

224 IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

ARB-347-2019

Date of decision: 9th May, 2023

M/s Krishna Amphibious Tours LLP

...Petitioner

Versus

State of Punjab and another

...Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Gunjeet Singh, Advocate for
Mr. Gagan Anand, Advocate for the petitioner.

Mr. Charanpreet Singh, AAG, Punjab.

Mr. Dinesh Kumar, Advocate for
Mr. Ankur Gupta, Advocate for respondents No.2.

AVNEESH JHINGAN, J (Oral):

1. This petition under Section 11(6) of the Arbitration and Conciliation Act, 1996 (for short 'the Act') is filed for appointment of an arbitrator.

2. The petitioner was allotted work of Operation and Maintenance of Amphibious Bus Service in Harike on PPP basis. Article 23 of the terms and conditions of the agreement provided for dispute resolution mechanism. Under Article 23.2, Chief Executive Officer, PHTPB had to mediate for an amicable settlement and in case of failure, the dispute is to be resolved through arbitration as per Article 23.3.

3. Article 23.4 deals with situation in case statutory tribunal or a forum is constituted to adjudicate the dispute between the parties. All disputes arising after the constitution of the Tribunal shall be adjudicated

by such forum or Tribunal instead of reference to arbitrator. Article 23.4 is reproduced below:-

“23.4 Adjudication by the Arbitration Tribunal

In the event of constitution of a statutory tribunal or other forum with powers to adjudicate upon disputes between the Concessionaire and the Authority, all Disputes arising after such constitution shall, instead of reference to arbitration under Clause 23.3, be adjudicated upon by such tribunal or other forum in accordance with Applicable Laws and all references to Dispute Resolution Procedure shall be construed accordingly.”

4. It is not disputed that Punjab Infrastructure Regulatory Authority (hereinafter referred as 'PIRA') was constituted in the year 2018. The petitioner approached PIRA with an application under Order XXXIX Rules 1 and 2 of the CPC which was rejected on 6th March, 2019.
5. Learned counsel for the petitioner submits that PIRA in its order dated 6th March, 2019, stated that the petitioner may invoke arbitration in terms of Article 23 of the agreement. The contention is that arbitrator be appointed in view of Article 23.3.
6. Learned counsel for the respondent opposes the prayer relying upon Article 23.4.
7. Article 23.4 shall not operate for the disputes arising after constitution of a statutory Tribunal or a forum empowered to decide the dispute between the parties. The PIRA was constituted in 2018 and claim raised by the petitioner is subsequent. In view of the plain language of Article 23.4, the matter has to be adjudicated by PIRA and no longer remains arbitrable.

8. The contention of learned counsel for the petitioner that PIRA directed that the matter be resolved through arbitration is misplaced. From perusal of the order dated 6th March, 2019, it is evident that the observations of PIRA was only to the extent that dispute resolution mechanism provided under Article 23 be resorted to. It would be apposite to mention here that Article 23.4 was not considered by PIRA.
9. In view of the clear terms and conditions agreed between the parties after constitution of the PIRA, no case is made out for issuing direction for appointing arbitrator, the petition is dismissed.
10. Needless to say that petitioner would be at liberty to avail remedies in accordance with law.
11. Since the main petition is dismissed, pending application, if any is rendered infructuous.

[AVNEESH JHINGAN]
JUDGE

9th May, 2023
Parveen Sharma

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| 1. Whether speaking/ reasoned | : | Yes / No |
| 2. Whether reportable | : | Yes / No |