

\$~OS-38

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ O.M.P. 114/2014

ARUN KUMAR

..... Petitioner

Through Mr.K.C.Mittal, Mr.Yugansh Mittal
and Mr.Amit Prakash Shahi, Advs.

versus

UOI & ORS

..... Respondent

Through

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

ORDER

% **13.10.2017**

This petition is filed under section 34 of the Arbitration and Conciliation Act, 1996 seeking to set aside the Award dated 14.11.2013. Some of the salient facts are that the petitioner entered into an Agreement dated 21.4.2008 for parcel space of 04tonnes in R.S.LR Compartment in Train No.376 running from Delhi to Saharanpur for a period of three years commencing from 25.4.2008 to 24.4.2011.

There was an extension clause being clause 18 of the Contract. As per the said clause 18 the petitioner is stated to be entitled to one time extension for a period of two years at enhanced lease rate of 25% more than the lumpsum leased freight rate subject to satisfactory performance and without penalty for overloading or violation of any of the provisions of the Contract.

The case of the petitioner is that the respondent failed to take steps to renew the contract in terms of the said clause. Accordingly, it is stated that the petitioner approached this court vide petition under section 9 of the Arbitration and Conciliation Act being OMP 282/2011for relief whereby an interim order was passed on 13.7.2011. On 13.7.2011 this Court confirmed

the interim order stating that the same shall continue to operate until 24.4.2013 or until making of the Award by the Arbitral Tribunal, whichever is earlier.

By the impugned Award the learned Arbitrator has rejected the contentions of the petitioner. The learned arbitrator held that in terms of Clause 18 of the Agreement extension of time is discretionary and conditional and the clause does not in any way give the claimant a right to claim extension of these agreements. It rejected the plea of the petitioner that other similarly situated contractors have also been granted extension including pursuant to directions of this court. Accordingly, the claim of the petitioner was rejected. An Award was passed in favour of the respondent based on the counter-claim holding that in terms of clause 18 the petitioner had been paying only Rs.5,639/- per day whereas the bid received by the respondent was for Rs.9,100/- per day. Accordingly, an Award of Rs.24,97,515/- was passed in favour of the respondents alongwith interest.

In an identical case in ***OMP(Comm.) 5/2015 titled Ram Chander vs. Union of India & Anr. dated 28.8.2017*** in identical facts this court has set aside a similar Award. On the same grounds and based on the said judgment dated 28.8.2017 the present Award is also set aside.

Petition stands disposed of. All pending applications, if any, also stand disposed of.

JAYANT NATH, J

OCTOBER 13, 2017/n