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

Reserved on : 5th October, 2018
Date of decision :26th October, 2018

\+ **O.M.P. (COMM) 64/2017**

M/S V2 RETAIL LTD ..... Petitioner

Through: Mr. Vishwendra Verma & Mr. Pranav Verma (M-91871704611).

versus

M/S S.S ENTERPRISES ..... Respondent

Through: Mr. Sudhir Naagar & Mr. Bhanu Sanoriay, Advocates (M-9953227984).

CORAM:
JUSTICE PRATHIBA M. SINGH

JUDGMENT

Prathiba M. Singh, J.

1. The Petitioner, who was the Respondent in the arbitral proceedings (*referred to as 'Respondent' for the sake of consistency*) has preferred the present petition challenging the award dated 27th December, 2012 passed by Justice J.P. Singh (Retired) – Learned Sole Arbitrator.

2. The Respondent had entered into a Memorandum of Understanding (*hereinafter 'MOU'*) dated 25th December, 2007 with M/s. S.S.Enterprises-Claimant in the arbitral proceedings *(referred to as `Claimant' for the sake of consistency),* by which the Respondent took on lease suit property i.e. part of 3/1/22, Site IV, Sahibabad Industrial Area, Ghaziabad (U.P.) constituting of Basement plus Ground Floor, First Floor, with wall to wall covered area of 21840 sq. ft. (approximately) (*hereinafter 'suit property'*). The monthly

lease amount was Rs.3,30,000/- for a period of 9 years with a lock in period of 15 months. After the expiry of the lock in period, if the lessee wished to terminate the agreement prior to the period of expiry, three months' notice in writing could be given by the lessee. However, the lessor did not have the option of terminating the lease. One of the clauses in the agreement imposed an obligation on the Claimant lessor, to get the user of the premises property changed from 'manufacturing corrugated boxes' to 'software development unit'.

3. The Respondent paid rent till September, 2008. However, in the month of October, 2008, it did not pay rent which resulted in issuance of notice dated 22nd October, 2008. Vide this notice, the Claimant called upon the Respondent to execute the lease deed in terms of the MOU and also pay the rent amount. Vide letter dated 10th November, 2008, the Claimant invoked the arbitration clause. In the mean time, the Respondent had filed an injunction suit before the Civil Judge seeking injunction and declaration.

4. Thus, disputes had arisen between the parties. Vide letter dated 3rd July, 2009, Learned Sole Arbitrator was appointed who entered reference.

5. The Learned Sole Arbitrator, vide award dated 27th December, 2012 awarded the following amounts in favour of the Claimant. The operative portion of the award is set out herein below:

> *"75. It is evident that the respondent for the reasons best known to it was not willing to continue its business in the tenancy premises and started vacating the same but there was confrontation with the claimant and there were some objections on behalf of the claimant, which resulted in disputes. It has been established on record that the claimant had taken steps for change of the user and no govt or municipal authorities had prevented the*

respondent from continuing its business. The dispute of removing goods and handing over vacant possession was resolved amicably during the arbitration proceedings. Therefore there is no question of the goods still lying in the premises. The security amount is to be adjusted from the outstanding amount as ascertained above. Both the sides do suffer some damage when the premises are vacated. But the respondent has neither pleaded nor given break up of the expenses allegedly incurred on maintenance. The claimant's pleadings and contentions on damages are on reliable footing. Considering all the facts and circumstances, I do not find any merit in the counter-claim and resultantly the same is dismissed.

SUMMARY OF THE AWARD *CLAIMS OF THE CLAIMANT*			
Srl. No.	*Amount claimed*	*Amount allowed*	
1.	*Claims No.1 to 3 and 6 regarding Rent for the period 1.10.2008 to 31.5.2010 @ Rs.3,30,000/- per month*	*(a)@ Rs.3,30,000/- per month from 1.10.2008 till 30.4.2009(upto lock-in period)*	*Rs. 23,10,000/-*
		(b)@ Rs.1,65,000/- from 1.5.2009 to 31.5.2010 (upto handing over the possession)	*Rs. 21,45,000/-*
2.	*Claim No. 7 towards damages Rs. 40,00,000/-*		*Rs. 5,00,000/-*
3.	*(a) Cost of Arbitration proceedings/litigation Rs. 2,00,000/-* *(b) The share of arbitration fee and expenses payable by*	*Rs. 2,00,000/-*	

	respondent but as per the paid by the claimant Arbitration Act 1996	*Rs. 82,500/-*	*Rs. 2,82,500/-* *Total Rs.52,37,500/-*
4.	*Interest claimed @12% per annum*	*Interest allowed @12% per annum*	
TOTAL AMOUNT ALLOWED IN FAVOUR OF THE CLAIMANT			***Rs.52,37,500/- (Plus interest)***

COUNTER CLAIMS OF THE RESPONDENT/COUNTER CLAIMANT		
Srl. No.	*Amount claimed*	*Amount allowed*
1.	*Cost of goods lying in the tenancy premises Rs.50,00,000/-*	*Nil*
2.	*Refund of security deposit Rs.9,90,000/-*	*Rs.9,90,000/- (adjusted)*
3.	*Damages Rs.20,00,000/-*	*Nil*
TOTAL AMOUNT ALLOWED IN FAVOUR OF THE RESPONDENT		***Rs.9,90,000/-** (adjusted)*
AMOUNT DUE AND RECOVERABLE FROM THE RESPONDENT		***Rs.42,47,500/- (Plus interest @ Rs.12% p.a)***

76. Consequently the counter-claim of the respondent is dismissed. The Award is passed in favour of the claimant and against the respondent in the sum of Rs. 42,47,500/-(Rupees Forty Two Lacs Forty Seven Thousand and Five Hundred) with interest @12% p.a.

from the date of filing of the claim petition till realisation of the Award amount. Announced and declared on this 27th day of December 2012."

6. The submission of Learned counsel for the Respondent is that the fundamental breach committed by the Claimant is that it had failed to obtain the change of user from Uttar Pradesh State Industrial Development Corporation *(hereinafter 'UPSIDC')* which was a pre-condition for the MOU. He submits that the Claimant having been in breach, could not have been compensated with the rental amount for the entire period. Moreover, the Respondent had clearly expressed its intention as of October, 2008 itself that it no longer wished to continue in the suit premises. He relies on the pleadings in the suit filed before the Civil Judge in the suit for injunction. He further submitted that there was no logic in the Arbitrator awarding full rent for the period 1st October, 2008 to 30th April, 2009 and 50% of the rent for the period 1st May, 2009 to 31st May, 2010. Mr. Verma also placed heavy reliance on the letter of the UPSIDC dated 25th September, 2008 (Mark A).

7. It is his further submission that even as per the Claimant's own notice, the maximum that was claimed by the Claimant was rent for the 15 month lock in period and nothing more. This is clear from the perusal of the notice dated 22nd October, 2008. The Respondent having tendered the property back to the Claimant, it was not liable to pay any rent. He submitted that as per the MOU, the approval from the UPSIDC had to be obtained within three months from the date of the MOU, but the application to the UPSIDC was made only on 21st April, 2008.

8. On the other hand, counsel for the Claimant submits that the Respondent though repeatedly claimed to take a position that they no longer

needed the premises, but in fact possession was only handed over under the supervision of the Arbitrator after he had entered reference. Specific reliance is placed on the proceeding sheets and orders passed by the Arbitrator dated 12th February, 2010 and 25th March, 2010. It is further submitted by learned counsel for the Claimant that the Respondent handed over possession after repeated attempts, only on 31st May, 2010, until which the premises was being continuously used. He submits that the Respondent had never terminated the lease as per Section 106 of the Transfer of Property Act, 1882 or in terms of the MOU. No notice of termination was ever given by the Respondent. Further it was argued that under Section 116 of the Indian Evidence Act, 1872 the tenant is estopped from questioning the title of the owner.

9. This Court has heard the submissions of the parties. Firstly, the scope of challenge under Section 34 of the Arbitration and Conciliation Act, 1996, is a limited one. The interpretation of the terms of the Contract have to be done by the Arbitrator and unless the findings of the Arbitrator are perverse, the Court cannot substitute its opinion, which is the settled position, as per the judgment of the Supreme Court in ***Associate Builders v. DDA A.I.R. 2015 SC 620***

10. The MOU dated 25th December, 2007 contains the following salient terms and conditions which are extracted herein below:

> *Whereas the owners are the lessee of the demised premises owned by UPSIDC, vide lease deed dated 7th January 2004. The same falls under industrial zone and is approved for manufacturing of corrugated boxes.*
> *And where as the lesser hereby undertakes that he shall get the use of the demised premises changed from corrugated boxes to software development unit and shall*

produce to the lessee a certificate of the same within 3 (Three) months from the date of signing of this MOU. He further undertakes that he shall take the required permission from the UPSIDC as per the terms of the lease deed dated 7th January 2004 to sublet the premises to the Lessee.

…

1. Rent

1.1 The rent for the demised premises shall be ***Rs 330000/- (Rupees Three Lacs Thirty Thousand only)*** *for the entire premises on a lump-sum basis, per month. The rent shall be payable on or before 10th of each month. An interest of 12% P A shall be payable in case of delayed payment.*

1.2 The rent in respect to the basement (7280 sq. ft) shall not be payable for initial 6 (Six) months ***or*** *our operation from that said floor which ever is earlier and shall be proportionately deduced from the rent payable as per clause 1.1.*

2. Increment of Rent

The aforesaid monthly rent shall be ***increased by 15 % after every 3 (Three) years*** *from the rent starting date in respect of the demised premises. The increase on the rent shall be calculated on the rent paid for the last month.*

…

4. Lease Period

Lease period shall be for ***9 (Nine) years*** *and may be extended on mutual agreement between the parties on terms contained here in this Memorandum of understanding. Separate agreement shall be entered into for the extended period. The* ***lock-in period shall be first 15 (Fifteen) months.***

…

7. Refundable Security Deposit

The Lessee shall pay an interest free refundable security deposit equivalent to the ***3 (Three)*** *months rent to the Lessor in the manner provided in clause 8.*

8. Payment schedule of Security Deposit

Sr. No.	*Description*	*Point of Payment*
1.	*One month security deposit.*	*At the time of signing of MOU.*
2.	*Two Months security deposit*	*At the time of handing over the renovated demised premises along with complete amenities to the Lessee.*

*The Lessee has paid **Rs. 330000/- (Rupees Three Lacs Thirty Thousand Only)** towards One month refundable security deposit, out of which Lessee has paid Rs.**10, 000/- (Rupees Ten thousand only) in cash** as part payment of refundable security deposit to the Lessor, the receipt of which Lessor hereby acknowledges. Further, the Lessee has paid balance amount by cheque No. 279909 &…… dated 26.12.08 drawn on Axis Bank, Rajouri Garden New Delhi towards balance payment of refundable security deposit, the receipt of which Lessor hereby acknowledges.*

In addition to the above said refundable security deposit the lessee shall pay advance rent of 2 (Two) months at the time of providing Electricity Connection as per the requirement of lessee, to the lessor. The lessor hereby declares that the same shall be adjustable in the rent of 3rd and 4th Month as per clause 6.

*9. **Notice Period***

*9.1 After the Lock in period Only the Lessee, if for any reason, wishes to terminate the agreement prior to the expiry of Twelve years, shall serve upon a notice in writing to the Lessor in their behalf at-least **3 (three) months** in advance. In other words the Lessor cannot*

terminate the agreement before the expiry of the Twelve years.
9.2 However, the Lessor may terminate the agreement in case of default in payment of monthly rental for continues period of three months by giving 15 days notice in advance.

*17. **Arbitration & Conciliation***

*In case of any difference or dispute arising between the parties herein on any of the terms and conditions contained herein, such difference or dispute shall be referred to sole arbitrator appointed by both the parties i.e. Lessee and the Lessor. The provision of the Arbitration and Conciliation Act, 1996 and any modification thereof shall be applicable for settlement of disputes, thus referred. The Venue for holding all such proceeding shall be at New Delhi. The **Courts at New Delhi shall have the sole and exclusive jurisdiction** to try any such dispute that may arise out of this instant agreement"*

As per the above-mentioned MOU –

- The rent payable was Rs.3,30,000/- per month.
- The user of the demise premises was to be changed within three months after applying to the UPSIDC
- Rent in respect of the basement was not payable for a period of six months or was to be paid from the date of operation of the basement whichever is earlier.
- The rent was to be increased 15% after every three years. The lease period was 9 years, extendable on mutual agreement.
- Lock in period was first 15 months.

- Security deposit of one month's rent was paid in addition, two months' rent was paid as advance rent.
- If the lessee wishes to terminate the agreement prior to the expiry of 12 years, three months' notice in writing was to be served in advance.
- If there is default in payment of rent, the lessor could terminate the agreement.

11. There is no dispute between the parties that until September 2008, rent was duly paid by the Respondent. When the Respondent defaulted the payment of rent for the month of October, 2008, notice dated 22nd October, 2008 (Ex.PW1/B) was issued. This notice is important as vide this notice, the Claimant called upon the Respondent to make the payment of monthly rent before the 10th of every month and if there is a default, interest of 12% per annum was liable to be paid. The notice records that despite repeatedly calling upon the Respondent, the lease deed in terms of the MOU was not being executed. By this notice, the Claimant also reminded the Respondent that the first 15 months was to be the lock in period. It thus called upon the Respondent to adhere to the MOU. On 10th November, 2008, the Claimant invoked arbitration and the said notice was sent to the Respondent, vide registered post on the same date. It appears that immediately after the notice was received, the Respondent filed a suit for declaration and permanent and mandatory injunction. In this suit for the first time, the Respondent took a stand that the user change permission was to be obtained from UPSIDC. However, this fact was not the basis of the suit. The basis of the suit was that the Claimant was not permitting the Respondent to remove its goods from

the premises on 26th September, 2008. It was claimed in the suit that a meeting was held between the parties on 21st October, 2008, thereafter Claimant's representative sent the notice dated 22nd October, 2008. In the said suit, it was claimed by the Respondent that it had stopped the use of the premises from 1st October, 2008. The prayer sought in the said plaint filed on 14th November, 2008 is set out herein below:

> *"It is, therefore, respectfully prayed that this Hon'ble Court be pleased to:*
>
> *(a) Restrain the defendant, its partners, agents, employees, successors, assignees, workers etc. from removing the articles from the premises bearing No.3/1/22, Site IV, Sahibabad Industrial Area, Ghaziabad (U.P.)*
>
> *(b) Restrain the defendant not to disturb the plaintiff, its workers while removing the articles from the premises bearing No.3/1/22, Site IV, Sahibabad Industrial Area, Ghaziabad (U.P.) and not to create any hindrance while removing the articles.*
>
> *(c) Declare the MOU dated 25.12.2007 as null and void.*
>
> *(d) Direct the defendant to accept the vacant possession of the premises bearing No.3/1/22, Site IV, Sahibabad Industrial Area, Ghaziabad (U.P.) after allowing the plaintiff to take out its belongings, material, equipment etc. or in alternate the plaintiff be allow to deposit the keys of the above said premises in the Hon'ble Court.*
>
> *(e) Any other relief that this Hon'ble Court deem fit be allowed in favour of the plaintiff as against the defendant."*

12. In the said suit, an application under Section 8 came to be moved and thereafter in Arbitration Application No.33/2009, the Learned Sole Arbitrator was appointed. Despite the stand of the Respondent in the suit

that it was willing to hand over peaceful and vacant possession of the property as of 1st October, 2008, a perusal of the proceedings before the Arbitrator clearly shows that it was not until May, 2010 that the actual vacant peaceful possession was handed over. The arbitral record shows that issues were framed on 3rd December, 2009 as under:

> *"1. Whether the respondent had taken the premises in question on a monthly rent of Rs.3,30,000/-? OPC*
>
> *2. Whether the respondent has validly terminated the tenancy at any point of time? OPR*
>
> *3. Whether the respondent has handed over the possession of the premises to the claimant? OPR*
>
> *4. Whether the respondent failed to execute the lease deed in terms of clause 14 of the Memorandum of Understanding dated 25.12.2007?OPC*
>
> *5. Whether the respondent is guilty of committing breach of Memorandum of Understanding dated 25.12.2007?OPC*
>
> *6. Whether the claimant is entitled to receive rent from the respondent from October 2008, onwards? OPC*
>
> *7. Whether the claimant is entitled to receive damages from the respondent on account of expenses incurred on the building by the claimant in order to bring it in shape with the requirement of respondent? OPC*
>
> *8. Whether the claimant is entitled to receive interest on the outstanding rate? If yes, at what rate and for what period? OPC*
>
> *9. Whether the claimant has failed to perform its part of the Memorandum of Understanding and failed to*

take the requisite permission from UPSIDC to allow the respondent to run its office from the claimant's premises? If yes, its effect? OPR

10. Whether the claimant is liable to pay damages to the respondent on account of not seeking permissions and allow the respondent to run its office by making adjustment with the concerned department and also for not returning the material/goods of the respondent? OPR

11. Whether the respondent is entitled to the relief in terms of the counter- claim? OPR"

13. Repeated adjournments were sought by the Claimant prior to framing of issues and even after framing of issues. Order dated 12th December, 2010 passed by the Arbitrator is important and is set out herein below:

"12.2.2010
Present Mr.Sudhir Naagar with Mr.Tarun Chaudhary Advocates for the claimant
Mr.Shishupal partner of the claimant
Mr.Rohit Singh, representative of the respondent

Mr.Rohit Singh, representative of the respondent submits that the respondent has given an application in Corporate Debt Restructuring Cell (CDR Cell), therefore, their records practically stand seized and they can not make any debit transactions. However, credit transactions can be made. Today, no document is available in support of this plea. Mr.Rohit submits that documents in this regard, can be filed on the next date. Evidence by way of affidavit has not been filed on behalf of the respondent despite this being the past opportunity.
Learned counsel for the claimant submits that adverse order be passed and at least possession of the property should be handed over to the claimant in accordance

with the memorandum of understanding (by 15 days notice).

Mr.Rohit has contacted his office on telephone and has then submitted that learned counsel for the respondent will contact learned counsel for the claimant on 15.2.2010, on this aspect and it can be mutually agreed to hand over the possession.

The arbitration fee, as mentioned in the proceeding dated 30.1.2010, has not been paid by the respondent. It is, therefore, directed that fee payable by the respondent, as mentioned in the proceedings/order dated 30.1.2010 be paid by the claimant by or before the next date (section 38 of the Arbitration & Conciliation Act).

Meanwhile, one final opportunity is granted to the respondent for filing evidence by way of affidavit by or before the next date, with advance copy to the learned counsel for the claimant, failing which adverse order may be passed.

To come up on 1.3.2010 at 5.00 pm, for further proceedings."

14. In this order, it is clearly recorded that it was the Claimant which sought the possession of the property in accordance with the MOU.

15. In response to this order, counsel for the Respondent addressed letter dated 16th February, 2010, which is on the arbitral record and reads as under:

"REGD.A.D.

To,
Sh. Sudhir Nagar,
Advocate,
Ch. No.106, Western Wing,
Tis Hazari Courts,
Delhi-110054.

Sub: Arbitration case of M/s S.S. Enterprises.

Sir,

With respect to this case, the proceedings are pending

before the Ld. Arbitrator. In terms of the discussions which took place after moving application before Ld. Arbitrator for withdrawing the material from the premises in question which took place on 12.02.2010, our clients shall start operation to withdraw all its material/equipments etc. from the premises bearing No.3/1/22, site No. IV, Sahibabad Industrial Area, Ghaziabad U.P. w.e.f. 19.02.2010. Please advise your client to co-operate in this regard, as agreed before the Ld. Arbitrator.
Thanks

For Vishal Retail Ltd.
(NARENDRA KALRA)
ADVOCATE"

16. Thus in this letter, the Respondent claimed that the removal of material from the premises would start from 19th February, 2010. In response to this letter, on 20th February, 2010, the Claimant's counsel addressed a reply and stated that the notice dated 16th February, 2010 shall be construed as a notice of 15 days as per the MOU and that the Respondent ought to hand over vacant and peaceful possession on 3rd March, 2010 at 12:00 noon. In fact, an application was then moved by the Respondent seeking Police help for removal of goods. On this application, the Learned Arbitrator passed order dated 25th March, 2010 which reads as under:

"25.3.2010
Present Mr.Sudhir Naagar with Mr.Tarun Chaudhary Advocates for the claimant
Mr.Shishupal partner of the claimant
Mr.Narendra Kalra, Advocate for the respondent

Evidence by way of affidavit has already been filed on behalf of the respondent. However, the document (Ex.RW-1/2) mentioned in para 3 of the affidavit, is not attached with the affidavit. The same be filed and copy

thereof be supplied to the learned counsel for the claimant.
Another application dated 24.2.2010 filed on behalf of the respondent, for directions stating that the claimant is not allowing the respondent to remove belongings &goods from the tenancy premises.
On this aspect, both the learned counsel have given statements which are recorded separately to the effect that respondent will remove all goods from the tenancy premises and the claimant will not create any hindrance. After vacating the tenancy premises the keys will be handed over by the learned counsel for the respondent to the learned counsel for the claimant on 15.4.2010 before me.
These statements are without prejudice to the rights and contentions of the parties in the matter pending before me and will not be read for settling anyother past, present and/or future disputes between the parties".

17. Thus, the Arbitrator directed that the keys of the premises should be handed over on 15th April, 2010. Despite this order, repeated communications were exchanged between the parties and on 15th April, 2010, the keys were not handed over before the Arbitrator. Thereafter on 24th April, 2010, the Arbitrator again recorded that the handing over of keys did not materialize on 15th April, 2010 and thus the same was re-scheduled for 8th May, 2010. Again on 13th May, 2010, the Arbitrator recorded the submissions of counsel for the Claimant that the Respondent had only removed some goods and the remaining goods were to be removed in due course. Admittedly, all the goods were finally removed only on 31st May, 2010.

18. The above chronology of events has been recorded as the Arbitrator in

view of these facts came to the conclusion that the tenancy has not been validly terminated by the Respondent. The findings of the Arbitrator are as under:

i) that the Claimant had applied to the UPSIDC only on 21st April, 2008. However, the Respondent had never been harassed by any government authority or agency from running its operations. Moreover, by the time, the Respondent allegedly started to remove its goods i.e. on 1st October, 2008, UPSIDC had already recommended the approval for change of user subject to deposit of requisite charges from 25th September, 2008;

ii) the keys were all along in the possession of the Respondent which had its goods stored until May, 2010;

iii) the Respondent never handed over possession in September, October, 2008 as was alleged;

iv) the tenancy could only have been terminated after the lock-in period and that too by giving notice of at least three months;

v) further the Respondent had also not paid the rent as agreed ;

The Arbitrator, taking into consideration the suit filed by the Respondent, thus awarded full rent for the lock in period and half rent thereafter. The Arbitrator further awarded the damages to the Claimant as the Claimant had re-done the premises as per the requirements of the Respondent. The Arbitrator then awarded interest at 12% per annum on the rent due from October, 2008 till date of realization. Since the Respondent vacated the premises for its own reasons, it is not entitled to any counter claims or damages except the refund of security deposit which was adjusted in favour of the Respondent. The vacant and peaceful possession was handed over just before 1st June, 2010 during the course of the arbitration proceedings.

19. The Claimant justifies the application to the UPSIDC in April, 2010, inasmuch as it wanted the Respondent to be in complete occupation of the premises as the Respondent had moved in to the premises in a staggered manner. Upon the Respondent fully occupying the premises, the Claimant applied for change of user which was in any case recommended in September, 2008.

20. The cross-examination of Mr. Arun Gupta – Ex. Legal Head of the Respondent is very relevant and is set out herein below:

> "*RW-1 Statement of Mr.Arun Gupta Legal Head &Company Secretary*
> *of the respondent on SA*
> *I tender my affidavit Ex.RW-1/1 in evidence Xxxxxxx by Sh.Sudhir aagar Advocate for the claimant*
> *My knowledge about this case is based on documents as well as my personal knowledge.*
> *I have not seen the property in question. Mr.Rajesh Verma who has signed the MOU dated 25.12.2007 is not in service as of now. I believe that no notice from any Government Authority was ever received regarding the use of the property in question. It is incorrect to suggest that no such notice was received as the property in question was being used lawfully. Vol. It was meant for industrial purpose and not for the purpose for which it was let out. It is correct that no Government authority came to stop or obstruct our business physically. Vol. In fact, we could not properly start our work as the claimant failed to prove the requisite permission which he was supposed to do within three months from the date of MOU.*
> *We did not write any letter regarding non supply of the above said permission by the claimant but had been verbally requesting to send the requisite permission.*

Mr.Rajesh Verma had been requesting Sh.Shivkumar ji, as I was told by Sh.Rajesh Verma as I had been asking Mr.Rajesh Verma about the matter. I used to discuss these issues with Mr.Rajesh Verma. I personally did not contact the claimant party.
It is wrong to suggest that even Mr.Rajesh Verma did not speak to the claimant party on this issue".

21. From the above cross-examination, it is clear that no governmental authority had troubled the Respondent's occupation on the premises and the Respondent did not write any letter in respect of change of user permission to the Claimant.

22. The Respondent had claimed that it had served termination letter dated 6th November, 2008 of the MOU, however, the witness could not produce the said letter. He also admitted that no letter was written to any authority by the Respondent that the Claimant was not allowing them to remove the goods. The witness of the Respondent could also not show any legal notice issued in the year 2008 for termination of lease. The second witness of Respondent – Mr. Umesh Sharma who was the Personal Assistant to CMD of the company also admitted that the Claimant had not misrepresented to him about the user of the premises. He also admitted that he had not signed any notice of termination dated 6th November, 2008. From the evidence on record, it is quite clear that the Respondent never terminated the lease as alleged in the pleadings. It was not able to show any notice of termination sent by it. The lease having not been terminated in terms of MOU, the earliest date that can be considered as notice of termination is before the Learned Arbitrator when letter dated 16th February, 2010 was issued. If the three months period is calculated from February, 2010, the

lease would actually come to an end on 15th May, 2010. The actual physical possession was given on 31st May, 2010.

23. The analysis of the facts, the chronology of the events as also after considering the submissions of the parties, it is clear that the Respondent defaulted in the payment of rent. It never terminated the tenancy as per the MOU by giving proper 15 days' notice and handing over of vacant and peaceful possession. Though, it pleaded in the suit for injunction filed by it that it was wanting to move its goods out on 25th September, 2008, as is evident from the evidence which transpired thereafter, it did not hand over possession until May, 2010. Even before the Arbitrator, from February, 2010 until May, 2010, repeated disputes were raised in respect of handing over of possession. This shows that the Respondent was wanting to enjoy the possession of the property and simultaneously avoid the payment of rent under the garb of the user having not been changed by the UPSIDC within the three months period as stipulated in the MOU.

24. There being no termination of lease and it having been admitted on record that the delay in the change in user having not affected the operations of the Respondent in any manner, the view of the Arbitrator cannot be termed to be perverse or a patent illegality. The Arbitrator has in fact given the benefit of doubt to the Respondent by reducing the rent amount after the lock in period, to 50% of the actual payment. Thus, the award of the Arbitrator does not deserve to be interfered with.

25. In the present petition, there was a delay in re-filing of the petition. The petition had been dismissed on 25th September, 2014. In the appeal, Ld. Division Bench had directed the Respondent to deposit the sum awarded together with interest vide order dated 27th May, 2015. However, it was

thereafter recorded that the Respondent has deposited the entire amount of the award along with interest before the Executing Court.

26. On 14th March, 2016, the Division Bench set aside the order of dismissal and condoned the delay in refiling the objections. The matter was to be thereafter heard on merits.

27. The discussion herein above clearly shows that the award does not warrant any interference. However, the interest payable on the awarded amount is reduced to 8% keeping in mind the prevalent interest rates. The Executing Court, may release the amount awarded along with simple interest at 8% to the Claimant in the manner awarded by the Arbitrator. Remaining sum be refunded to the Claimant. The award is upheld except with the modification of rate of interest.

28. OMP is disposed of.

PRATHIBA M. SINGH
JUDGE

OCTOBER 26, 2018
Rahul