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

% ***Date of decision***: 04.08.2017

\+ O.M.P. (COMM) 106/2016

M/S ARVIND DYE CHEM CORPORATION & ANR..... Petitioners
Through Mr.S.N.Tripathi, Adv.

versus

BOMBAY MERCANTILE COOP
BANK LTD DELHI ..... Respondent
Through Mr.A.H.Pasha, Adv.

CORAM:
HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J.(ORAL)

1. This petition is filed under section 34 of the Arbitration and Conciliation Act, 1996 (herein referred as "the Act") seeking to set aside the Award dated 4.3.2008.

2. The facts as stated in the Award are that the respondent is a Cooperative Bank Originally registered under Bombay Cooperative Societies Act, having its registered office in Mumbai and branch office in Delhi. The petitioner No.1 is stated to be a registered partnership firm having its head office in Delhi and Branch Office at Ghaziabad, U.P. engaged in the business of wholesale trading and distribution of various types of dyes, allied chemicals and yards since 1983. The firm is said to have two partners, namely, petitioner No.2 Mr.Neeraj Aggarwal and Mr. Hari Kishore Aggarwal. They approached the respondent bank for a credit limit of Rs.50 lacs and credit limit against book debts for Rs.75 lacs being a

total of Rs.125 lacs vide their loan application dated 17.2.2000. It is stated that the respondent bank sanctioned the overdraft facility of Rs.50 lacs against hypothecation of stocks and of Rs.40 lacs against hypothecation of book debts on 25.3.2000. The facilities were collaterally secured by equitable mortgage of two properties of 72 sq.yards and of 177.10 sq. Yards respectively being Commercial Property MPL Nos.2122, 2124-A, 2124 (Part) and 2121 to 2128 situated at Phatak Habash Khan, Khari Baoli, Tilak Bazar, Delhi-110006 owned by Mr Neeraj Aggarwal. The petitioners were members/shareholders of the bank.

3. It was the case of the respondent that the petitioners have failed to repay the loan amount and hence it was claimed that as on 30.11.2004 a principal of Rs.1,22,72,934/- became payable. Including interest and costs total amount of Rs.3,04,10,628/- was claimed.

4. On account of disputes having arisen between the parties, the Central Registrar Cooperative Societies, New Delhi in exercise of powers conferred under sub-section (4) of Section 84 of the Multi State Cooperative Societies Act, 2002, nominated an Arbitrator. The Arbitrator has now given an Award in favour of the respondent for the full amount as claimed by the respondent.

5. A perusal of the Award would show that the petitioners appeared through Shri Abdesh Chaudhary, Advocate. Copy of the claim petition was provided to the learned counsel for the petitioners. On 2.4.2005 Shri Abdesh Chaudhary, Advocate was given copies of the loan document. On 14.5.2005 Shri B.P.Singh, Authorised Representative of petitioner No.2 appeared and requested for an adjournment. The Award noted that documents and bank statements were handed over to him. Thereafter the Award notes that the matter was fixed on several dates but the petitioners failed to file any

documents against the claim of the bank except few irrelevant letters. No objections were raised regarding the claim raised by the respondent. Accordingly, an Award was passed in favour of the respondent and against the petitioners in the Arbitration proceedings jointly and severally for a sum of Rs.3,04,10,628/-. Direction was also passed to sell the movable and immovable property hypothecated/mortgaged to the respondent bank.

6. It is the case of the petitioners that they were never served with a signed copy of the Award. It is stated that they came to know about passing of the Award on receipt of a notice in Execution Petition 322/2008. Hence, they claim notice of the Award only based on the notice received in the Execution Petition and has hence filed the present objections to the Award.

7. I have heard learned counsel for the parties. Learned counsel for the petitioners have submitted that when the matter was pending before the learned Arbitrator talks of compromise were going on between the petitioners and the respondent. It is urged that on the assurance of the respondent the petitioners did not appear for the arbitration proceedings as they were made to believe that the matter would be settled. It is further urged that the Award is a non-speaking award and is liable to be set aside.

8. Learned counsel for the respondent has vehemently pointed out that the Award was passed on 4.3.2008 and the present petition has been filed in 2011 and is hopelessly barred by limitation. He submits that the petitioners are habitual in changing their address and signed copy of the Award was sent to the petitioners. He further submits that they were given ample opportunity to defend themselves before the learned Arbitrator. No defence was raised despite several opportunities by the petitioners. It is hence clear that the petitioners had no defence and the learned Arbitrator has rightly

passed an Award. It is also pleaded that as no objection was filed to the Award for quite some time, the respondent filed an Execution Petition being Ex.P.322/2008 in which also the respondent had great difficulty in serving the petitioners.

9. As far as the issue of limitation that is raised by the respondent is concerned, a perusal of the petition shows that at the outset an averment is made that the petitioners have not been served with a copy of the Award and that they have received knowledge of the Award only on filing of the Execution Petition No.322/2008 and thereafter they got the record inspected. In reply to these averments, apart from a bald denial there are no material particulars given by the respondent as to how and when the signed copy of the Award was served on the petitioners. It is clear that there is merit in the contention of the petitioners that they did not receive a signed copy of the Award. Under section 34(3) of the Act an application for setting aside of the Award cannot be moved after three months from the date on which the party has received the arbitral award. In the present case the arbitral award has been received only when the petitioners are said to have taken a certified copy of the Execution Petition. Hence, the petition has been filed within limitation.

10. Coming to the second contention of the petitioners, namely, that the Award is a non-speaking Award. Reference may be had to section 31(3) of the Act, which reads as follows:

> "31(3) The arbitral award shall state the reasons upon which it is based, unless—
> (a) the parties have agreed that no reasons are to be given, or
> (b) the award is an arbitral award on agreed terms under section 30."

Hence, the arbitral award shall state the reasons upon which it is based. Reference in this regard may be had to the judgment of Supreme Court in ***Som Datt Builders Ltd. vs. State of Kerela 2009 (10) SCC 259*** which held as follows:-

> "25. The requirement of reasons in support of the award under Section 31(3) is not an empty formality. It guarantees fair and legitimate consideration of the controversy by the arbitral tribunal. It is true that arbitral tribunal is not expected to write judgment like a court nor it is expected to give elaborate and detailed reasons in support of its finding/s but mere noticing the submissions of the parties or reference to documents is no substitute for reasons which the arbitral tribunal is obliged to give. Howsoever brief these may be, reasons must be indicated in the award as that would reflect thought process leading to a particular conclusion. To satisfy the requirement of Section 31(3), the reasons must be stated by the arbitral tribunal upon which the award is based; want of reasons would make such award legally flawed....."

11. It is quite clear from the Award that several proceedings have taken place before the learned Arbitrator. The claim petition, loan documents and Statement of Account have been duly provided to the petitioners. As per the Award more than ten hearings have taken place and the petitioners have failed to file any reply or objection to the claim petition.

12. A perusal of the award shows that it has noted the nature of transaction between parties. It has also noted the fact that the loan facility is secured by way of collateral, namely equitable mortgage of two different properties. It notes the execution of various documents by the petitioners including promissory note making themselves liable. Despite, several opportunities there has been no attempt on the part of the petitioner to challenge these documents or the statement of account filed by the

respondent before the learned arbitrator. Even Before this court other than making a plea that the award is a non speaking award, there is no attempt to explain as to how and why the findings recorded by the learned arbitrator are not tenable or factually disputed or incorrect. In the fact and circumstances of this case, I hold that the award gives sufficient reasons and grounds for its conclusions. In these facts, it cannot be said that the award is a non-speaking award.

13. I may also mention about the conduct of the petitioners. There are two properties which are said to have been mortgaged with the respondent bank both situated at Phatak Habash Khan, Khari Baoli, Tilak Bazar, Delhi-110006. The Execution Petition was filed by the respondent bank in 2008. Objections have been filed by various third parties pointing out that the said two properties were never owned by petitioner No.2. Mohd. Suleh, Mr.Virender Gupta and Ms.Kusum Upadhyay have filed objections claiming that the property No.2121-2128 situated at Phatak Habash Khan, Khari Baoli, Tilak Bazar, Delhi-110006 are owned by them and was never owned or possessed by the judgment debtors/petitioner No.2. In Ex. P. 322/2008, this Court by order dated 20.2.2014 noted the submissions of the Objectors that the bank is claiming encumbrance on the property on the basis of GPA said to have been executed by Mr.Ashutosh Upadhyay in favour of petitioner No.2. There is no sale deed in favour of Mr.Ashutosh Upadhyay and this court *prima facie* held that the said Mr. Ashutosh Upadhyay had no title to the property and did not have the competence to execute the GPA dated 24.2.2000 in favour of Mr.Neeraj Aggarwal petitioner No.2.

14. Keeping in view the aforesaid facts, in my opinion, there is no merit in the objections of the petitioners. It cannot be said that the Award is in

contravention of the fundamental policies of Indian law. There are no reasons to interfere in the Award.

15. Present petition is dismissed. All pending applications, if any, also stand disposed of accordingly.

JAYANT NATH, J

AUGUST 04, 2017/n