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

<u>Date of Decision : 14th August, 2015.</u>

\+ **<u>W.P.(C) 7727/2015 and C.M.No.15149-15150/2015</u>**

DELHI EPDP COOPERATIVE GROUP HOUSING SOCIETY LTD.
..... Petitioner

Through: M.Qayam-ud-din, Advocate.

versus

REGISTRAR, COOP. SOCIETIES & ANR
..... Respondents

Through: Mr.Gautam Narayan , ASC for R-1 & R-2.

CORAM:
HON'BLE MS. JUSTICE GITA MITTAL
HON'BLE MR. JUSTICE I.S.MEHTA

<u>GITA MITTAL, J (ORAL)</u>

1. The petitioner assails the order dated 18th April, 2011 passed by the Assistant Registrar (Audit) holding that the petitioner-society had violated the provisions of Section 60(1) of the Delhi Co-operative Societies Act, 2003 by not getting its audit conducted for the period 2009-10 within the stipulated time and levying a fine of Rs.1,500/- under Rule 167 of the DCS Rules, 2007. The petitioner has also assailed the order dated 7th August, 2015 passed by the Financial Commissioner, Delhi in the Revision Petition being (case No.215/2011) which was filed by the petitioner herein under Section 116 of the Delhi Co-operative Societies Act, 2003 against the

aforesaid order dated 18th April, 2011.

2. There is no dispute to the material facts giving rise to the instant petition. The petitioner has contended that for the year 2009-10, its audit was concluded as mandated on 31st August, 2010, however, such report was submitted by the Auditor on 3rd December, 2010.

3. We find that there is also no controversy that the Auditor was appointed in accordance with the applicable rules from the panel of auditors approved by the office of Registrar of Co-operative Societies. The question which has been pressed for our consideration is as to what would be the relevant date by which the audit for such accounts could have been completed. According to the impugned orders, the audit could have been completed by 29th July, 2010 and that the petitioner-society had failed to do so.

4. The adjudication by this Court rests on the consideration of Section 60(1) of the Delhi Co-operative Societies Act as well as the Rule-38 of the Delhi Co-operative Societies Rules, 2007. For the sake of convenience, we extract hereunder the relevant portion of the statutory provision, which reads as under:-

> *"60. Audit*
>
> *(1) A co-operative society shall get its accounts audited annually by an auditor selected from the panel prepared by the Registrar in the prescribed manner within the period of [one hundred twenty days from the prescribed date for making up its account for the year]".*

5. The statute thus requires that the Society is mandatorily required to get its accounts audited annually by an Auditor selected from the panel

which has been prepared and approved by the office of the Registrar of Co-operative Societies within a period of 120 days from the *"prescribed"* date for making up of its accounts for the year.

6. We, therefore, have to examine the Rules whereunder such prescription is contained. Learned counsel for the parties have drawn our attention to the provisions of Rule 38 which is concerned with the closing of accounts of the society, which reads as under:-

> *"38. Closing of Accounts*
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> *Every co-operative <u>society shall maintain accounts</u> and books for the purpose of recording business transactions by it and <u>close</u> them <u>every year on 31st March, by the 30th April</u>. Each closing entry in the cash book, in each ledger account shall be signed by the president or secretary or the treasurer or any other authorized officials of the society authorized by the committee in this behalf. The closing balances, which are thus authenticated, shall be carried forward to the following year commencing on the 1st April. For the purpose of calling the annual general body meeting as provided in section 31 of the Act, <u>the date fixed for making up the accounts, for the year shall be 30th April of each year</u>. The closing accounts shall be signed by the secretary or the treasurer or any other officers of the society/bank authorized by the committee".*
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> *(Emphasis by us)*

7. A clear distinction has been drawn by the Legislature while enacting the rule. It has been made mandatory that the accounts books of the society shall be closed on the 31st March. However, the Rule provides for a grace period of 30 days for the society to make up its accounts. The Rule itself stipulates that the closure of accounts on 31st March shall be effected by the "30th April".

8. Such reading of the Rule is supported by the latter part of Rule 38 as well as by Section 31 of the statute which mandates that every Co-operative

Society "*shall within a period of 180 days, after the date fixed <u>for making up of its accounts</u> for the year under the rules which are in force, call for the general body meeting*".

9. Rule-38, heretofore extracted, also clarifies that for the purposes of calling the general body meeting as provided in Section 31 of the Act, the date fixed for "making up of the accounts" for the year shall be 30th April of each year. It needs no further elaboration that the statute makes a distinction between the date on which the accounts must have been closed, i.e. 31st March of the year concerned and the date by which the accounts need to be made up, i.e. by 30th April of the year concerned.

10. This writ petition is concerned with the accounts of the petitioner-society for the year 2009-10. The accounts, therefore, had to be closed by 31st March, 2010 and the accounts had to be made up by 30th April, 2010. Thereafter, in accordance with the provisions of Sub-Section (1) of Section 60, the accounts for the year 2009-10 had to be audited within a period of 120 days from 30th April, 2010 from the date of making up of its accounts, i.e. 120 days from 30th April, 2010.

It is not disputed before us that such period of 120 days would have come to an end on or around 27th August, 2010.

11. The impugned orders dated 7th August, 2015 and the order of the Registrar of Co-operative Societies dated 18th April, 2011, to the extent that they hold that the audit of the accounts for the year 2009-10 of the petitioner-society could have been completed by 29th July, 2010, are erroneous and cannot be sustained in the eyes of law.

12. There is yet another aspect of the matter. Section 31 of the DCS Act,

2003 mandates that the society must call the general body meeting of its members within a period of 180 days next after the date fixed for making up of its accounts for the year under rules for the time being in force to, inter alia, as prescribed in Sub Section (c), consider the audit report along with audited accounts and the annual report. This period of 180 days from 30th April, 2010 comes to an end on or about 27th October, 2010. The petitioner-society was, therefore, required to have held its annual general meeting on the 27th October, 2010. As per the writ petition, the petitioner-society had held the annual general meeting on the 27th October, 2010 in which the accounts of the petitioner-society were placed and approved.

13. Our attention, however, is drawn to the audit report of the petitioner-society for the year 2009-10. This shows that the auditor has signed this report on the 31st August, 2010 and not on 27th August, 2010 as he was required to do so. The petitioner has complained that no fault can be attributed to it for the delay of three days for the reason that the office bearers of the managing committee of the society had taken every step to ensure that the audit of the society was completed within the stipulated period and the delay was on the part of the auditor who had been appointed in accordance with the law from the panel approved by the office of Registrar of Co-operative Societies. The petitioner prays that this delay of three days be condoned in the peculiar facts and circumstances of the present case.

14. The impugned orders made no reference on this aspect and the orders are premised primarily on the misreading of the requirements of Sub-Section 1 of Section 60 of the Act. No such objection has been raised by the Registrar of Co-operative Societies as well. However, in the peculiar facts

and circumstances of the present case, in order to meet the ends of justice, we are inclined to accept the prayer for condonation of three days delay in submitting the audited accounts of the petitioner-society with the RCS.

15. In view of the above discussion, this writ petition has to be allowed and the same is accordingly allowed. The impugned orders dated 18th April, 2011 and 7th August, 2015 are hereby set aside and quashed.

16. There shall be no order as to costs.

GITA MITTAL
(JUDGE)

I.S.MEHTA
(JUDGE)

AUGUST 14, 2015
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