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

+ **ARB.P. 1216/2023**

CAMPUS ACTIVE WEAR LIMITED

..... Petitioner

Through: Mr. Zeeshan Hashmi, Mr. Ankit
Parashar, Advocates.

versus

**MR. KULDEEP PROPRIETOR OF-
M/S TYAGI TRADING COMPANY**

..... Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

ORDER

% **15.01.2024**

1. The present petition has been filed under Section 11 of the Arbitration and Conciliation Act, 1996 ["the Act"], seeking appointment of a sole arbitrator to adjudicate the disputes between the parties under a Distributor Agreement dated 01.04.2021 ["the Agreement"].
2. Learned counsel for the petitioner submits that the Agreement contains an arbitration clause, which provides that all disputes with respect to the Agreement, shall be referred to arbitration as per provisions of the Act, and further provides that the place of arbitration would be at Delhi.
3. Disputes having arisen between the parties, the petitioner invoked arbitration vide notice dated 12.09.2023, to which no response was received.

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4. Notice was issued in this petition on 20.11.2023. The Registry reports that notice has been served by ordinary mode at one of the addresses mentioned in the memo of parties. An affidavit of service has also been filed by the petitioner, showing that speed post delivery to two of the respondent's addresses has been returned with the reason "refused". However, it is stated that learned counsel for the petitioner has also served the respondent by e-mail on 15.12.2023, and the e-mail has not bounced back. The e-mail address mahavirtyagisnp@gmail.com is the same e-mail address as is mentioned in the Agreement. The petitioner has also attempted to serve the respondent at the address mentioned in the Agreement in terms of Clause 16 thereof. Although the respondent has not entered appearance, in view of the aforesaid facts, I am of the view that service has been effected, and it is not necessary to await the appearance of the respondent any further.

5. The petitioner has, *prima-facie*, established the existence of the arbitration clause and invocation thereof. The respondent has not come forward to controvert these submissions. For the present purposes, therefore, this is sufficient to appoint an Arbitrator, leaving it open to the respondent to raise all permissible defences before the learned Arbitrator.

6. For the aforesaid reasons, the petition is allowed and the proceedings are referred to arbitration of Mr. Rahul Kripalani, Advocate (Mob No. 9953049776).

7. The arbitration will be held under the aegis of Delhi International Arbitration Centre, Delhi High Court, Shershah Road, New Delhi ["DIAC"], and will be governed by the Rules of DIAC, including as to remuneration of the learned Arbitrator. The learned Arbitrator is



requested to furnish a declaration under Section 12 of the Act, prior to entering upon the reference.

8. As the respondent has not entered appearance in these proceedings, it is made clear that the respondent is required to be served in the arbitration proceedings, in accordance with the Rules of DIAC.

9. It is made clear that this Court has not adjudicated the rights and contentions of the parties on merits, which are reserved for adjudication by the learned Arbitrator.

10. The petition is disposed of in these terms.

PRATEEK JALAN, J

JANUARY 15, 2024
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