

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

ARBITRATION PETITION NO. 1 OF 2022

Bridgestone India Pvt. Ltd. ...Petitioner
Vs.
M/s. Tyre Shoppe India Pvt. Ltd. ...Respondent

Ms. Niyati Shah-Chitnis a/w. Mr. Abhishek Chitnis, for the
Petitioner.

Mr. Dilip Shukla, for the Respondent.

CORAM : MANISH PITALE, J.
DATE : 24 NOVEMBER 2022

P.C.

. The petitioner has filed present petition under Section 11(6) of the Arbitration and Conciliation Act, 1996, for appointment of an Arbitrator. This is in the context of a dealership agreement dated 3/2/2015 executed between the parties.

2. It appears that some disputes have arisen between the parties. There is admittedly an arbitration clause in the aforesaid agreement which reads as follows:

*19. Arbitration : Regardless of the place of contracting,
place of performance or otherwise, any dispute,*

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controversy or claims arising out of or relating to this Agreement or the breach, termination or invalidity thereof, shall be referred to the arbitration of a sole arbitrator in accordance with and subject to the provisions of Arbitration and Conciliation Act, 1996 and rules thereto as amended from time to time, who shall be the Managing Director of BSID or nominated by him. The award passed by such arbitrator shall be final and binding between the parties. The arbitration shall be held at Pune. The Award shall be made in writing and the language of the proceedings will be English. Any payment due from the Dealer to BSID as per terms of this Agreement shall not be withheld by the Dealer unless same happens to be a matter referred to the arbitrator and the Courts at Pune shall have the exclusive jurisdiction to deal with the arbitration proceedings and the awards in accordance with law.

3. The petitioner had issued notice dated 23/9/2020 invoking the arbitration clause. Being conscious of the position of law as laid down by the Supreme Court in the context of the amended Section 12(5) of the said Act read with Seventh Schedule thereof, the petitioner, on its own, proposed appointment of a neutral Arbitrator for the arbitration proceedings to be conducted at Pune.

4. On 1/10/2020, the respondent sent its reply, essentially stating that it could not afford arbitration proceedings at Pune although, the existence of dispute between the parties could not be denied.

5. Since there was failure in appointment of arbitrator in terms of the procedure agreed upon by the parties, the petitioner approached this Court by filing the present petition.

6. Upon service of notice, the respondent appeared through counsel today. The affidavit-in-reply is handed over on behalf of the respondent, which is taken on record. In the said affidavit-in-reply also, the respondent insisted that the arbitration proceedings ought not to take place at Pune.

7. This Court has considered the contentions raised by the learned counsel appearing for the rival parties. There can be no dispute about the fact that the arbitration clause in the said agreement is hit by Section 12(5) of the said Act read with Seventh Schedule of the said Act, for the reason that the clause stipulates that the Arbitrator shall be Managing Director of the petitioner or a person nominated by him. It is for this reason that while invoking the arbitration clause, the petitioner itself proposed appointment of a neutral Arbitrator. Two names were suggested as Arbitrators who are former Judges of this Court.

8. The learned counsel for the respondent reiterated the contention of the respondent that it could not afford arbitration proceedings to be conducted by a former Judge of this Court at Pune. It was submitted that since the petitioner has its office at Delhi and Gurgaon, the arbitration proceedings ought to take place at one of the said places, instead of Pune.

9. This Court perused the above quoted arbitration clause. It specifically stipulates that the dispute could be referred to Arbitrator at Pune and that it shall be subject matter of exclusive jurisdiction of the Courts at Pune. Since the respondent voluntarily agreed to such stipulation regarding place of arbitration in the arbitration clause, it cannot now lie in his mouth that the place of arbitration cannot be at Pune. In so far as the difficulty faced by the respondent about appointment of a former Judge of this Court as an Arbitrator, considering the cost implication, a retired District Judge could be appointed as the sole Arbitrator.

10. At this juncture, the learned counsel appearing for the rival parties jointly requested for appointment of Mr. S. B. Panse, a retired District Judge as the sole Arbitrator.

11. Accordingly, Mr. S. B. Panse, retired District Judge, is appointed as the sole Arbitrator. The details of the learned Arbitrator are as follows.

Shri. S. B. Panse
Vimal Nivas, Sudarshan Society,
Model Colony, Behind Post Office,
Canol Road, Pune – 411 016.

12. The parties shall inform the learned Arbitrator about the order passed today, at the earliest.

13. The learned arbitrator is requested to send his consent and disclosure statement as per Section 11(8) and 12(1) of the aforesaid Act, within four weeks from today to the Registrar (Judicial) of this Court.

14. The fees of the learned arbitrator shall be as per schedule IV to the said Act.

15. All contentions of the parties are kept open.

16. The petition stands disposed of, in aforesaid terms.

MANISH PITALE, J.