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

+ O.M.P. 32/2016

M.P. STATE COOPERATIVE CONSUMER
FEDERATION LTD.

..... Petitioner

Through: Mr Vikrant Singh Bais, Advocate.

versus

NATIONAL COOPERATIVE CONSUMER
FEDERATION OF INDIA LTD. & ANR.

..... Respondents

Through

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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31.08.2016

VIBHU BAKHRU, J

IA No.16682/2016

1. This is an application for condonation of delay in re-filing the appeal.
2. The learned counsel for the petitioner states that even after taking into account the delay in re-filing, the petition would be within the period of 120 days from the date of passing of the Award.
3. In view of the aforesaid statement, the delay in re-filing the appeal is condoned.

IA No.10626/2016 & 10627/2016

4. Allowed, subject to all just exceptions.

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5. The petitioner, M.P. State Cooperative Consumer Federation Ltd. is a Member of the National Cooperative Consumer Federation of India Limited (respondent no.1). Respondent no. 1 is a Multi-State Cooperative Society registered under the provisions of the Multi State Cooperative Societies Act, 1984.

6. The disputes involved pertain to certain *inter se* transactions between the petitioner and respondent no.1. Admittedly, the reconciliation of accounts between the said parties was undertaken at the petitioner's office at Bhopal on 19.01.2000 and it was found that a sum of ₹12,37,312.94 was due and payable by the petitioner to respondent no.1. It is the petitioner's case that the aforesaid reconciliation did not fully take into account all *inter se* transactions inasmuch as the payments made by the petitioner to respondent no.1 and their branches at Bombay, Ahmedabad, Delhi, Guwahati and Kanpur were not accounted for.

7. The history of litigation between the parties is a chequered one and spans over a decade and a half. It began by respondent no.1 making a claim before the Central Registrar of Cooperative Societies, Government of India (CRCS) for recovery of the sum of ₹12,96,332/-. It is not necessary for the purposes of the present petition to narrate the history of litigation; suffice it to mention that the petitioner preferred a writ petition before this Court (W.P. No.6767/2007) against an order of the Appellate Authority of CRCS. In the said petition, this Court directed that the decretal amount deposited with respondent no.1 be kept in a separate interest bearing account. The said writ petition was finally dismissed. However, the Division Bench allowed

the petitioner's appeal (LPA No.717/2012) by an order dated 30.12.2012 and set aside the order dated 04.05.2012 passed by the learned Single Judge as well as the order of the Appellate Authority of CRCS passed on 20.03.2007. The Division Bench further remanded the matter to CRCS for fresh adjudication on merits of the plea taken by the petitioner.

8. Pursuant to the aforesaid order, CRCS considered the disputes and by an order dated 29.08.2013 referred the matter to a Sole Arbitrator as CRCS was of the view that the adjudication of the pleas raised by the petitioner would require reconciliation of accounts of both the parties.

9. Before the Arbitrator, efforts were made for reconciliation of accounts. However, the accounts could not be reconciled. It is the petitioner's case that it had made all efforts for reconciliation of accounts but the same were frustrated by respondent no.1; respondent no.1 disputed the aforesaid contention.

10. In the aforesaid circumstances, the Arbitrator considered the claims made by the petitioner and rejected the same, principally on the ground that neither the reconciliation of accounts was done by the parties nor the petitioner could substantiate its claims through specific documentary evidence. The relevant extracts from the Award reads as under:-

“67. Even before me, Respondent No.1 did not make any endeavour to substantiate its claim through specific documentary evidence. It merely kept on stating that the documents are voluminous and have already been filed with the Central Registrar. But no details or copies thereof were furnished nor any specific cases/documents provided. In any case, once these arbitration proceedings were initiated it was

for Respondent 1 to put up his defence in these proceedings and duly substantiate the same with documents to my satisfaction. Respondent 1 has failed to do so, especially in view of the absence of reconciliation of its accounts with that of NCCF. It would, however, be open to Respondent 1 to raise appropriate claim, if need be, upon reconciliation of accounts with specific documentary evidence.”

11. The learned counsel appearing for the petitioner has contested the aforesaid finding and submitted that all the relevant documents including the balance sheet, ledger accounts, vouchers and other documentary evidence were provided to the CRCS and the same were part of the record. However, it is not disputed that the petitioner had not pointed out specific documentary evidence in the arbitral proceedings so as to enable the Arbitrator to adjudicate the claims raised by the petitioner. There is no ground in the present petition that this had been done by the petitioner. The fact that certain documents were part of the record with CRCS would be of no assistance to the Arbitrator as the same were not before him; at any rate, the same were not referred to by the petitioner in the arbitral proceedings

12. It is well settled that the approach of the Courts while considering a petition for setting aside an award under Section 34 of the Arbitration and Conciliation Act, 1996 is one of non-interference. The arbitral award cannot be challenged except on the limited grounds as specified in Section 34(2) of the Act. In the present case, I am unable to accept that any of the grounds specified under the said section have been established. Clearly, the arbitrator could not be expected to accept the petitioner’s claims without the necessary documentary evidence. The impugned Award cannot be stated to be in conflict with the Public Policy of India as is sought to be urged by the

petitioner. Accordingly, the petition is dismissed.

VIBHU BAKHRU, J

AUGUST 31, 2016
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