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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **ARB.P. 1022/2023**
M/S ECOM EXPRESS LIMITED Petitioner
Through: Mr. Varun Tyagi, Advocate *via*
video-conferencing.
versus

MADBOW VENTURES LIMITED Respondent
Through: None.

CORAM:
HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

% **ORDER**
16.02.2024

By way of the present petition filed under section 11(3) of the Arbitration & Conciliation Act 1996 ('A&C Act' for short), the petitioner seeks appointment of a 03-Member Arbitral Tribunal to adjudicate upon the disputes that are stated to have arisen with the respondent from Courier Services Agreement dated 31.10.2017 ('Agreement').

2. Mr. Varun Tyagi, learned counsel for the petitioner has drawn the attention of this court to clause 12 of the Agreement which comprises the arbitration agreement between the parties; and contemplates reference of disputes between them to arbitration in accordance with the A&C Act; with the 'venue' and 'seat' of arbitration being at New Delhi.
3. For completeness, it may be recorded that a separate territorial jurisdiction provision is also contained in clause 14 of the Agreement,



which also subjects the contract between the parties to the jurisdiction of courts of law at New Delhi.

4. As per the record, the petitioner invoked arbitration *vide* Notice dated 28.06.2023; to which the respondent has not sent any reply.
5. Notice on this petition was issued on 05.10.2023.
6. By reason of the respondent having not been served through other modes, *vide* order dated 11.01.2024 an application filed by the petitioner on the principles of Order 5 Rule 20 of the Code of Civil Procedure, 1908 was allowed and the petitioner was permitted to serve the respondent by substituted service through publication.
7. Order dated 12.02.2024 made by the learned Joint Registrar records that the respondent has been duly served by publication in two newspapers, one in English and the other in Hindi on 29.01.2024.
8. Despite having been served, no one is present on behalf of the respondent today. No reply has been filed to the petition either.
9. Accordingly, this court is satisfied that having been duly served, the respondent has chosen not to be represented in the matter.
10. The respondent is accordingly set *ex-parte*.
11. Upon a conspectus of the averments contained in the petition 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 28.06.2023 do not appear *ex-facie* to be non-arbitrable.



12. Though clause 13 of the Agreement which comprises the arbitration agreement between the parties contemplates the parties to jointly appoint a Sole Arbitrator, the arbitration agreement also contemplates that upon the parties failing to jointly appoint a Sole Arbitrator, the Arbitral Tribunal would comprise a panel of 03 arbitrators, one to be appointed by each party with the 02 nominee arbitrators appointing the presiding arbitrator.
13. It is also noticed that upon the respondent failing to respond to the petitioner's invocation notice, the petitioner did not appoint its nominee arbitrator towards the 03-Member Arbitral Tribunal.
14. As set-out in Invocation Notice dated 28.06.2023 issued by the petitioner to the respondent, the claim by the petitioner is for about Rs. 6.62 lacs, along with interest.
15. In these circumstances, and since respondent has chosen to remain unrepresented in the matter, this court is of the view that the interests of justice will be served if a Sole Arbitrator is appointed to adjudicate upon the dispute between the parties.
16. Accordingly, the present petition is allowed and **Mr. Ashish Kumar Singh (Cellphone No.: +91 9971149676)** is appointed as the learned Sole Arbitrator to adjudicate upon the disputes between the parties; with arbitration proceedings to be conducted under the aegis of the Delhi International Arbitration Centre, New Delhi ('DIAC'), in accordance with applicable rules.
17. 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.

18. The learned Sole Arbitrator shall then proceed with the arbitral proceedings in accordance with the rules and regulations of DIAC and subject to arbitrator's fee and arbitration costs, as may be applicable.
19. All rights and contentions of the parties in relation to the claims/counter-claims are kept open, to be decided by the learned Sole Arbitrator on merits, in accordance with law.
20. A copy of this order be communicated *forthwith* to the Co-ordinator, DIAC, for information and compliance.
21. A copy of this order be sent by e-mail to the learned Sole Arbitrator, as also to learned counsel for the parties.
22. The petition stands disposed-of in the above terms.
23. Pending applications, if any, also stand disposed-of.
24. The Registry is directed to send a copy of this order to the respondent on the address and the e-mail ID available on record.

ANUP JAIRAM BHAMBHANI, J

FEBRUARY 16, 2024/MR