

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

**Date of Decision: April 28<sup>th</sup>, 2016**

**1. F.A.O.No.4558 of 2009**

**Punjab State Civil Supplies Corporation, Limited (PUNSUP), Sector 34-B,  
Chandigarh**

**...Appellant**

**Versus**

**M/s Ram Nath and Sons, Faridkot Road, Mandi Guruhhar Sahai, District  
Ferozepur & others**

**...Respondents**

**2. F.A.O.No.6760 of 2010**

**Punjab State Civil Supplies Corporation, Limited (PUNSUP), Sector 34-B,  
Chandigarh**

**...Appellant**

**Versus**

**M/s Ram Nath and Sons, Faridkot Road, Mandi Guruhhar Sahai, District  
Ferozepur & others**

**...Respondents**

**CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE**

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

**Present: Mr.Deepak Sabherwal, Advocate,  
for the appellant in both the appeals.**

**Mr.Pardeep Bajaj, Advocate for  
Mr.Parvez Chugh, Advocate,  
for respondent No.1 in both the appeals.**

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**AMIT RAWAL, J. (Oral)**

By this order, I intend to dispose of two F.A.O.Nos.4558 of  
2009 and 6760 of 2010 as the common questions of law and facts involved  
in both the appeals are the same. The facts are being taken from FAO  
No.4558 of 2009.

The appellant-PUNSUP is aggrieved against the impugned order, whereby the objections filed under Section 34 of the Arbitration and Conciliation Act, 1996 (for short “1996 Act”) at the instance of the miller for seeking setting-aside of the award dated 7.6.2004, have been accepted on the ground that the Arbitrator did not have the jurisdiction being excepted matter.

Mr. Deepak Sabherwal, learned counsel appearing on behalf of the appellant-PUNSUP submits that the respondent-miller had not taken the objection before the Arbitrator vis-a-vis the claim falling under the excepted clause and, thus, deemed to have waived the right under Section 4 of 1996 Act. This fact has been totally ignored, much less not noticed by the Objecting Court while accepting the objections.

Mr. Pardeep Bajaj Advocate for Mr. Parvez Chugh, learned counsel appearing on behalf of respondent No.1 submits that even otherwise once the claim was falling within the excepted clause, the Arbitrator did not have the jurisdiction to entertain and try the reference and could have relegated the parties for adjudication of the lis before the Managing Director and rightly so, the objection in this regard has been accepted as the award is against the public policy.

I have heard the learned counsel for the parties and appraised the paper book and of the opinion that in view of the objection having not been taken qua the claim before the Arbitrator, the miller is deemed to have waived the right under the provisions of Section 4 of 1996 Act. For the sake of brevity, Section 4 is reproduced herein below:-

Section 4 of the Act reads thus:

**“4. Waiver of right to object.-** A party who knows that-

(a) any provision of this Part from which the parties may

derogate, or

(b) any requirement under the arbitration agreement, has not been complied with and yet proceeds with the arbitration without stating his objection to such non-compliance without undue delay or, if a time limit is provided for stating that objection, within that period of time, shall be deemed to have waived his right to so object.”

This aspect has not totally been appreciated, much less gone into by the Objecting Court. In my view, the Objecting Court could not have accepted the objections as the same did not fall within the realm of Section 34 of 1996 Act. The view of mine is supported by the judgments rendered in **State of Haryana Versus M/s Mehta Construction Co. and another, FAO No.1576 of 2008**, decided on 23.12.2015, **Narayan Prasad Lohia Versus Nikunj Kumar Lohia and others, AIR 2002 (SC) 1139** and **M/s.Gupta Rice Mill (P) Ltd. Versus The Punjab State Co-operative Supply and Marketing Federation Ltd. and another, 2013(3) R.C.R. (Civil) 371.**

In view of the aforementioned facts, the order under challenge is set-aside. The award is restored. Resultantly, the appeals stand allowed.

**April 28<sup>th</sup>, 2016**  
**ramesh**

**( AMIT RAWAL )**  
**JUDGE**