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

+ O.M.P. (COMM) 457/2016

DARSHAN JAISWAL

..... Petitioner

Through Mr.Rajshekhar Rao, Mr.Ishaan
Madaan and Mr.Chaitanya Puri, Advs.

versus

NORTHERN RAILWAYS & ANR.

..... Respondent

Through Mr.Jagjit Singh, Adv.

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

ORDER

% **17.08.2017**

1. This petition is filed under section 34 of the Arbitration and Conciliation Act, 1996 seeking to set aside the Award dated 4.8.2016 passed by the learned Arbitrator.
2. Pursuant to a tender invited by respondent No.1 the bid of the petitioner was accepted on 20.11.2012 for leasing of 04 tons FSLR II compartment in Train No.12394 plying from New Delhi Railway Station (NDLS) to Rajinder Nagar Bihar, Patna.
3. Disputes having arisen between the parties the petitioner on 28.5.2014 invoked the arbitration clause. In terms of the arbitration clause being Clause 27 of the Agreement between the parties the respondent appointed an Arbitrator. As per Clause 27 the Arbitrator is to be appointed by the General Manager, Northern Railway, Baroda House, New Delhi.
4. A perusal of the Award would show that the learned Arbitrator has noted the Statement of Claim of the claimant. He has thereafter noted the

submissions of the respondent and recorded his conclusions as follows:-

“The undersigned has gone through of the written and oral evidences submitted by both the claimant and the respondent and after going through the entire case, the following is awarded:

1. In terms of Clause 21.1 of the lease agreement-

The Railway Administration shall have the right to terminate the operation of lease contract/agreement for any reason whatsoever after serving one month's notice to the lease holder. Railway shall also reserves the right to terminate the contract without giving any notice at any time for whatsoever reason as a punitive measure or breach of agreement by the lease holder or in case of operational exigencies or it is necessary to do so in public interest.

However, in this case Railway Administration should have promptly intimated the payment regarding invocation of Clause No. 21.1 suitably.

2. Therefore, the claim submitted by the Claimant is not admissible. However, the Claimant is entitled to refund all the security deposit under Clause 21.1 of the agreement and any other due payable to him under the scope of the lease agreement.”

5. It is clear that no reasons have been given in the Award as to why the claim petition of the petitioners has been rejected. The Award is contrary to Section 31(3) of the Act which states that the Award shall state the reasons unless the parties agree that no reasons have to be given.

6. After some arguments, learned counsel for the respondent fairly accepts the position and states that the Award may be set aside and that the respondent would take steps for appointment of a fresh Arbitrator in terms of the contract between the parties. He assures that needful will be done

within four weeks from today.

7. Accordingly, the Award dated 4.8.2016 is set aside as being contrary to section 31(3) of the Act. The respondents will take steps to appoint a new Arbitrator in terms of the Arbitration Agreement within four weeks from today. The newly appointed Arbitrator may take over the record from the previous Arbitrator and based on the same after giving adequate opportunities to the parties may proceed as per law.

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

9. At this stage, learned counsel for the petitioner points out that as per the impugned Award a direction was passed that the petitioner is liable to refund of the security deposit under Clause 21.1 of the Agreement or any such due payable to him under the scope of the lease agreement. He submits that this payment in any case should be released to the petitioner. The petitioner is given liberty to press this relief before the newly appointed Arbitrator and to seek and press for an interim Award. In the eventuality of such a request being made, the learned Arbitrator may deal with such request, as per law. The original arbitral record may be released to the respondent to be transmitted to the newly appointed Arbitrator.

10. A copy of the order be given dasti, as prayed.

JAYANT NATH, J

AUGUST 17, 2017

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