

ARB-192-2022

-1-

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

ARB-192-2022

Date of decision : 24.03.2023

Gateway Distriparks Ltd.

.....Applicant

Versus

Punjab State Container and Warehousing Corporation Limited

....Respondent

CORAM: HON'BLE MR. JUSTICE RAVI SHANKER JHA, CHIEF JUSTICE

Present: Mr. Puneet Bali, Senior Advocate, with
Mr. Abhisar Bairagi, Advocate,
Mr. Milind Jain, Advocate,
Mr. Vipul Joshi, Advocate,
for the applicant.

Mr. Gurminder Singh, Senior Advocate, with
Mr. Gurnoor Sandhu, Advocate,
for the respondent.

RAVI SHANKER JHA, CHIEF JUSTICE (Oral)

This is an application under Section 11 (6) of the Arbitration and Conciliation Act, 1996 (for short, 'the Act') filed by the applicant seeking appointment of an Arbitrator.

Though several issues have been raised in the application, it is observed that the notice dated 02.04.2022 (Annexure P-4) was issued by the applicant, seeking invocation of the arbitration clause contained in the O & M agreement dated 12.01.2007 (Annexure P-1) and appointment of an arbitrator. Vide the said notice, the applicant had asked the respondent to refer the dispute(s) to the existing Arbitral Tribunal, which was constituted on 06.05.2021 and which was seized of the prior

dispute(s) between the same parties arising out of the same agreement, as it was stated therein that attempts for amicable settlement had failed.

It is evident from the documents on record that no reply was filed by the respondent to the notice of the applicant. However, when the matter is taken up today, learned counsel for the parties fairly state that Arbitral Tribunal, to which the matter was sought to be referred is no longer in existence, as far as the dispute that was pending before it is concerned, as that Tribunal has already passed an award on 11.07.2022 and is not in existence today, and has, thus, become *functus officio*.

In such circumstances, learned counsel for the parties conjointly submit that in terms of clause 15.2 of the O & M agreement dated 12.01.2007 entered into between the parties, the parties would proceed ahead by nominating their Arbitrators, who in turn would thereafter appoint Presiding Arbitrator, and proceed further to resolve the dispute(s). Learned counsel for the parties agree that they will take necessary steps in accordance with clause 15.2 of the agreement within a period of one month. Learned counsel for the parties have also agreed that all the issues including the issue of arbitrability of the dispute would be taken before the Arbitrator.

Application stands disposed of accordingly.

(RAVI SHANKER JHA)
CHIEF JUSTICE

March 24, 2023
ndj

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No