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

+ **ARB.P. 1103/2023**

ECOM EXPRESS LIMITED Petitioner
Through: **Mr.Ronmi Risom, Advocate**

versus

PARCIT AUTOCRAZY PRIVATE LIMITED Respondent
Through:

CORAM:
HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

% **ORDER**
05.01.2024

1. By way of the present petition filed under Section 11 of the Arbitration and Conciliation Act, 1996 (hereinafter, referred to as the 'A&C Act'), the petitioner seeks appointment of an arbitral tribunal comprising of a sole arbitrator to adjudicate the disputes between the parties.
2. Mr. Ronmi Risom, learned counsel for the petitioner submits that the petitioner is an e-commerce-focused courier services company incorporated under the Indian Companies Act. Learned Counsel submits that the respondent approached the petitioner for the purpose of availing services and therefore parties had entered into a Services Agreement dated 31.07.2021.
3. It is submitted that the said Agreement contains an arbitration clause (clause 16) in Section 24 of the agreement which provides as under:



“16. DISPUTE RESOLUTION: The Parties shall attempt to mutually resolve all disputes arising out of or in relation to this Agreement, including any question regarding its existence, validity or termination within 15 days of being brought to its attention ("Consultation Period") and if any such dispute is not resolved, the dispute shall be settled by arbitration governed by the provisions Arbitration and Conciliation Act, 1996. The Parties shall mutually appoint a sole arbitrator for arbitration proceedings within 15 days following the expiry of Consultation Period. If the Parties are not able to agree on a sole arbitrator, either of the Parties shall be entitled to approach the Court for the appointment of the arbitrator in terms of the Arbitration and Conciliation Act, 1996 (including the amendments thereto). The venue and seat of Arbitration shall be New Delhi and the language of arbitration shall be English. A dispute shall be deemed to have arisen when either Party notifies the other Party in writing to that effect. The Arbitral award passed by the Arbitrator shall be in writing and shall be final and binding on the Parties.”

4. Disputes having arisen between the parties, the petitioner invoked arbitration vide notice dated 28.06.2023, issued under Section 21 of the A&C Act and as per the arbitration clause that the place of arbitration would be at New Delhi and the claim amount is stated to be Rs.20,68,000/-.
5. The notice was issued vide order dated 08.12.2023, the respondent was sought to be served at the address mentioned in the service agreement and was also served through e-mail provided. The emails have not bounced back. Considering the same, the respondents are deemed to be served.
6. The scope of jurisdiction of the court under section 11(6) of the Arbitration and Conciliation Act is very limited to examine whether



an arbitration agreement exists between the parties. Reliance can be placed on *M/S Duro Felguera, S.A. vs Gangavaram Port Limited (2017) 9 SCC 729* wherein the court *inter-alia* held as under:

*The scope of the power under Section 11 (6) of the 1996 Act was considerably wide in view of the decisions in **SBP and Co.** (supra) and **Boghara Polyfab** (supra). This position continued till the amendment brought about in 2015. After the amendment, all that the Courts need to see is whether an arbitration agreement exists - nothing more, nothing less. The legislative policy and purpose is essentially to minimize the Court's intervention at the stage of appointing the arbitrator and this intention as incorporated in Section 11 (6A) ought to be respected.*

7. Considering the above submissions, the present petition is disposed of with the following directions.
 - i. The disputes between the parties under the said agreement are referred to the arbitral tribunal.
 - ii. As agreed, Mr. Brijesh Kumar Tamber, adv. (Enrl.No.D/1432/2003) (Mobile No.9891125411) is appointed as an Arbitrator to adjudicate the disputes between the parties.
 - iii. The arbitration will be held under the aegis of the Delhi International Arbitration Centre, Delhi High Court, Sher Shah Road, New Delhi hereinafter, referred to as the 'DIAC'). The remuneration of the learned Arbitrator shall be in terms of Schedule IV of the A&C Act.
 - iv. The learned Arbitrator is requested to furnish a declaration in terms of Section 12 of the Act prior to entering into the



reference.

- v. It is made clear that all the rights and contentions of the parties, including as to the arbitrability of any of the claim, any other preliminary objection, as well as claims on merits of the dispute of either of the parties, are left open for adjudication by the learned arbitrator.
 - vi. The petitioner shall approach the learned arbitrator within two weeks from today.
7. The petition is disposed of in the above terms.

DINESH KUMAR SHARMA, J

JANUARY 5, 2024

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