

CORAM : MANISH PITALE, J
DATE : 7th DECEMBER, 2022

2. Learned counsel for the petitioner invited attention of this Court to the documents on record including a techno-commercial proposal dated 12th May, 2018, submitted on behalf of the petitioner in response to which, the respondent placed a purchase order. Attention was also invited to the letter dated 30th July, 2018 issued by the petitioner in response to the purchase order, re-iterating all the terms and conditions of the techno-commercial offer dated 12th May, 2018. On this basis, it was submitted that a concluded contract had taken place and one of the clauses i.e. clause No.9.5 of the techno-commercial proposal, which culminated into an agreement, provided for resolution of disputes between the parties by way of arbitration. It was emphasized that the clause specified the venue of arbitration as Pune and that clause No.12 pertaining to jurisdiction specified the Courts at Pune to have exclusive jurisdiction in the matter.

3. Certain disputes arose between the parties, due to which the petitioner initially issued a legal notice dated 6th June, 2019 and thereupon, issued the notice dated 2nd September, 2019, specifically invoking the arbitration clause. The petitioner also proposed the name of an arbitrator. In response, by communication dated 22nd September, 2019, the respondent alleged that there was no arbitration agreement between the parties, claiming that clause No.9.5 pertaining to arbitration had been inserted by the petitioner and that it was not agreed between the parties. It is in this backdrop that the present petition came to be filed.

4. Learned counsel for the petitioner submitted that considering the material placed on record, this Court may exercise jurisdiction under Section 11(6) of the said Act as the procedure agreed upon between the parties had failed.

5. Learned counsel for the respondent reiterated the objections raised in response to the notice invoking arbitration.

6. This Court has perused the material on record. There is substance in the contention of the petitioner that reading the techno-commercial proposal dated 12th May, 2018, in conjunction with the purchase order and the communication dated 30th July, 2018 issued by the petitioner, shows that a concluded contract arose and that clause No.9.5 of the techno-commercial proposal became an agreed arbitration clause between the parties. There is also substance in the contention raised on behalf of the petitioner that the place of arbitration ought to be Pune, for the reason that clause No.9.5 of the proposal provides the venue of arbitration to be at Pune and clause No.12

specifically provides exclusive jurisdiction of the Courts at Pune in the present matter.

7. Insofar as the objection raised by respondent is concerned, at this stage, the same cannot be decided and it can be left open to be decided before the learned arbitrator.

8. In view of the above, Justice S. R. Sathe, former Judge of this Court, is appointed as a sole arbitrator. Details of the learned arbitrator are as follows:-

Shri S. R. Sathe

A-802, Ruturang Apartment,
Behind Paranjape School,
Kothrud, Pune-411038.
Tel. No.: 020-2539 6407

9. Parties undertake to inform the learned arbitrator about the order passed today, at the earliest.

10. The learned arbitrator is requested to submit his consent and disclosure statement in terms of Sections 11(8) and 12(1) of the aforesaid Act within four weeks from today to the Registrar (Judicial) of this Court. The fees of the learned arbitrator shall be in terms of Fourth Schedule of the said Act.

11. All questions are left open to be decided by the learned arbitrator.

12. Petition stands disposed of in above terms.

(MANISH PITALE, J)