

ARB-294-2021(O&M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

ARB-294-2021(O&M)
Date of decision:-06.02.2024

M/s Knight Frank (India) Pvt. Ltd.

...Petitioner

Versus

Punjab Heritage and Tourism Promotion Board

...Respondent

CORAM : HON’BLE MR. JUSTICE SUVIR SEHGAL

Present : Mr.Abhinav Sood, Advocate and
Mr.Anmol Gupta, Advocate
for the petitioner.

Mr.Dharam Vir Sharma, Sr.Advocate with
Ms.Pooja Yadav, Advocate
for the respondent.

SUVIR SEHGAL, J.(ORAL)

1. By way of instant petition filed under Section 11 (6) of the Arbitration and Conciliation Act, 1996 (for short “the Act of 1996”), petitioner has approached this Court for appointment of an Arbitrator to adjudicate the dispute between the parties.
2. Facts, in brief, may be noticed.

3. Petitioner is an International Property Consultant and entered into an agreement dated 29.08.2018, Annexure P1 with the respondent as a Transaction Advisor to provide its services for optimal utilization of unutilized properties under the control of Tourism Department and their development, operation and maintenance on public private partnership mode. The scope of the work was divided in three stages. Petitioner completed the first two stages and submitted its detailed reports. However, vide letter dated 7.10.2019, Annexure P6, respondent decided to curtail the scope of the work to the first stage and terminated the agreement. By its letter dated 28.11.2019, Annexure P7, petitioner requested the respondent to release the payment due to it. By its communication dated 17.12.2019, Annexure P8, respondent declined the claim of the petitioner for payment beyond Stage - I. A dispute arose between the parties and in terms of Clause 2 (v) of the agreement, Annexure P1, petitioner served a legal notice dated 25.02.2021, Annexure P10 invoking the arbitration clause. By its letter dated 18.03.2021, Annexure P11, respondent appointed a sole arbitrator. Relying upon the judgment of the Supreme Court in **Perkins Eastman Architect DPC and another Versus HSCC (India) Ltd. 2020 AIR SC 59**, this Court by order dated 01.04.2022, directed that the proceedings before the Arbitrator be adjourned beyond the date fixed by this Court.

4. Upon notice, respondent has filed a reply admitting the agreement, Annexure P1, which contains an arbitration clause as well as the legal notice, Annexure P10, invoking the arbitration clause. The respondent has resisted the petition by raising some objections, which are being dealt with in the succeeding paragraphs.

5. The first and foremost objection is that the respondent has been impleaded as a party through the Principal Secretary/Additional Chief Secretary Directorate, whereas it should have been made a party through the Chief Executive Officer. This objection simply deserves to be noticed and rejected. A perusal of the Memorandum of Parties of the petition shows that respondent has been impleaded through Principal Secretary/Additional Chief Secretary/Directorate/Chief Executive Officer.

6. Respondent has further objected to the appointment of an Arbitrator on the ground that in terms of the arbitration clause, the Principal Secretary, Tourism has appointed an arbitrator to adjudicate the dispute. It is the conceded case of the respondent that the Additional Chief Secretary is exercising dual roles. Besides acting as an Additional Chief Secretary, he is also one of the trustees of the respondent and is therefore interested in the result of the arbitration. In such a scenario, the said official is himself ineligible as also cannot appoint an arbitrator on behalf of the respondent, as has been settled by the Supreme Court in *Perkins's case* supra. In *M/s Glock Asia – Pacific Limited Versus Union of India (2023) 8 SCC 226*, Hon'ble, Supreme Court has held as under:

“23. In contrast, the arbitration clause in the present case enables a serving employee of the Union of India, a party to the contract, to nominate a serving employee of the Union of India as the sole arbitrator. Such an authorization is clearly distinct from the arbitration clause in Voestalpine Schienen GmbH (supra) and Central Organisation of Railway Electrification (supra) and is in

conflict with Section 12 (5) of the Act. It was informed at the bar that the correctness of judgment of Central Organisation of Railway Electrification has been challenged and referred to a larger Bench in Union of India Versus M/s Tania Constructions Ltd. 2021 SCC OnLine SC 271 as well as JWS Steel Ltd. Versus South Western Railways and another, 2022 SCC OnLine SC 1973. As we have noticed that the decision in Central Organisation of Railway Electrification (supra) is not applicable in the present case, its reference to the larger bench will have no bearing on the outcome of the present case.”

7. Yet another objection raised and insisted upon by the respondent, although during arguments, as it has never been taken in its written response, is that an Arbitrator has to be appointed under Section 55 of the Punjab Cooperative Societies Act of 1961 (for short – “Act of 1961”). This objection is frivolous. There is no material on the record to show that the respondent is registered as a co-operative society under the Act of 1961. Rather, as is evident from the Punjab Heritage and Tourism Promotion Board Byelaws, 2008, respondent was set up by the Government of Punjab by notification dated 14.08.2002 and was subsequently registered as a Public Charitable Trust on 05.12.2002. Moreover, in Arbitration Case No.358 of 2018 titled as “*The Kisan Workers Cooperative Labour and Construction Society Ltd. Versus The Amritsar Cooperative Labour and Construction and ors.*”, decided on 14.10.2022, a Coordinate Bench of this Court has held that Section 55 of the Act of 1961, which provides for reference to arbitration applies in respect of disputes touching the constitution, management or the

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business of a Cooperative Society. This is not the situation in the present case as neither the respondent is a society registered under the Act of 1961 nor the dispute falls within the ambit of Section 55 *ibid*.

8. Resultantly, all the objections raised by the respondent are overruled. At this stage, the Court deems it necessary to express its disapproval over the fact that the petitions for appointment of Arbitrator are generally strongly contested by the respondents, moreso by State instrumentalities or authorities, sometimes by raising frivolous objections. Such an approach would defeat the intent and objective behind the incorporation of the Act of 1996, which provides for a speedy and efficacious resolution of disputes.

9. For the foregoing reasons, prayer made in the petition deserves to be acceded to. The authority of the arbitrator appointed by the Additional Chief Secretary stands negated due to ineligibility of such arbitrator arising out of Section 12 (5) of the Act of 1996 as the Additional Chief Secretary is statutorily incapacitated to nominate any person as an arbitrator.

10. Accordingly, petition is allowed. Hon'ble Mr. Justice Tejinder Singh Dhindsa, a former Judge of this Court, r/o House No. 123, Sector 8, Chandigarh, M: 7837049208, is requested to act as the sole Arbitrator to adjudicate the dispute between the parties, subject to declaration to be made under Section 12 of the Act with regard to his independence and impartiality to adjudicate the dispute.

11. Parties are directed to appear before the learned Arbitrator on the date, time and place to be fixed and communicated by the learned Arbitrator at his convenience.

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- 12. Needless to mention, respondent will be at liberty to raise all the pleas before the Arbitrator.
- 13. Request letter be sent to Mr.Justice Tejinder Singh Dhindsa (Retd.).
- 14. Pending application is disposed of.

(SUVIR SEHGAL)
JUDGE

06.02.2024

Brij

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No