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

+ **ARB.P. 686/2023**

KRIVA CORPORATION

..... Petitioner

Through: Mr. Yashasvi Virender, Advocate.

versus

TIPPING MR PINK PVT. LTD.

..... Respondent

Through: Ms. Varuna Bhanrale, Ms.
Jojongandha Ray, and Mr. Mohit
Agarwal, Advs. (M. 9429986822)

CORAM:

JUSTICE PRATHIBA M. SINGH

ORDER

% **05.02.2024**

1. This hearing has been done through hybrid mode.
2. The present petition has been filed by the Petitioner – Kriva Corporation under Section 11 of the Arbitration and Conciliation Act, 1996 seeking for appointment of an Arbitrator for adjudication of dispute between the parties.
3. The dispute in the present matter arises out of a brokerage agreement dated 7th February, 2022 called as Business Brokerage agreement. The Respondent- Tipping Mr Pink Pvt. Ltd., who runs a food outlet under the names “Burger Singh” and “Momo Shomo” had engaged the Petitioner for the purpose of providing business brokerage services and allied services including franchise proposals and opportunities.
4. The agreement contains an arbitration Clause which reads as under:-

“12. GOVERNING LAW AND ARBITRATION

12.1 This Agreement shall be governed by and



construed in accordance with the laws of India.

12.2 In the event of any dispute, controversy or claim arising out of or in connection with this Agreement, including any question regarding its existence, validity or termination (Dispute), shall initially be resolved by amicable negotiations among the senior executives of the Parties.

12.3 If the Dispute is not resolved amicably within [30 (thirty)] days after receipt by one Party of the other Party's written request, the Dispute shall be referred to and finally resolved by arbitration under the Arbitration Act.

12.4 The arbitration shall be conducted in the English language and the arbitrator shall be appointed in accordance with such Arbitration Act.

12.5 The seat, or legal place, of arbitration shall be [New Delhi].

12.6 There shall be 3 (three) arbitrators, 1 (one) nominated by the claimant(s) in the notice for arbitration, the second nominated by the respondent(s) within [30 (thirty)] days of receipt of notice for arbitration, and third arbitrator, who shall act as the presiding arbitrator, shall be nominated by the 2 (two) arbitrators so appointed within a period of [15 (fifteen)] days of the nomination of the second arbitrator.

12.7 The arbitral tribunal shall have the authority to award all forms of relief determined to be just and equitable, provided that such tribunal shall have no authority to award punitive or exemplary damages.

12.8 Any arbitral award entered by such tribunal shall be final and binding on the parties hereto and may be enforced in a court of competent jurisdiction.

12.9 The existence of a Dispute, or the commencement or continuation of arbitration proceedings shall not, in any manner, prevent or postpone the performance of those obligations of Parties under the Agreement which are not in dispute. Nothing shall preclude a



Party from seeking interim equitable or injunctive relief, or both, from any court having jurisdiction to grant the same. The pursuit of equitable or injunctive relief shall not be a waiver of the duty of the parties to pursue any remedy for losses through the arbitration under this Clause 10.”

5. Initially, the Respondent was opposing the request for reference to arbitration on the ground that the arbitration agreement was not stamped. However, after the decision in ***Re:Interplay between Arbitration Agreements under the Arbitration and conciliation Act, 1996 and the Indian Stamp Act, 1899 (2023 INSC 1066)*** with regard to the stamping of the arbitration agreement rendered by the Constitution Bench, this objection is no longer pressed by the Respondent. The relevant paragraphs of the said judgement are set out below:

*“M. Conclusions in Civil Appeal No. 1599 Of 2020
234. The conclusions reached in this judgment are summarized below: -*

a. Agreements which are not stamped or are inadequately stamped are inadmissible in evidence under Section 35 of the Stamp Act. Such agreements are not rendered void or void ab initio or unenforceable;

b. Non-stamping or inadequate stamping is a curable defect;

c. An objection as to stamping does not fall for determination under Sections 8 or 11 of the Arbitration Act. The concerned court must examine whether the arbitration agreement prima facie exists;

d. Any objections in relation to the stamping of the agreement fall within the ambit of the arbitral tribunal; and

e. The decision in NN Global 2 (supra) and SMS Tea Estates (supra) are overruled. Paragraphs 22 and 29



of Garware Wall Ropes (supra) are overruled to that extent.”

6. However, it is submitted that by the Counsel for Respondents, that a Sole Arbitrator be appointed for the purposes of saving costs and for expeditious disposal.

7. The Petitioner has no objection for appointment of a Sole Arbitrator. Accordingly, with the consent of parties, instead of a three member tribunal as contemplated in Clause 12 of the said brokerage agreement, a Sole Arbitrator is appointed in this matter.

8. **Mr. Tejveer Singh Bhatia, Advocate (9899528289)** is appointed as a Sole Arbitrator who shall adjudicate the dispute between the parties. The fee of the Id. Sole Arbitrator shall be as per the fourth schedule of the Act as modified by the Delhi International Arbitration Centre (DIAC) Rules. Arbitration shall take place under the aegis of the procedural Rules of DIAC.

9. The Petition is disposed of with all pending applications, if any.

10. Parties to appear before the DIAC on 12th March, 2024.

11. Copy of this order be communicated to the Secretary of DIAC.

PRATHIBA M. SINGH, J.

FEBRUARY 05, 2024

mr/bh