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

+ O.M.P. 1/2017 & CAV. 1/2017 & IA Nos. 3/2017 & 5/2017

THE NATIONAL FEDERATION OF URBAN
CO-OPERATIVE BANKS AND CREDIT
SOCIETIES LTD.

..... Petitioner

Through: Mr Sandeep Sethi, Senior Advocate
with Mr Kabir Galib, Dr Puran Chand
and Mr S. Rajappa, Advocates.

versus

THE COSMOS CO-OPERATIVE BANK LTD
& ANR.

..... Respondents

Through

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER
03.01.2017

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VIBHU BAKHRU, J

IA No. 4 & 5/2017

1. Exemptions are allowed, subject to all just exceptions.
2. The applications are disposed of.

O.M.P. 1/2017 & CAV. 1/2017 & IA Nos. 3/2017

3. The National Federation of Urban Co-operative Banks and Credit Societies Ltd. (hereafter 'NFSL') has filed the present petition under Section 34 of the Arbitration and Conciliation Act, 1996 (hereafter 'the Act') *inter alia* praying that the Arbitral Award dated 29.09.2016 (hereafter 'the

impugned award’) passed by the Sole Arbitrator, be set aside.

4. The disputes between the parties relate to the removal of respondent no. 2, Dr Mukund L. Abhyankar, from the post of President of NFSL. While NFSL claims that the removal of Dr Mukund L. Abhyankar was legal and valid, the respondents contend otherwise.

5. By the impugned award, the Arbitrator has accepted the claims of the respondents and rejected the contentions advanced by NFSL. The Arbitrator has held that the disputes raised by respondents (claimants therein) were arbitrable and further that the proceedings and procedure adopted to remove Dr Mukund L. Abhyankar as the President of NFSL in the 147th Meeting dated 25.02.2016 were illegal and invalid. The Arbitrator further rejected the contention of NFSL that respondents could not challenge the election procedure for electing the President in 148th meeting held on 20.03.2016 ~~even~~ after participating in the same. In view of the aforesaid, the Arbitrator held that the election dated 20.03.2016 was also invalid and illegal.

6. Briefly stated, the relevant facts necessary to address the controversy are as under :

6.1 NFSL is a multi-State Co-operative Society registered under the Multi State Co-operative Societies Act, 2002 (hereafter ‘MSCS Act’) and is stated to be an apex level promotional body of urban co-operative banks and credit societies in India. It is stated that its activities include liaisoning and interacting with the Reserve Bank of India, Central Government, State Governments, etc. to promote the interests of its members. Respondent No.1, The Cosmos Co-operative Bank Ltd. (hereafter ‘CCBL’) is a multi-

State Co-operative Scheduled Bank registered under the MSCS Act. Respondent No.2, Dr Mukund L. Abhyankar, the sole representative of CCBL in NFSL, is the Director of CCBL.

6.2 On 06.02.2014, Dr Mukund L. Abhyankar - in his capacity as the Director of CCBL - was elected as the President of NFSL. Thereafter, on 25.02.2016, Dr Mukund L. Abhyankar, being the President of NFSL, convened 147th meeting of the Board of Directors of NFSL. It is stated that in the said meeting, certain members voiced their concerns against the stand taken by Dr Mukund L. Abhyankar before a high powered committee constituted by the Reserve Bank of India which was completely opposite to the stand taken by the General Body of NFSL in its meeting dated 22.08.2015. It is stated that the Directors of NFSL wanted to take up the No Confidence Motion against Dr Mukund L. Abhyankar first rather than the published agenda; however Dr Mukund left the meeting abruptly. Thereafter, Mr R.B. Shandilya, Vice President of NFSL, was invited by the Chief Executive to preside over the meeting and conduct further proceedings. It is claimed by NFSL that a No Confidence Motion was passed by the Directors present in the meeting and Dr Mukund L. Abhyankar was removed as the President of NFSL. The Board also scheduled the 148th Board Meeting for conducting fresh election to the post of the President.

6.3 Thereafter, the respondents challenged the removal of Dr Abhyankar from the post of the President by filing a Writ Petition (W.P. No. 3375/2016) before the Bombay High Court. In the said proceedings, by an order dated 18.03.2016, the Court directed NFSL to find out if any arbitrator

was available for deciding the disputes between the parties. The Court further held that result of the election to be held on 20.03.2016 would also be subject to further orders that may be passed in the said petition. Thereafter, a letter from the Central Registrar of Co-operative Societies (CRCS) was produced by NFSL indicating that the disputes between the parties could be adjudicated by an arbitrator as per Section 84 of the MSCS Act.

6.4 In view of the above, the Bombay High Court disposed of the Writ Petition (WP No. 3375/2016) by granting the liberty to the respondents to approach CRCS for appointment of an arbitrator.

6.5 Subsequently, on 13.05.2016, the respondents filed a petition before CRCS for appointment of an arbitrator. Thereafter, by an order dated 31.05.2016, CRCS appointed Dr G.G. Saxena as the Sole Arbitrator as per Section 84(4) of the MSCS Act, to adjudicate the disputes between the parties.

6.6 NFSL challenged the order dated 31.05.2016 passed by CRCS appointing the Arbitrator by filing a Writ Petition, being W.P (C) No. 5783/2016, in this Court. By an order dated 11.07.2016, this Court disposed of the said petition granting liberty to NFSL to raise all issues and contentions before the Arbitrator, including the issue of arbitrability of disputes.

6.7 The Arbitrator heard the rival contentions and passed the impugned award on 29.09.2016.

Submissions

7. Mr Sandeep Sethi, learned senior counsel appearing for NFSL contended that the disputes raised by the respondents were not arbitrable in terms of Section 84 of the MSCS Act and, therefore, the impugned award was liable to be set aside in terms of Section 34(2) (iv) of the Act. He further submitted that the impugned award was contrary to the decision of the Madras High Court in **K. Kumaragurubaran and B. Raghunathan C. Janakiraman v. A. Arunkumar**: (2012) 1 MLJ 946.

8. He further submitted that the decision of the Arbitrator in holding the 147th Meeting of the Board of Directors of NFSL as invalid, was patently illegal and, thus, the impugned award was liable to be set aside under Section 34(2)(b) of the Act. He stated that Bye-laws of NFSL did not contain any provision for removal of the President of the Board and, therefore, the President could be removed in the same manner as he was appointed. He submitted that, therefore, the Board had full authority to remove Dr Abhyankar as the President. He contended that the Arbitrator had grossly erred in rejecting the minutes of the meeting as they were not signed by Dr Abhyankar (the then President of NFSL). He submitted that Dr Abhyankar had left the proceedings and, therefore, was not expected to sign the same. Mr Sethi further contended that it would be impossible for Board of Directors to remove the President if they are compelled to do so in a meeting convened for the said purpose. This is so as the meeting could only be convened by the President and he would not do so as it would be contrary to his interest.

9. I have heard the learned senior counsel for NFSL.

Reasoning and Conclusion

10. In order to appreciate the contention that disputes regarding removal of the President of NFSL are not arbitrable under Section 84 of the MSCS Act, it is necessary to refer to Section 84 of the MSCS Act. Sub-section (1) and (2) of Section 84 of the MSCS Act are relevant and are set out below:-

“84. Reference of disputes.— (1) Notwithstanding anything contained in any other law for the time being in force, if any dispute [other than a dispute regarding disciplinary action taken by a multi-State co-operative society against its paid employee or an industrial dispute as defined in clause (k) of section 2 of the Industrial Disputes Act, 1947 (14 of 1947)] touching the constitution, management or business of a multi-State co-operative society arises—

- (a) among members, past members and persons claiming through members, past members and deceased members, or
- (b) between a member, past members and persons claiming through a member, past member or deceased member and the multi-State co-operative society, its board or any officer, agent or employee of the multi-State co-operative society or liquidator, past or present, or
- (c) between the multi-State co-operative society or its board and any past board, any officer, agent or employee, or any past officer, past agent or past employee, heirs or legal representatives of any deceased officer, deceased agent or deceased employee of the multi-State co-operative society, or
- (d) between the multi-State co-operative society and any other multi-State co-operative society, between a multi-State co-operative society and

liquidator of another multi-State co-operative society or between the liquidator of one multi-State co-operative society and the liquidator of another multi-State co-operative society,

such dispute shall be referred to arbitration.

(2) For the purposes of sub-section (1), the following shall be deemed to be disputes touching the constitution, management or business of a multi-State co-operative society, namely:-

(a) a claim by the multi-State co-operative society for any debt or demand due to it from a member or the nominee, heirs or legal representatives of a deceased member, whether such debt or demand be admitted or not;

(b) a claim by a surety against the principal debtor where the multi-State co-operative society has recovered from the surety any amount in respect of any debt or demand due to it from the principal debtor as a result of the default of the principal debtor, whether such debt or demand is admitted or not;

(c) any dispute arising in connection with the election of any officer of a multi-State co-operative society.”

11. The expression “Officer” is defined under Section 3(t) of MSCS Act, as under:-

““officer” means a president, vice-president, chairperson, vice-chairperson, managing director, secretary, manager, member of a board, treasurer, liquidator, an administrator appointed under section 123 and includes any other person empowered under this Act or the rules or the bye-laws to give directions in regard to the business of a multi-State co-operative society;”

12. It is clear from the plain language of Section 3(t) of MSCS Act that Dr Abhyankar, being the President of NFSL, would fall within the definition of an “Officer” and in terms of clause (c) of Sub-section (1) of Section 84 of

the MSCS Act, any dispute between a Multi State Co-operative Society and any officer or past officer, would be arbitrable.

13. It was earnestly contended by Mr Sethi that the dispute as to removal of the President did not touch upon the constitution, management or business of a multi State co-operative society. This Court does not find any merit in that contention also. Undisputedly, the Board of Directors are charged with managing the affairs of NFSL (Bye-law 10). In terms of Bye-law 11(b), the powers and functions of the Board of Directors also include election of the President. Constitution of the said Board of Directors and appointment/removal of office bearers would plainly concern the management of NFSL. Thus, the disputes regarding constitution of the Board of Directors or appointment of officers including the President would clearly be a matter touching upon the management of the society.

14. The Arbitrator rejected the contention that the dispute as to removal of President was not a matter touching upon the management of NFSL. In doing so, the Arbitrator followed a decision of a Division Bench of this Court in **Jagjit Singh Sangwan v. Union of India and Ors.: 1996 (36) DRJ 192**. In that case, the petitioner (therein) was appointed as a director of Krishak Bharati Co-operative Ltd. (KRIBHCO) and was sought to be removed by a resolution dated 20.04.1995 passed by Indian Farmers Fertilizer Co-operative Ltd. (IFFCO) as the petitioner's term as a director on the Board of IFFCO had expired. KRIBHCO and IFFCO are Multi State Co-operative Societies and at the material time, were governed under the Multi State Co-operative Societies Act, 1984 (hereafter 'the 1984 Act'). The writ petition was opposed, *inter alia*, on the ground that the dispute raised was

arbitrable in terms of Section 74(1) of the 1984 Act. The Division Bench of this Court accepted the above contention and held that: "*Right of a person to be on Board is a dispute covered by Section 74(1) without regard to the mode or mechanism of appointment. The question arising for decision in the present petition is squarely covered by the phraseology used in Section 74(1)*". Accordingly, the Court dismissed the petition, *inter alia*, on the ground that the petitioner had an alternate efficacious remedy available under Section 74(1) of the 1984 Act. Section 74(1) of the 1984 Act is identically worded as Section 84(1) of the MSCS Act. Therefore, the said decision would squarely cover the point in issue. In view of the above, this Court finds no infirmity with the view accepted by the Arbitrator.

15. In ***Kumaragurubaran and B. Raghunathan C. Janakriaman v. A. Arunkumar*** (*supra*), the learned Single Judge of the Madras High Court had reasoned that the issue regarding removal of an officer was personal in nature and "*only if there was any dispute in the election process, the same needs to be referred to the arbitration*". I am, most respectfully, unable to concur with the said view. The language of Section 84(1) of the MSCS Act is wide and its sweep is not limited to disputes relating to election process alone. The provisions of Section 84(2)(c) of the MSCS Act specifies that any dispute arising in connection with the election of any officer of a multi State co-operative society would be deemed to be a dispute touching the constitution, management or business of a multi State co-operative society. The import of the said provision is to include such disputes within the scope of Section 84(1) of the Act. The provisions of Section 84(2) of the MSCS Act cannot be read as to circumscribe the width of the provision of Section

84(1) of the MSCS Act.

16. Insofar as the decision of the Arbitrator on merits is concerned, it is seen that the Arbitrator did not disagree with the view that the majority of the Directors were in favour of removal of Dr. Abhyankar. However, the Arbitrator was persuaded to hold that the 147th meeting of the Board of Directors of NFSL was invalid principally for the manner in which the said meeting had been conducted. First of all, the business of removing Dr. Abhyankar from the Office of President of NFSL was not one of the agenda items that were circulated. Thus, there was no notice to any of the Directors that a resolution of no confidence would be moved against the President at the said meeting. He too was not forewarned of any such move. The Arbitrator held that the business of removing the President was an important item and it was thus necessary that the Directors - and more importantly the President - had notice of the same, sufficiently in advance. Clearly, the Arbitrator's view that removal of President was an important business, which required prior notice, cannot be held to be perverse or patently illegal. The Arbitrator had further observed that prior to the 147th meeting, the Directors had given no indication whatsoever that they intended to remove the President or to table a no confidence motion. The Arbitrator found this to be contrary to the basic principles for conduct of the said business as the consequences for the same were severe and, therefore, according to the Arbitrator, the necessary safeguard of due notice was required. I am unable to accept that the aforesaid view, is perverse or patently illegal.

17. Secondly, the Arbitrator also noted that the meeting was not conducted in an orderly fashion. Admittedly, in terms of the Bye-laws, the

President has the right to preside over the meetings. In the present case, Dr Abhyankar had presided over the 147th meeting of the Board of Directors of NFSL and had rejected the request for taking up the item which was not in the published agenda. The said decision was not followed and the Arbitrator found that the meeting was reduced to chaos thereafter. The Arbitrator found that some of the Directors took over the proceedings by creating pandemonium and not observing discipline. According to the respondents, the meeting was adjourned. The purported minutes of the meeting (which were not accepted by the Arbitrator) also indicate that Dr Abhyankar, being President of NFSL, intended to adjourn the meeting. The Arbitrator, accordingly, concluded that the continuation of the meeting by the Vice President taking the chair was not proper as no such authority had been delegated by the President to the Vice President.

18. The Arbitrator's conclusion that the conduct of the meeting was improper, is supported by sufficient material and therefore, the said conclusion cannot be interfered with in these proceedings.

19. It is necessary to observe that the scope of the present proceedings is restricted and this Court while examining a petition under Section 34 of the Act, does not sit in appeal over the decision of an arbitrator. Unless the award is found to be perverse or patently illegal, it cannot be set aside as opposed to public policy of India. In the present case, the petitioner's case cannot be accepted under Section 34 (2) (b) (ii) of the Act as the impugned award cannot be held to be in conflict with the public policy of India. Explanation (1) to Section 34 (2) (b) (ii) of the Act further clarifies that *an award is in conflict with the public policy of India, only if, (i) the making of*

the award was induced or affected by fraud or corruption or was in violation of section 75 or section 81; or (ii) it is in contravention with the fundamental policy of Indian Law; or (iii) it is in conflict with the most basic notions of morality or justice. In the present case, there is no allegation that the impugned award was induced or affected by fraud or corruption. This Court is also not persuaded to accept that the impugned award contravenes any fundamental policy of Indian Law. It is important to note that the Arbitrator did not disagree with NFSL that the majority of the directors could take the necessary action for removal of the President. The resolution passed for removal of the President of NFSL was set aside mainly because of the manner in which the said business was conducted.

20. The impugned award also does not fall foul of the basic notions of morality or justice. On the contrary, the Arbitrator has underscored the necessity of due notice to Dr. Abhyankar, before taking any measures for his removal as the President of NFSL. The said principle conforms to the inherent principles of natural justice which requires that party, against whom an adverse action is proposed, be apprised in advance and given a fair opportunity to meet the allegations made against him. In the present case, it is admitted that no communication was sent to Dr Abhyankar that some of the directors intended to remove him from the Office of the President of NFSL.

21. Mr Sethi's contention that it would be impossible to remove the President of NFSL as no notice for his removal could be issued without his signature, is not merited. As per the Bye-laws, the Chief Executive of NFSL is authorized to issue the notice convening the meetings of general body,

board of directors, executive committee and other committees of NFSL (Bye-law19), albeit, in consultation with the President. Clearly the Chief Executive would have the powers to circulate the notice if called upon to do so by other directors even in matters concerning removal of the President. Refusal of the President to permit issuance of such notice in these circumstances would not disable the Chief Executive from issuing a proper notice, *albeit* with due information to the President.

22. The petition is, accordingly, dismissed. The pending application stands disposed of. No order as to costs.

JANUARY 03, 2017
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VIBHU BAKHRU, J

