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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of decision: 12.10.2021

+ **ARB.P. 651/2021**

TNSI RETAIL PVT LTD

..... Petitioner

Through **Mr.Varun Shankar & Mr.Divyanshu
Jain, Advs.**

versus

UNIWORLD LOGISTICS PRIVATE LIMITED Respondent

Through **None.**

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

J U D G M E N T (oral)

1. The present petition has been filed by petitioner seeking appointment of a Sole Arbitrator under the provisions of Section 11(6) of the Arbitration and Conciliation Act, 1996.
2. Petitioner, a Private Limited Company, incorporated with Companies Act, 1956 and engaged in the business of importing, distribution, marketing and sale of travel-oriented retail products such as packaged food items, books, gifts, confectionery, novelty items, etc. under the brand name “WH Smith” throughout the territory of India.
3. On the other hand, respondent is also a Private Limited Company,

incorporated under the Companies Act and is involved in the business of providing logistical and warehousing services.

4. As per the version of petitioner, petitioner and respondent executed the Warehouse Agreement dated 01.02.2016 in which petitioner agreed to engage respondent as a non-exclusive warehousing and logistics service provider. Petitioner transferred to respondent Rs.20,00,000/- via NEFT (NEFT no.N247180145659021). But inadvertently, due to accounting error, an amount of Rs.20,00,000/- was again transferred via NEFT (NEFT no.N264180153590801) to the respondent on the presumption that the said amount was not reflected in the petitioner's ledger account. After the audit done by Group Retail Audit Services, respondent agreed to pay Rs.10,00,000/- to the petitioner against the shrinkage in stock. As per full and final settlement, petitioner agreed to pay to the respondent Rs.13,95,856/- after adjusting shrinkage of Rs.10,00,000/- as full and final settlement of liability towards respondent. Thereafter respondent handed over the stock lying over at the warehouse to the petitioner. Petitioner and respondent exchanged various correspondences wherein petitioner claimed Rs.20,00,000/- which was sent on 01.10.2018 due to accounting error but while email dated 13.03.2019, respondent claimed Rs.3,25,358/- as per the

reconciliation statement.

5. As per the version of the petitioner, he exchanged several emails and communications, attempted to close the matter and arrive at an amicable resolution in the best interest of the Parties. However, the Respondent instead resorted to raising bogus claims to unjustly enrich itself and avoid any refund of the Payment received by them.

6. Thereafter, the Petitioner sent a legal notice on 01.07.2019 asking the respondent to pay excess amount of Rs.20,00,000/- within 30 days from the receipt of the notice but respondent failed to respond the same and thus, the Petitioner again sent notice on 12.01.2021 wherein he categorically invoked arbitration under Clause 26.2 of the Warehouse Agreement.

7. Respondent has filed reply wherein he stated that as per the Warehouse Agreement, respondent had to raise invoices for fees, for the services rendered to them which includes storage fees, for the warehouse space used by the petitioner.

8. As per the version of respondent, respondent company decided to shift the Warehouse Storage Facility, for the need to have larger warehousing space and expansion, from Khentaawas to their new Warehouse located in Tauru, both lie in Gurgaon, Haryana State, which lead

to the Termination of Warehouse Agreement dated 01.02.2016, by the Petitioner, as they did not want to move to Tauru and instead wished to move their stocks, to their own Warehouse.

9. As far as claim of petitioner for Rs.20,00,000/- is concerned, respondent has averred that he will clarify the same at the later stage. Petitioner sold 25% respondent's stocks till mid-September 2018 at a very slow pace despite respondent providing all transport arrangement to shift the stocks of the petitioner. In its reply, respondent has reserved its rights to raise the merits and demerits of the case in detail before learned arbitrator.

10. During the course of hearing, learned counsel appearing for the parties pressed that this Court may appoint Arbitrator to adjudicate the disputes pending amongst the parties.

11. Accordingly, **Mr. Babu Lal, DHJS (Retd.) (Mobile:9910384643)** is appointed as the sole Arbitrator to adjudicate the dispute between the parties.

12. The fee of the learned Arbitrator shall be governed by the Fourth Schedule of the Arbitration and Conciliation Act, 1996.

13. The learned Arbitrator shall ensure compliance of Section 12 of Arbitration and Conciliation Act, 1996 before commencing the arbitration.

14. Needless to say that all issues are open for the parties to be agitated before the learned Arbitrator.

15. With aforesaid directions, the present petition is, accordingly, disposed of.

(SURESH KUMAR KAIT)
JUDGE

OCTOBER 12, 2021
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