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

+ FAO(OS) 69/2017 & CM Nos. 10005-10008/2017

% Date of decision : 27th April, 2017

M P STATE COOPERATIVE CONSUMER FEDERATION
LTD Appellant

Through: Mr. Vikrant Singh Bais, Adv.
versus

NATIONAL COOPERATIVE CONSUMERS FEDERATION
OF INDIA LTD & ANR Respondent

Through: Ms. Anju Bhattacharya, Adv.

CORAM:

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MS. JUSTICE ANU MALHOTRA

JUDGMENT (ORAL)

GITA MITTAL, ACTING CHIEF JUSTICE

CM No.10005-10006/2017

1. Exemptions allowed subject to just exceptions.

These applications are disposed of.

CM No. 10008/2017(delay in refiling)

2. Notice.

3. Ms. Anju Bhattacharya accepts notice for the respondents.

4. Having regard to the nature of the application, no reply is necessary and counsels are orally heard. We are satisfied that the learned counsel for the appellant was prevented by sufficient cause beyond his control from refiling the appeal

after the same was returned under office objections within the period granted.

Delay in refilling the appeal is condoned.

This application is allowed.

CM No. 10007/2017(delay in filing)

5. Notice.

Ms. Anju Bhattacharya accepts notice for the respondents.

6. Having regard to the nature of the application, no reply is necessary. Counsels are orally heard.

7. The appellant has filed the instant application praying for condonation of 81 days delay in filing the appeal. The appellant has explained the circumstances in which delay was occasioned. We are satisfied that the circumstances set out are bonafide and the appellant has sufficiently explained the same. Delay in filing the appeal is condoned.

This application is allowed.

FAO(OS) 69/2017

8. We have heard learned counsels for the parties on this appeal whereby a challenge is laid to the order dated 31st August, 2016 dismissing OMP 32/2016 filed by the M.P. State Cooperative Consumer Federation Ltd. (appellant herein), a Multi-State Cooperative Society registered under the provisions

of the Multi State Cooperative Societies Act, 1984. This petition was filed by the appellant before the learned Single Judge under Section 34 of the Arbitration & Conciliation Act, 1996 praying for setting aside an arbitral award dated 31st August, 2015 made by a sole arbitrator in arbitration proceedings between these parties.

9. The dispute between the parties related to payment for goods stated to have been supplied by the respondent to the appellant and their various branches over a period of time. The appellant herein was the 'respondent no.1' before the sole arbitrator.

10. History of the litigation between the parties is noted in paras 7 and 8 of the impugned order dated 31st August, 2016 which read as follows :

“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 O.M.P. 32/2016 Page 3 of 5 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.”

11. By the award dated 31st August, 2015, the arbitrator concluded that the present respondent herein were entitled to the claims which have been asserted by them and found that ₹12,37,312.94 was due and payable by the present appellant to the respondent no.1 (claimant before the arbitral tribunal).

12. It appears that the appellant herein had set up a plea of having made excess payments to the respondent no.1 against supplies made by it. Before the arbitrator, efforts were made to reconcile the accounts. The basis on which the award came to be passed, is to be found in the discussion of the arbitrator in

paras 65 to 69 of the award which read as follows :

“65. It is to be further noted that the accounts which respondent no.1 is relying upon are as on February, 2006. The respondent is claiming that though it reconciled its account in 2006 but it was for the accounts as on 31.3.1999. However the evidence furnished by respondent no.1 in this regard does not support the claim of the respondent.

66. The respondent has also stated that Central Registrar called for copies of its balance sheet and the same were duly filed with copies to the opposite party. This, however, is not borne out by the records of the case as placed before us. As matter of fact these were neither placed before me by respondent no.1 nor does it rely upon it (with specifics) in its written submission.

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.

68. The question of limitation should be considered as and when any such claim is made upon necessary reconciliation of accounts of the parties. The present stage is not appropriate for that purpose.

69. Respondent no.1 has thus failed to avail successfully the opportunities afforded to it in these proceedings to have its accounts duly reconciled, as is necessary to adjudicate its defence on merits' respondent 1 has failed to show that the joint reconciliation made in January 2000 of accounts as on 31.3.1999 pertained to some of the branches and not all branches. Respondent 1 has also failed to show that all dues of the claimant have otherwise been fully paid."

13. Before the learned Single Judge, it was the submission of the appellant that it had filed all relevant ledger accounts, vouchers and other documentary evidence which stood provided to the CRCS and were part of the record. As noted by the learned Arbitrator (and before the learned Single Judge), the appellant was unable to point out the relevant and specific documentary evidence in support of its case. Even before us, the same bald plea has been asserted without anything more. The appellant was bound to have placed the relevant documents necessary for the consideration before the Arbitrator, which it has failed to do.

14. As noted by the learned Single Judge that an Arbitral

Award is amenable to a challenge under Section 34 on the grounds restricted to those set out in Section 34(2) of the Act. The arbitrator has rejected the case of the respondents for want of necessary documentary evidence. In this background, the learned Single Judge in the order dated 31st August, 2016 has rightly held that the impugned award could not be held to be in conflict with the public policy of India as has been agitated before us as well. This order has not been challenged on any legally tenable grounds.

We, therefore, find no merit in this appeal which is hereby dismissed.

ACTING CHIEF JUSTICE

ANU MALHOTRA, J

APRIL 27, 2017/kr