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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **ARB.P. 1120/2023**
IBOSS TECH SOLUTIONS PRIVATE LIMITED Petitioner

Through: Mr. Sarvesh Bhardwaj, Advocate.
versus

PODDAR TYRES LIMITED Respondent

Through: Mr. Aditya Jain and Ms. Aditi Gupta
and Ms. Gauri Puri, Advocates.

CORAM:
HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI
ORDER
% **21.05.2024**

By way of the present petition under section 11(6) of the Arbitration & Conciliation Act 1996 ('A&C Act'), the petitioner seeks appointment of a Sole Arbitrator to adjudicate upon the disputes that are stated to have arisen with the respondent from Agreement dated 23.07.2014 ('Agreement').

2. Notice on this petition was issued on 20.10.2023; consequent upon which reply dated 31.12.2023 has been filed by the respondents.
3. Pursuant to order dated 08.04.2024, the respondent has also filed written submissions in the matter.
4. The court has heard Mr. Sarvesh Bhardwaj, learned counsel appearing for the petitioner and Mr. Aditya Jain, learned counsel appearing for the respondent at length.
5. Upon a detailed consideration of the matter, it transpires that the claims in question arise from several invoices which were raised by



the petitioner upon the respondent between the period 04.05.2018 and 08.01.2019.

6. Mr. Bhardwaj argues that if in terms of para 5.1 and 5.3 of order dated 10.01.2022 made by the Supreme Court in *In re: Cognizance for Extension of Limitation*¹, the period between 15.03.2020 and 28.02.2022 is excluded for purpose of computing limitation and the petitioner is granted the benefit of 90 days' time from 01.03.2022 for invoking his remedies as permitted by that order, the invocation of arbitration in the present case is within limitation.
7. On a *prima-facie* view of the matter, this court is of the opinion, that though the issue of the claims being time-barred may arise in respect of some of the invoices, the claims in relation to other invoices appear to be within time.
8. Mr. Sarvesh Bhardwaj, learned counsel for the petitioner has drawn the attention of this court to article 18.2 of the Agreement which comprises the arbitration agreement; and contemplates reference of disputes between the parties to arbitration in accordance with the A&C Act; with the further stipulation that the arbitral proceedings "... shall be conducted in Delhi city only".
9. For completeness, it may be recorded that a separate territorial jurisdiction provision is also contained in article 19 of the Agreement, which subjects the contract between the parties to the jurisdiction of courts at Delhi.

¹ (2022) 3 SCC 117



10. As per the record, the petitioner invoked arbitration *vide* Notice dated 11.09.2023; to which the respondent sent a response *vide* reply dated 21.09.2023.
11. Upon a conspectus of the averments contained in the petition, the stand taken by the respondents, and the submissions made, this court is satisfied that there is a valid and subsisting arbitration agreement between the parties; that this court has territorial jurisdiction to entertain and decide the present petition; and also that the disputes that are stated to have arisen between the parties, as set-out *inter-alia* in invocation notice dated 11.09.2023, do not appear *ex-facie* to be non-arbitrable.
12. In view of the above, at this stage, learned counsel for the parties jointly request that this court may appoint an arbitrator; refer the matter for arbitration, keeping all their respective factual and legal contentions open; and to then hold the appointment in abeyance for 02 (two) months, affording to the parties sufficient time to attempt an amicable resolution of their *inter-se* disputes through mediation.
13. Accordingly, the present petition is allowed and **Mr. Aayush Agarwala, Advocate (Cellphone No.: +91 9999105064)** is appointed as the learned Sole Arbitrator to adjudicate upon the disputes between the parties.
14. The learned Sole Arbitrator would furnish to the parties requisite disclosures as required under section 12 of the A&C Act; and in the event there is any impediment to the appointment on that count, the parties are given liberty to file an appropriate application in this court.



15. The learned Arbitrator shall be entitled to fee in accordance with Fourth Schedule to the A&C Act; or as may otherwise be agreed to between the parties and the learned Arbitrator.
16. Parties shall share the arbitrator's fee and arbitral costs, equally.
17. All rights and contentions of the parties in relation to the claims/counter-claims are kept open, to be decided by the learned Arbitrator on their merits, in accordance with law.
18. Furthermore, in view of the request made by the parties, and to afford to them an opportunity for a negotiated settlement, the order appointing the arbitrator shall be held in abeyance for a period of 02 (two) months from today, during which time the parties are at liberty to attempt a negotiated settlement of their dispute, failing which, the order of appointment shall take effect.
19. Accordingly, at request, the parties are referred to mediation under the aegis of Delhi High Court Mediation & Conciliation Centre, with a request to the learned Organizing Secretary to appoint an appropriate mediator in the matter.
20. Let the parties approach the Mediation Centre on Monday *i.e.* 27th May 2024 at 02:30 p.m. for the above purpose.
21. A copy of this order be sent to the learned Organizing Secretary of the Mediation Centre, for information and compliance.
22. Parties are directed to sincerely attempt to settle their *inter-se* disputes through mediation within 02 months; and in the event settlement does not fructify within the said period, to approach the learned Arbitrator hereby appointed, within 10 days after the aforesaid two-month period.



23. Since the respondent is ordinarily based in Ludhiana, Punjab, the learned Mediator is requested to permit the officers/counsel for the respondent to join the mediation proceedings *via* video-conferencing.
24. A copy of this order be communicated by the Registry *via* e-mail to the learned Sole Arbitrator, as also to learned counsel for the parties.
25. The petition stands disposed-of in the above terms.
26. Other pending applications, if any, also stand disposed-of.

ANUP JAIRAM BHAMBHANI, J

MAY 21, 2024

V.Rawat