

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO-CARB-41 of 2022 (O&M)
Decided on 20.12.2022.

M/S ACC-RAC(JV)

...Appellant

Versus

State of Punjab and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH
HON'BLE MR. JUSTICE VIKRAM AGGARWAL

Present: Mr. Naresh Markanda, Sr. Advcoate with
Mr. Rohan Markanda, Advocate
fort the appellant.

Mr. Arjun Sheoran, DAG, Punjab.

AUGUSTINE GEORGE MASIH J.(ORAL)

Notice of motion.

On the asking of the Court, Mr. Arjun Sheoran, DAG, Punjab, accepts
notice on behalf of respondents.

Challenge in this appeal is to order dated 09.11.2022, passed by the
Commercial Court, Kapurthala.

Learned Senior counsel for the appellant has asserted that the part of
the award which has been set aside by the Commercial Court, vide impugned
order is relating to the price variation and remand to the Arbitrator to decide the
point of price variation afresh expeditiously within a period of three months
specially with the findings and the observations made in the earlier part of the
order holding therein that there was no such clause for payment of price variation
which leaves the Arbitrator with no choice but to reject that claim. Learned Senior

counsel has referred to the judgment of Hon'ble Supreme Court in the case of *Food Corporation of India Vs. A.M. Ahmed & Co. and another (2006) 13 SCC 779*, to contend that in the absence of even escalation clause the said claim can be granted if the finding is returned by the Arbitrator that there has been delay at the end of a party. On this basis, counsel contends that there would be no quarrel in case the matter is remanded to the Arbitrator for fresh decision on this aspect of price variation provided the observation as made by the Commercial Court is not taken into consideration, nor are they taken as binding upon the Arbitrator.

Counsel for the respondents has stated that liberty may be granted to both the parties i.e. the appellant as well as the respondent to put-forth their respective submissions before the Arbitrator who may proceed to decide the claim on the price variation aspect without being influenced by any of the observations made by the Commercial Court and based upon the facts and the evidence produced before the Arbitrator as projected by the parties, in accordance with law.

The appeal stands disposed of binding the Arbitrator with the period of three months, which may be taken from the date of appearance of the parties before the Arbitrator, which is fixed as 09.01.2023.

(AUGUSTINE GEORGE MASIH)
JUDGE

(VIKRAM AGGARWAL)
JUDGE

20.12.2022

R.sharma

Whether speaking/reasoned : *Yes/No.*
Whether reportable : *Yes/No.*