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IN THE HIGH COURT OF SOUTH AFRICA
KWAZULU-NATAL DIVISION, PIETERMARITZBURG

CASE NO: 3190/18P

In the matter between:

IHLOBO FOOTWEAR CC

APPLICANT

and

BATA SOUTH AFRICA (PTY) LTD

FIRST RESPONDENT

FUTURA FOOTWEAR LIMITED

SECOND RESPONDENT

ORDER

VAHED J:

As indicated at the conclusion of the argument on 2 August 2018 the following orders are made:-

- A. In the Second Contempt Application instituted by Notice of Motion dated 26 June 2018:-
1. Paragraphs 2.1.1 and 2.1.2 of the Rule Nisi issued on 2 July 2018 are confirmed.
 2. The Rule Nisi issued on 2 July 2018 is otherwise discharged.
 3. The first respondent is directed to pay the costs of the Second Contempt Application on a scale as between attorney and own client, such costs:
 - i. to include all orders for costs previously reserved in the Second Contempt Application;

- ii. to include the costs of two counsel where two counsel were employed;
 - iii. to exclude the costs associated with putting up copies of the First Contempt Application as part of the papers in the Second Contempt Application.
4. For the guidance of the taxing officials 45% (forty five per cent) of the time spent in Court on 2 August 2018 was devoted to the Second Contempt Application.

B. In the Main Application:-

1. In terms of Clause 28 of the Associate Business Unit Agreement signed by the applicant on 7 August 2015 and which appears as annexure "NC4" to the applicant's founding affidavit ("the Agreement"), the dispute between the applicant and the first respondent is referred to arbitration which is to be conducted in accordance with the provisions of the said Clause 28.
2. The principal dispute that will be the subject of the arbitration will be the determination of such damages (if any) allegedly sustained by the applicant during any period or periods up to and including (but not beyond) 28 February 2019.
3. During the arbitration the applicant shall retain its right to contend for and prove (according to the procedures set out in clause 28) that:-
 - i. Clause 29 of the Agreement is unenforceable to the extent that it provides for termination forthwith on thirty (30) days' written notice on the ground that in the circumstances of this matter, it is unconstitutional and contrary to public policy;
 - ii. The Agreement may not be terminated on less than one year's notice by either party, or such shorter period as the arbitrator deems just and equitable in the circumstances.

4. During the arbitration the first respondent shall retain its right to contend for and prove (according to the procedure set out in clause 28) that the cancellations of 1 March 2018 and/or 24 April 2018 were valid.
5. If, in terms of clause 28.3 of the Agreement, the parties fail to reach agreement as to the identity of the arbitrator within 10 days of the date of this order, the parties, or either of them shall be at liberty to approach the KwaZulu-Natal Law Society for such appointment to be made within 15 days thereafter.
6. The costs of the Main Application, including all reserved costs as well as the costs of two counsel where employed, shall be costs in the arbitration.

Vahed J

Vahed J
10/8/2018