

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

ARBITRATION PETITION NO. 68 OF 2021

Wirtgen India Private Limited

...Petitioner

Versus

Variant Commercial Private Limited

...Respondent

Mr. Yogesh Patil i/b P. S. Legal for Petitioner.

None present for Respondent.

CORAM: DR. NEELA GOKHALE, J.

DATED: 3rd January 2024

PC:-

1. Mr. Yogesh Patil, learned Counsel for the Petitioner seeks appointment of a sole Arbitrator to decide the disputes arising out of an agreement for hire dated 22nd January 2016, the extended agreement dated 22nd April 2016 and the further extended agreement dated 25th May 2016.

2. Notice was issued by this Court vide order dated 21st September 2022. A further order dated 19th October 2022 records that although the office report shows that the service of notice on the sole Respondent was awaited, an advocate viz. Mr. Pankaj Jha had contacted the learned Counsel for the Petitioner claiming to have instructions to appear for the Respondent. The order dated 7th June 2023 records that there was no appearance put in by the Respondent even on that day and by way of last chance, the petition was stood

over to 19th June 2023. It was also made clear that, in the event, the Respondent remains absent on the next adjourned date, the arbitration petition will be heard in absence of the Respondent. The Petitioner was also directed to notify the Respondent of the order dated 7th June 2023 and file an affidavit of service to that effect on or before the next date. Accordingly, the Petitioner has served a copy of the order dated 7th June 2023 along with the copy of petition and the annexures thereof upon the Respondent and has filed an affidavit of service on 19th June 2023.

3. Thereafter, the matter was listed before this Court on 2nd January 2024 and again none appeared for the Respondent. The matter was listed again today and even today none appears for the Respondent. Thus, the matter is being taken up *ex-parte* for final hearing.

4. Mr. Yogesh Patil, learned Counsel for the Petitioner draws my attention to paragraph no. 17 of the agreement for hire dated 22nd January 2016, which is the arbitration clause of said agreement. The said clause reads thus,

“17. Arbitration & Jurisdiction :

The parties shall endeavor to settle all disputes through negotiations, failing which the dispute will be referred to arbitration of a Sole Arbitrator with mutual consent. The venue of arbitration shall be at Pune and the arbitration shall be governed by the provisions of the

Arbitration & Conciliation Act, 1996 or any modifications or amendment thereto. “Hirer do not possess / own Effective Control of the referred machine of Wirtgen India Private Limited. This machine is brought at our site for the purpose of and if necessary for the contractual activities assigned to Wirtgen India Private Limited. Wirtgen India Private Limited is retaining the effective possession and control of these machines.”

5. This agreement was extended from time to time and the extended agreement also contains the same clause.

6. The dispute has arisen between the parties to the agreement for hire originally executed on 25th May 2016 and extended by subsequent agreements. The Petitioner issued notice dated 19th October 2019 calling upon the Respondent to settle the disputes through negotiation, failing which the Petitioner stated that the dispute will be referred to arbitration as per the agreement. The Respondent issued a reply dated 14th November 2019 referring the notice of Petitioner dated 19th October 2019 and disputed the demand amount of Petitioner.

7. Paragraph no. 8 of the notice dated 19th October 2019 calls upon the Respondent to refer the matter for arbitration failing negotiation between the parties. There is no reply of the Respondent signifying a willingness to negotiate, neither to the further invocation of the arbitration clause by the Petitioner.

8. In view of the aforesaid, I am satisfied that the prayer of the Petitioner seeking appointment of an Arbitrator is justified. In the result, I pass the following order :-

ORDER

- a. **Ms. Shirin Merchant**, Advocate is appointed as a Sole Arbitrator to enter reference and adjudicate the disputes between the parties out of the Agreement dated 22nd January 2016. The seat of the arbitration shall be Pune as agreed by the parties in the clause 17 of the agreement.
- b. The learned Sole Arbitrator shall forward a statement of disclosure as per the requirement of Section 12(1) of Arbitration and Conciliation Act, 1996 to the Prothonotary and Senior Master of this Court to be placed on record of this petition with a copy forwarded to both the parties.
- c. At the first instance the parties shall appear before the learned Arbitrator within a period of ten days from the date of uploading of this order or on such date that may be fixed by the Sole Arbitrator.
- d. All contentions of the parties on merits of the disputes are expressly left open.
- e. The fees payable to the Arbitral Tribunal shall be in accordance with the Bombay High Court (Fee payable to the Arbitrator) Rules, 2018 which shall be borne by the parties in equal proportion.

- f. The petition is disposed of in the above terms. There will be no order as to costs.
- g. Office to forward a copy of this order to the learned Sole Arbitrator on the following address :

Office No. 4, East Street, Camp, Pune-411 001.

E-mail ID : Shireenmerchant@hotmail.com

(DR. NEELA GOKHALE, J.)

Digitally signed
by GITALAXMI
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KOTAWADEKAR
Date:
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