondent that he owns over 117 equity shares in the company. Hence, invoking the arbitration clause in Annexure-A1 agreement, a notice was issued on 30.1.2026. Respondent did not respond to the notice. Later, this arbitration request was filed.

3. Respondent entered appearance and filed a counter affidavit raising various contentions and disputing the allegations and averments in the memorandum of arbitration request. According to the respondent, there are no arbitrable disputes arising



out of Annexure-A1 agreement. The disputes mentioned in the memorandum of arbitration request as also the notice issued are outside the scope of the arbitration clause. Those issues are pending adjudication before the NCLT, Kochi Bench in a company petition. Moreover, the invocation of arbitration clause is barred by limitation. Further it is alleged that the attempt of the petitioner is to circumvent the statutory proceedings. Hence, the respondent alleges that the arbitration request is not maintainable and is bereft of any merits.

4. Heard Sri.Paul Jacob, the learned counsel for the petitioner and Sri.Harikumar.G.Nair, the learned counsel for the respondent.

5. Learned counsel for the petitioner referred to the arbitration clause in Annexure-A1. The said clause is extracted hereunder:-

“9. ARBITRATION

Any dispute, controversy claims or disagreement of any kind whatsoever between or among the parties in



connection with or arising out of this Agreement or the breach, termination or invalidity thereof (hereinafter referred to as a "Dispute") shall be referred to and finally resolved by arbitration under the (Indian) Arbitration and Conciliation Act, 1996, as amended from time to time and the rules and regulations framed thereunder ("Arbitration Act"). The venue and seat of the arbitration shall be at Ernakulam and the arbitration shall be conducted in English by a sole arbitrator mutually appointed by the Parties in accordance with the provisions of the Arbitration Act."

6. He submitted that every dispute, controversy, claim or disagreement of any kind whatsoever arising out of the agreement is liable to be resolved by arbitration as mutually agreed by the parties. He submitted that by executing Annexure-A2 affidavit the respondent had affirmed that he did not own any shares or any instruments convertible into shares in the company. The affidavit was executed as per the terms of the agreement. The same was as provided under clause 3(a)(v) of Annexure-A1. Later, the respondent initiated proceedings before the NCLT claiming that he continues to hold 117 equity shares. The learned counsel submitted that in view of the said development it is clear that contention of the respondent



is contrary to the share transfer agreement and affidavit executed. He submitted that the arbitration clause in the agreement provides for the resolution of every controversy arising out of the agreement through arbitration. He further submitted that the petitioner therefore rightly invoked the arbitration clause. The learned counsel referred to the judgment of the Hon'ble Supreme Court in **Olympus Superstructures Pvt. Ltd. v. Meena Vijay Khetan and others** [(1999) 5 SCC 651] to explain the nature of the arbitration clause in the agreement and its connotation. He referred to paragraphs 25 and 26 of the judgment which are extracted hereunder:-

“25. It is true that there are two agreements in each of the three appeals before us. One is the main agreement relating to construction of flats and arbitration clause 39 is general and does not refer to any named arbitrator. It is also true that there is a separate arbitration clause 5 in the Interior Design Agreement which gives the names of specific arbitrators. But it must be noticed that clause 39 permits reference to arbitration not only of issues arising under the main agreement but also those disputes or differences which are "connected" with disputes arising under the main agreement. The following words in the main agreement are important:



"Otherwise as to any other matter in any way connected with, arising out of or in relation to the subject-matter of this agreement."

In other words, clause 39 refers to the "subject-matter" of the main agreement and also to "any other matters" and these "any other matters" if they are "connected with or arise out of or are in relation to the subject-matter of the main agreement, the disputes and differences concerning those "other matters" can also be referred to arbitration under clause 39 of the main agreement. In other words, parties intended arbitration in respect of the main disputes and connected disputes before one arbitral tribunal.

26. As to the meaning of the words "connected with, arising out of or in relation thereto", we may refer to Renusagar Power Co. Ltd. v. General Electric Co. [(1984) 4 SCC 679]. It was held that these words "are of the widest amplitude and content and include even questions as to the existence and effect (scope) of the arbitration agreement".

7. Further in paragraph 30 it was held as under:-

“30. If there is a situation where there are disputes and differences in connection with the main agreement and also disputes in regard to "other matters" "connected with the subject-matter of the main agreement then in such a situation, in our view, we are governed by the general arbitration clause 39 of the main agreement under which disputes under the main agreement and disputes connected therewith can be referred to the same arbitral tribunal.”



8. The learned counsel for the petitioner also referred to the judgment of a three-Judge Bench of the Hon'ble Supreme Court in **SBI General Insurance Company Limited v. Krish Spinning** [(2024) 12 SCC 1]. Reference to the following paragraphs of the said judgment is profitable in the instant case:-

“112. The difference between Sections 8 and 11, respectively, of the 1996 Act is also evident from the scope of these provisions. Some of these differences are:

112.1. While Section 8 empowers any “judicial authority” to refer the parties to arbitration, under Section 11, the power to refer has been exclusively conferred upon the High Court and the Supreme Court.

112.2. Under Section 37, an appeal lies against the refusal of the judicial authority to refer the parties to arbitration, whereas no such provision for appeal exists for a refusal under Section 11.

112.3. The standard of scrutiny provided under Section 8 is that of prima facie examination of the validity and existence of an arbitration agreement. Whereas, the standard of scrutiny under Section 11 is confined to the examination of the existence of the arbitration agreement.

112.4. During the pendency of an application under Section 8, arbitration may commence or continue and an award can be passed. On the other hand, under Section 11, once there is failure on the part of the parties in appointing the arbitrator as per the agreed procedure and



an application is preferred, no arbitration proceedings can commence or continue.

113. The scope of examination under Section 11(6-A) is confined to the existence of an arbitration agreement on the basis of Section 7. The examination of validity of the arbitration agreement is also limited to the requirement of formal validity such as the requirement that the agreement should be in writing.

114. The use of the term “examination” under Section 11(6-A) as distinguished from the use of the term “rule” under Section 16 implies that the scope of enquiry under Section 11(6-A) is limited to a prima facie scrutiny of the existence of the arbitration agreement, and does not include a contested or laborious enquiry, which is left for the Arbitral Tribunal to “rule” under Section 16. The prima facie view on existence of the arbitration agreement taken by the Referral Court does not bind either the Arbitral Tribunal or the Court enforcing the arbitral award.

115. The aforesaid approach serves a twofold purpose — firstly, it allows the Referral Court to weed out non-existent arbitration agreements, and secondly, it protects the jurisdictional competence of the Arbitral Tribunal to rule on the issue of existence of the arbitration agreement in depth.

116. Referring to the Statement of Objects and Reasons of the Arbitration and Conciliation (Amendment) Act, 2015, it was observed in Interplay Between Arbitration Agreements under the Arbitration Act, 1996 & the Stamp Act, 1899, In re [(2024) 6 SCC 1 : 2023 INSC 1066] that the High Court and the Supreme Court at the stage of appointment of arbitrator shall examine the existence of a prima facie arbitration agreement and not any other



issues. The relevant observations are extracted hereinbelow: (SCC p. 104, para 220)

“220. The above extract indicates that the Supreme Court or High Court at the stage of the appointment of an arbitrator shall “examine the existence of a prima facie arbitration agreement and not other issues [Ed.: The words between two asterisks have been emphasised in original as well.]”. These other issues not only pertain to the validity of the arbitration agreement, but also include any other issues which are a consequence of unnecessary judicial interference in the arbitration proceedings. Accordingly, the “other issues” also include examination and impounding of an unstamped instrument by the Referral Court at the Section 8 or Section 11 stage. The process of examination, impounding, and dealing with an unstamped instrument under the Stamp Act is not a time-bound process, and therefore does not align with the stated goal of the Arbitration Act to ensure expeditious and time-bound appointment of arbitrators.”

(emphasis supplied)

117. In view of the observations made by this Court in *Interplay Between Arbitration Agreements under the Arbitration Act, 1996 & the Stamp Act, 1899*, *In re [(2024) 6 SCC 1 : 2023 INSC 1066]*, it is clear that the scope of enquiry at the stage of appointment of arbitrator is limited to the scrutiny of prima facie existence of the arbitration agreement, and nothing else. For this reason, we find it difficult to hold that the observations made in *Vidya Drolia v. Durga Trading Corpn.*, *[(2021) 2 SCC 1 : (2021) 1*



SCC (Civ) 549] and adopted in *NTPC Ltd. v. SPML Infra Ltd.* [(2023) 9 SCC 385 : (2023) 4 SCC (Civ) 342] that the jurisdiction of the Referral Court when dealing with the issue of “accord and satisfaction” under Section 11 extends to weeding out *ex facie* non-arbitrable and frivolous disputes would continue to apply despite the subsequent decision in *Interplay Between Arbitration Agreements* under the Arbitration Act, 1996 & the Stamp Act, 1899, *In re* [(2024) 6 SCC 1 : 2023 INSC 1066].

.....
121. Tests like the “eye of the needle” and “*ex facie* meritless”, although try to minimise the extent of judicial interference, yet they require the Referral Court to examine contested facts and appreciate *prima facie* evidence (however limited the scope of enquiry may be) and thus are not in conformity with the principles of modern arbitration which place arbitral autonomy and judicial non-interference on the highest pedestal.

122. Appointment of an Arbitral Tribunal at the stage of Section 11 petition also does not mean that the Referral Courts forego any scope of judicial review of the adjudication done by the Arbitral Tribunal. The 1996 Act clearly vests the national courts with the power of subsequent review by which the award passed by an arbitrator may be subjected to challenge by any of the parties to the arbitration.

.....
126. The power available to the Referral Courts has to be construed in the light of the fact that no right to appeal is available against any order passed by the Referral Court under Section 11 for either appointing or refusing to appoint an arbitrator. Thus, by delving into the domain of the Arbitral Tribunal at the nascent stage of Section 11,



the Referral Courts also run the risk of leaving the claimant in a situation wherein it does not have any forum to approach for the adjudication of its claims, if its Section 11 application is rejected.

.....
128. *We are also of the view that ex facie frivolity and dishonesty in litigation is an aspect which the Arbitral Tribunal is equally, if not more, capable to decide upon the appreciation of the evidence adduced by the parties. We say so because the Arbitral Tribunal has the benefit of going through all the relevant evidence and pleadings in much more detail than the Referral Court. If the Referral Court is able to see the frivolity in the litigation on the basis of bare minimum pleadings, then it would be incorrect to doubt that the Arbitral Tribunal would not be able to arrive at the same inference, most likely in the first few hearings itself, with the benefit of extensive pleadings and evidentiary material.”*

9. Learned counsel for the respondent submitted that the arbitration request is not liable to be entertained. He submitted that the disputes subsisting between the parties are not confined to the interpretation or enforcement of the share transfer agreement. Parties were promoter directors of the company. Pertaining to the disputes between the parties, C.P.No.28/2022 is pending before the NCLT, Kochi. Attempt of the petitioner is to initiate arbitral



proceedings parallelly which is impermissible in law. The learned counsel also submitted that Annexure-A1 agreement cannot be relied on for initiating arbitral proceedings as the said agreement was fully performed, acted upon and exhausted. So also, there is no breach of the terms of the agreement by the respondents. Hence, in any view of the matter, the arbitration clause in the agreement cannot be invoked. Moreover, disputes relating to the affairs of the company are not arbitrable and the company is not a party to this arbitration request. Disputes pending before the NCLT are not extension of the contractual relationship that existed between the parties. Above all the proceedings are liable to be rejected solely on the ground of limitation. Proceedings were initiated before the NCLT as early as in the year 2022. Hence, the disputes were in existence in 2022 itself and at this distant point of time arbitral proceedings cannot be initiated.

10. The learned counsel relied on the judgment of a learned Single Judge of this Court in **Purushothaman Thitta v. Pothan**



Rajan and Another [2026 SCC OnLine Ker 5346]. He submitted that it was held by this Court referring to relevant provisions of the Companies Act, 2013 that disputes regarding restructuring of a company are not arbitrable. This Court directed that the arbitral proceedings be terminated, as the dispute before the arbitrator, qua the companies involved in the case, was essentially an intra-company dispute, and the company was not a signatory to the agreement relied upon for initiating the arbitral proceedings. In support of his contention pertaining to the issue of limitation the learned counsel relied on the judgments of the Hon'ble Supreme Court in **Alan Mervyn Arthur Stephenson v. J. Xavier Jayarajan** [2025 SCC OnLine SC 2227]. He submitted that, when the notice invoking arbitration was delayed and barred by limitation, the Hon'ble Supreme Court rejected the application for the appointment of an arbitrator. He also relied on the judgment of the Hon'ble Supreme Court in **Bharat Sanchar Nigam Limited and Others v. Notel Networks India Private Limited** [(2021) 5 SCC 738] to



contend that when claims are ex facie time barred, arbitration request can be rejected. He also made reference to the judgment of the Hon'ble Supreme Court in **Indian Oil Corporation Limited v. NCC Limited** [(2023) 2 SCC 539]. The learned counsel referred to the following observation of the Hon'ble Supreme Court in the judgment:-

“93. We are of the opinion that though the Arbitral Tribunal may have jurisdiction and authority to decide the disputes including the question of jurisdiction and non-arbitrability, the same can also be considered by the Court at the stage of deciding Section 11 application if the facts are very clear and glaring and in view of the specific clauses in the agreement binding between the parties, whether the dispute is non-arbitrable and/or it falls within the excepted clause. Even at the stage of deciding Section 11 application, the Court may prima facie consider even the aspect with regard to “accord and satisfaction” of the claims.”

11. He also referred to judgment of a learned Single Judge of this Court in **Baburaj v. Faizal** [2014 (2) KLT 238] wherein this Court declined nomination of arbitrator since there were serious allegations of fraud and misappropriation. He submitted that in



appropriate cases the Court exercising jurisdiction under Section 11 of the Arbitration and Conciliation Act can refuse reference. He also submitted that in view of the arguments advanced on behalf of the respondent the case at hand is a fit one wherein this Court should refuse reference.

12. Inquiry by the Court exercising referral jurisdiction under Section 11 of the Arbitration and Conciliation Act is a constricted one. Section 11(6A) mandates that the referral court shall confine to the examination of the existence of an arbitration agreement. In **SBI General Insurance Company Limited**(supra) it was clarified that use of the term ‘examination’ under Section 11(6A) as distinguished from the use of the term ‘Rule’ under Section 16 implies that the scope of inquiry under Section 11(6A) is limited to a prima facie scrutiny of the existence of the arbitration agreement and does not include a contested or elaborate inquiry which is left for the arbitral tribunal to rule under Section 16. The prima facie scrutiny on existence of the arbitration agreement is also limited to



the requirement of formal validity such as the requirement that the agreement should be in writing. No adjudication beyond the said limit is contemplated.

13. It is also well settled by the judgment in **Aslam Ismail Khan Deshmukh v. Asap Fluids Private Limited and Another** [(2025) 1 SCC 502] that the issue of limitation shall be left to the decision of the arbitrator. A three-Judge Bench of the Hon'ble Supreme Court held as under:-

“43. Therefore, while determining the issue of limitation in the exercise of powers under Section 11(6) of the 1996 Act, the referral Court must only conduct a limited enquiry for the purpose of examining whether the Section 11(6) application has been filed within the limitation period of three years or not. At this stage, it would not be proper for the referral Court to indulge in an intricate evidentiary enquiry into the question of whether the claims raised by the petitioner are time-barred. Such a determination must be left to the decision of the arbitrator.

44. After all, in a scenario where the referral Court is able to discern the frivolity in the litigation on the basis of bare minimum pleadings, it would be incorrect to assume or doubt that the Arbitral Tribunal would not be able to arrive at the same inference, especially when they are equipped with the power to undertake an extensive



examination of the pleadings and evidence adduced before them.”

14. In view of the judgment in **Aslam Ismail Khan Deshmukh** (supra) rendered by the three-Judge Bench of the Apex Court it is not ordinarily open to the referral court to reject arbitration request on the ground of the claims allegedly being time barred.

15. I shall now analyse the contentions raised by the learned counsel for the respondent objecting reference keeping in mind the principles laid down in the judgments referred above.

16. It is the contention of the respondent that proceedings are pending before the NCLT pertaining to the company and therefore arbitral proceedings cannot be permitted on the basis of Annexure-A1 agreement. Learned counsel relied on the judgment of a learned Single Judge of this Court in **Purushothaman Thitta** (supra). The said judgment was rendered in an original petition filed against a preliminary order passed by an arbitral tribunal rejecting



the contention of the opposite party that the disputes involved in the said case were not arbitrable. The jurisdiction of this Court in an original petition under Article 227 filed against an order of the arbitral tribunal and that under Section 11 of the Arbitration and Conciliation Act are incomparable. As noted above, inquiry by the Court under Section 11 is of a very limited ambit. The only aspect that can be examined is regarding existence of an arbitration agreement. In the case at hand, there is no dispute that Annexure-A1 agreement contains an arbitration clause. Of course, the respondent has a contention that the agreement was fulfilled and the arbitration clause has become inoperative. However, the said contention is a matter that requires deeper scrutiny. I am of the view that analysing such a contention is definitely not within the scope of the arbitration request.

17. Likewise, the prime contention of the learned counsel for the respondent that the dispute regarding the company is pending consideration before the NCLT and hence no arbitral proceedings



can be initiated on the basis of Annexure-A1 agreement is a contention pertaining to the arbitrability of the dispute raised by the petitioner. In view of Section 16 of the Arbitration and Conciliation Act, proper authority to determine such an issue is the arbitral tribunal. Prudent course open to this Court is to leave such issues to be considered by the arbitral tribunal.

18. It was also contended that the respondent had raised disputes in the year 2022 and therefore the arbitration request is time barred. However, the said contention was refuted by the learned counsel for the petitioner stating that the disputes are not time barred since the cause of action arose much later. Whether the claims are time barred or not is a dispute that would require an intricate inquiry in the facts and circumstances of the present case. The same shall also be left to be decided by the arbitral tribunal.

19. In the light of the foregoing discussion, I am of the view that this arbitration request can be allowed, leaving open all the contentions of the respondent for consideration by the arbitral



tribunal. It will be open to the respondent to raise the preliminary objections before the arbitral tribunal pertaining to the contentions raised before this Court.

20. Arbitration Request is allowed with the following directions:-

- I. The Kerala High Court Arbitration Centre is directed to nominate a sole Arbitrator from Panel-III, preferably from Ernakulam, to resolve the disputes that have arisen between the petitioners and the respondents under Annexure-A1 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 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**

skj

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APPENDIX OF AR NO. 60 OF 2026

PETITIONER' S ANNEXURES

Annexure A1	TRUE COPY OF THE SHARE TRANSFER AGREEMENT DATED 17.09.2019 EXECUTED BETWEEN THE RESPONDENT AND THE APPLICANT
Annexure A2	TRUE COPY OF THE AFFIDAVIT SOLEMNLY AFFIRMED AND EXECUTED BY THE RESPONDENT DATED 23.10.2019
Annexure A3	TRUE COPY OF THE COMPANY PETITION NO. 28 OF 2022 (EXCLUDING ANNEXURES) FILED BY THE RESPONDENT AND 2 OTHERS BEFORE NATIONAL COMPANY LAW TRIBUNAL, KOCHI BENCH.
Annexure A4	TRUE COPY OF THE NOTICE UNDER SECTION 21 OF THE ARBITRATION AND CONCILIATION ACT, 1996 DATED 30.01.2026 ISSUED BY THE APPLICANT TO RESPONDENT