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

+ ARB.P. 1262/2022
ECOM EXPRESS LIMITED
Through:

..... Petitioner

versus

MODERN MODE APPERALS
Through:

..... Respondent

CORAM:
HON'BLE MR. JUSTICE PRATEEK JALAN

ORDER
31.01.2024

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1. By way of this petition under Section 11 of the Arbitration and Conciliation Act, 1996 [“the Act”], the petitioner seeks appointment of an arbitrator to adjudicate disputes arising between the parties under a Courier Services Agreement dated 13.07.2021 [“the Agreement”], whereby the petitioner was to provide courier services to the respondent.
2. The Agreement contains an arbitration clause (clause 16), which provides for arbitration by a sole arbitrator. The seat and venue of the arbitration has been designated as New Delhi. Jurisdiction has also been vested in Courts in Delhi by virtue of clause 17 of the Agreement.
3. The petitioner claims that disputes arose on account of unpaid invoices under the Agreement. The petitioner first addressed a notice dated 07.07.2022 to the respondent seeking conciliation. As the respondent failed to respond to the notice, arbitration clause was invoked by a legal notice dated 30.07.2022. This notice also failed to elicit a



response. It is in these circumstances that the present petition has been filed.

4. Notice was issued in this petition on 15.11.2023. The petitioner has filed two affidavits of service dated 06.02.2023 and 16.05.2023. The Court has recorded on 05.12.2023 that the respondent has chosen not to appear despite service. In fact, the order dated 13.02.2023 also records that one Mr. Kartik appeared on video conference and stated that he was the husband of the proprietor of the respondent concern. He was granted time to engage counsel. The respondent has not appeared since.

5. It appears from the order dated 05.12.2023 that the petition was kept pending awaiting the decision of the Supreme Court in Curative Petition (Civil) No. 44/2023 in Review Petition (Civil) No. 704/2021 in Civil Appeal No. 1599/2020. The Supreme Court has since decided the aforesaid proceedings and held that the question of stamping of the agreement is not germane to adjudication of a petition under Section 11 of the Act and may be left open for adjudication by the learned arbitrator.

6. In these circumstances, there is no impediment to the proceedings for hearing of the petition.

7. For the reasons stated above, I am *prima facie* satisfied that there exists an arbitration agreement which has been duly invoked. The respondent has also not appeared to controvert the submissions of the petitioner.

8. The petition is consequently allowed and disputes between the parties are referred for adjudication under the aegis of the Delhi International Arbitration Centre, Delhi High Court, Shershah Road, New Delhi ["DIAC"]. DIAC is requested to nominate an arbitrator from its



panel. The arbitral proceedings will be governed by the Rules of DIAC, including as to the remuneration of the learned Arbitrator.

9. The learned Arbitrator is requested to furnish a declaration in terms of Section 12 of the Act, prior to entering into the reference.

10. In view of the fact that the respondent has not entered appearance, it is made clear that it should be served in accordance with DIAC Rules in the arbitration proceedings.

11. It is made clear that all rights and contentions of the parties on maintainability or merits are left open for adjudication by the learned Arbitrator.

PRATEEK JALAN, J

JANUARY 31, 2024

“Bhupi”/