

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
ARBITRATION PETITION NO. 40 OF 2016

Bridgestone India Pvt. Ltd.

..... Petitioner

VERSUS

M/s.Transocean Express Logistics Pvt.Ltd.

..... Respondent

Mr.Sandesh Shukla, a/w. Mr.Amit Singh, i/b.Abhay Nevagi & Associates for the Petitioner.

None for the Respondent.

CORAM : R.D. DHANUKA, J.

DATE : 5th AUGUST, 2016

P.C.

Learned counsel appearing for the petitioner states that the respondent has been already served with the notice and papers and proceedings of the arbitration petition. The petitioner has already filed affidavit of service dated 22nd July, 2016 which indicates that the arbitration proceedings as well as the notice of hearing has been already served upon the respondent. None appeared for the respondent though served. No affidavit-in-reply is filed.

2. The learned counsel appearing for the petitioner invited my attention to the arbitration agreement recorded in clause 15 of the agreement dated 10th January, 2014 annexed at Ex.B to the arbitration petition which provides that the dispute if any of the parties shall be referred to the sole arbitration of the managing director of the company or any other person nominated by him whose award shall be final and binding on both the parties.

3. The dispute arose between the parties. The respondent exercised their rights under clause 15.1 and appointed Shri V.K.Deshpande, former District and Sessions

Judge who has already accepted his appointment.

4. Learned counsel for the petitioner invited my attention to the correspondence annexed to the arbitration petition including the letter addressed by the respondent to the petitioner disputing the appointment of the learned arbitrator appointed by the petitioner under clause 15.1 of the said agreement. He submits that though the petitioner has rightly appointed the learned arbitrator by exercising rights under clause 15.1 of the agreement, as and by way of abundant caution, the petitioner has filed this petition under section 11(6) of the Arbitration and Conciliation Act, 1996 and thus this court shall confirm the appointment of Shri V.K.Deshpande as a sole arbitrator.

5. In my view since the said Shri V.K.Deshpande has been already appointed as an arbitrator by the petitioner and since the arbitrator is in place, this petition filed under section 11(6) is not maintainable.

6. Insofar as objection raised by the respondent in the correspondence about the appointment of the learned arbitrator by the petitioner is concerned, the respondent would be at liberty to raise such objection under section 16 of the Arbitration and Conciliation Act, 1996 before the learned arbitrator. Since there is no vacancy having arisen insofar as the appointment of the learned arbitrator is concerned, I am not inclined to accept this petition at this stage.

7. Arbitration petition is accordingly dismissed as not maintainable. No order as to costs.

[R.D. DHANUKA, J.]