

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

Date of decision: 19.07.2019

1. FAO-2331-2015 (O&M)

M/s Shoreline Infrastructure Developers Ltd.

... Appellant

Versus

M/s National Projects Construction Corporation Ltd. and anr.

... Respondents

2. FAO-2366-2015 (O&M)

M/s National Projects Construction Corporation Ltd.

... Appellant

Versus

M/s Shoreline Infrastructure Developers Ltd. and anr.

... Respondents

CORAM: HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. RBS Chahal, Advocate,
for the appellant in FAO-2331-2015 and
for respondent No.1 in FAO-2366-2015.

Mr. Lokesh Sinhal, Advocate,
for the appellant in FAO-2366-2015 and
for respondent No.1 in FAO-2331-2015.

JAISHREE THAKUR, J. (ORAL)

1. By this common order, this Court proposes to dispose of the
above referred two appeals as filed i.e **FAO-2331-2015 (O&M)** by M/s
Shoreline Infrastructure Developers Ltd. against M/s National Projects

Construction Corporation Ltd. and another i.e. FAO-2366-2015 by M/s National Projects Construction Corporation Ltd. against M/s Shoreline Infrastructure Developers Ltd. and anr. as they arise from a common order.

2. Both the counsels for the parties are in agreement that the impugned order dated 18.11.2014 passed by the Addl. District Judge, Faridabad deserves to be set aside, as he has misread and misconstrued the individual replies filed to the objections filed under Section 34 of the Arbitration and Conciliation Act, 1996.

3. In brief, the facts are that Bharat Heavy Electrical Limited (BHEL) floated a tender for construction work to be executed, which work was allotted to M/s National Projects Construction Corporation Ltd. (NPCC), who in turn allotted the work to M/s Shoreline Infrastructure Developers Ltd. On account of a dispute that arose between NPCC and M/s Shoreline Infrastructure Developers Ltd., the matter was referred for arbitration. The Arbitrator gave his award dated 15.12.2011 allowing certain claims while rejecting others. Since both the parties were aggrieved against the award, they filed their individual objections against the said award which were numbered Arbitration Case No. 12 of 2012 titled M/s National Projects Construction Corporation Ltd. Vs M/s Shoreline Infrastructure Developers Ltd and Arbitration case No. 16 of 2012 M/s Shoreline Infrastructure Developers Ltd. Vs. M/s National Projects Construction Corporation Ltd. The said objections were dismissed by the Addl. District Judge, Faridabad and the reasoning for the said dismissal is reflected in para Nos. 36 & 37 of the said order, which are reproduced hereunder :-

“36. As per this award, claims No. 1, 2, 3, 11 and 12 of M/s Shoreline were accepted whereas its remaining claims were

rejected and accepted claims of NPCC. However, this Award has been challenged by both of them. But interestingly, in the petition filed by Shoreline, NPCC supported the award and pleaded that it may be upheld and objections may be dismissed. Similarly objection petition filed by NPCC has been objected by M/s Shoreline with the prayer that Award may be upheld and objection petition may be dismissed.

37. In this factual position, it cannot be accepted that there is really any objection against Award. A party cannot be allowed to blow hot and cold in same breath. A party cannot accept Award in one petition and object against it in another. It means, this Award is acceptable to both of them. Moreover, there are specific grounds to set aside on Award.”

4. Counsels appearing on behalf of the objectors-appellants herein contend that the Addl. District Judge, Faridabad has misread the replies so filed to the objection petitions by coming to a conclusion that both the parties would have no objection to the dismissal of each of the objection petition which conclusion is wholly unsustainable. It is argued that the parties were aggrieved against the award of the Arbitrator, hence, both parties had filed their individual objections against the award and it was a duty cast upon the Court to have decided the objections as filed. It is argued that the matter be remanded back for decision on merits.

5. I have heard learned counsel for the parties and with their able assistance have gone through the individual replies filed to the objections filed under Section 34 of the Arbitration and Conciliation Act 1996.

6. A categorical plea had been taken by the objectors in their replies filed to the objection petition that the objections of the opposite party be dismissed while also asking for their objections to be decided and upheld. In other words, both parties have prayed for the claims allowed in their favour to

be upheld while seeking setting aside of those not allowed. There is no pleading or averment in the replies to the objections that the parties are accepting the award of the Arbitrator as it is. In such a situation, this Court has no option but to set aside the order of the Addl. District Judge, Faridabad and remand the case back to the Addl. District Judge, Faridabad with a direction to decide the objections as filed by both the appellants herein. Ordered accordingly.

7. The parties are directed to appear before the Addl. District Judge, Faridabad on 19.08.2019.

8. Both the appeals stand allowed accordingly.

9. A photocopy of this order be placed on the file of the other connected case.

19.07.2019

Satyawan

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes.
No.