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

% *Date of Judgment: 7th November, 2017*

+ **FAO(OS)(COMM)190/2017**

NATIONAL AGRICULTURAL CO-OPERATIVE MARKETING
FEDERATION OF INDIA LTD(NAFED) Appellant

Through Mr. Aditya Vijay Kumar and Ms.
Akshita Katoch, Advocates

versus

NATIONAL SPOT EXCHANGE LIMITED(NSEL)..... Respondent

Through Mr. Rakesh Munjal, Senior Advocate
with Mr. Ranjan Kumar Pandey, Mr.
Sandeep Bisht and Mr. Anshomaan
Bahadur, Advocates

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MR. JUSTICE V.KAMESWAR RAO

G.S.SISTANI, J. (ORAL)

CM.APPL 39394/2017

1. Exemption allowed, subject to all just exceptions.
2. The application stands disposed of.

CAVEAT PET.943/2017

3. Counsel for the Caveator has entered appearance.
4. Accordingly, the Caveat Petition stands disposed of.

FAO(OS)(COMM)190/2017

5. Notice. Mr. Rakesh Munjal, learned Senior Counsel, on instructions, accepts notice on behalf of the respondent.
6. With the consent of the parties, the present appeal is set down for final hearing and disposal.
7. This is an appeal filed under Section 37 of the Arbitration and Conciliation Act, 1996 read with Section 13 of the Commercial Courts Act, 2015 by the appellant against the judgment of the learned Single Judge dated 01.09.2017 whereby the Award dated 01.05.2017 rendered by the sole Arbitrator has been upheld.
8. The brief facts which have given rise to the filing of the present appeal, in short, are that the appellant entered into an agreement with the respondent on 30.12.2008 for the season 2008-09 wherein the respondent was appointed as a State Level Agency(SLA) in the State of Andhra Pradesh for the procurement of cotton and processing of cotton by ginning and pressing to convert into cotton bales for the said season. In the year 2012, another agreement was entered into between the appellant and the respondent for the same purpose for the season 2012-13. The agreement was signed and executed on 10.11.2012. As the payments were not released in favour of the respondent, a dispute was raised by the respondent which was referred to the sole Arbitrator in terms of Section 84 of the Multi-State Co-operative Societies Act, 2002. The Arbitrator rendered his Award on 01.05.2017. A statement of claim was filed with the following prayers:
“In view of the submissions made hereinabove it is respectfully submitted that this Hon’ble Registrar may be pleased to:

- (A) Admit the claim and decide the disputes as mentioned in para 21 above in terms of section 84 of the Multi State Cooperative Societies Act, 2002;
- (B) Direct the respondent to pay an amount of Rs.8,50,41,900/- along with interest @ 18% from 1st April 2009 for the season 2008-09 and Rs.94,34,15,378/- Rupees Ninety Crore Four Lacs Thirty Four Lacs Fifteen Thousand Three Hundred Seventy Eight Only) along with interest @ 18% from 1st April 2013 for the reason 2012-2013;
- (C) Direct the respondent to deposit before this Hon'ble Registrar a sum of Rs.102,84,57,278/-(Rupees One Hundred Two Crore Eight Four Lacs Fifty Seven Thousand Two Hundred Seventy Eight Only) towards the outstanding amount payable by it under the agreements dated 30.12.2008 & 10.11.2012;
- (D) Direct the respondent to pay *pendente lite* interest @ 18% till the date of actual payment of outstanding amount to the petitioner;
- (E) Award costs in favour of the petitioner; and
- (F) Any such further and other order(s) as this Hon'ble Forum may deem fit and proper in the facts and circumstances of the present case.”

9. As noticed by the learned Single Judge, the Arbitrator by the impugned Award dated 01.05.2017 granted the following reliefs to the respondent herein:

“85. In view of the conclusions arrived at by the Tribunal in the foregoing paragraphs the Tribunal proceeds to pass an award in favour of the Claimant holding the Claimant entitled to recover from the Respondent the following Amounts:

- (a) For Season 2008-2009 under the Agreement dated 30.12.2008, a sum of Rs. 3,95,14,350 {Rupees Three crores, ninety fifty lacs, fourteen thousand, three hundred and fifty only) along with interest payable by the Respondent inclusive of a simple interest at the rate of 12% per annum from the date of occurrence i.e. 02.09.2014 to the date of award which works out too

Rs.5,21,28,629 { Rupees five crores, twenty one lacs , twenty eight thousand, six hundred and twenty nine only).

- (b) For Season 2012-2013 under the Agreement dated 10.11.2012, a sum of Rs. 64,10,38,755 (Rupees Sixty four crores, ten lacs, thirty eight thousand , seven hundred and fifty five only) along with interest payable by the Respondent inclusive of a simple interest at the rate of 12 % per annum from the date of occurrence i.e. 22.09.2014 to the date of award which works out too Rs.84,14,64,351 (Rupees Eighty four crores, fourteen lacs, sixty four thousand, three hundred and fifty one only).
- (c) Rs. 25,00,000 (Rupees twenty five lacs) towards cost of arbitration
- (d) Future interest at the rate of 14% on the awarded amounts for both seasons (inclusive of Interest as on date of award) from the date of award till the date of actual payments shall be payable to the Claimant in case payment of the awarded amounts including interest is not made within four months from the date of award.”

- 10. The objections to the Award filed by the appellant herein were dismissed, however, costs awarded in the sum of Rs.25.0 lakhs were reduced to Rs.10.0 lakhs.
- 11. At the outset, counsel for the appellant submits that he has instructions not to challenge the Award and the order of the learned Single Judge as far as it relates to Claim no.1 in relation to payments with respect to season 2008-09.
- 12. Before we deal with the rival submissions made by the learned counsel for the parties, we deem it appropriate to reproduce the observations

made by the Supreme Court of India in the case of *Associate Builders v. DDA*, reported in (2015) 3 SCC 49, which read as under:

“28. In a recent judgment, *ONGC Ltd. v. Western Geco International Ltd.* 2014 (9) SCC 263, this Court added three other distinct and fundamental juristic principles which must be understood as a part and parcel of the fundamental policy of Indian law. The Court held-

35. What then would constitute the "fundamental policy of Indian law" is the question. The decision in *ONGC Ltd. v. Saw Pipes Ltd.* MANU/SC/0314/2003 : (2003) 5 SCC 705] does not elaborate that aspect. Even so, the expression must, in our opinion, include all such fundamental principles as providing a basis for administration of justice and enforcement of law in this country. Without meaning to exhaustively enumerate the purport of the expression "fundamental policy of Indian law", we may refer to three distinct and fundamental juristic principles that must necessarily be understood as a part and parcel of the fundamental policy of Indian law. The first and foremost is the principle that in every determination whether by a court or other authority that affects the rights of a citizen or leads to any civil consequences, the court or authority concerned is bound to adopt what is in legal parlance called a "judicial approach" in the matter. The duty to adopt a judicial approach arises from the very nature of the power exercised by the court or the authority does not have to be separately or additionally enjoined upon the fora concerned. What must be remembered is that the importance of a judicial approach in judicial and quasi-judicial determination lies in the fact that so long as the court, tribunal or the authority exercising powers that affect the rights or obligations of the parties before them shows fidelity to judicial approach, they cannot act in an arbitrary, capricious or whimsical manner. Judicial approach ensures that the authority acts bona fide and deals with the subject in

a fair, reasonable and objective manner and that its decision is not actuated by any extraneous consideration. Judicial approach in that sense acts as a check against flaws and faults that can render the decision of a court, tribunal or authority vulnerable to challenge.

38. Equally important and indeed fundamental to the policy of Indian law is the principle that a court and so also a quasi-judicial authority must, while determining the rights and obligations of parties before it, do so in accordance with the principles of natural justice. Besides the celebrated *audi alteram partem* rule one of the facets of the principles of natural justice is that the court/authority deciding the matter must apply its mind to the attendant facts and circumstances while taking a view one way or the other. Non-application of mind is a defect that is fatal to any adjudication. Application of mind is best demonstrated by disclosure of the mind and disclosure of mind is best done by recording reasons in support of the decision which the court or authority is taking. The requirement that an adjudicatory authority must apply its mind is, in that view, so deeply embedded in our jurisprudence that it can be described as a fundamental policy of Indian law.

39. No less important is the principle now recognised as a salutary juristic fundamental in administrative law that a decision which is perverse or so irrational that no reasonable person would have arrived at the same will not be sustained in a court of law. Perversity or irrationality of decisions is tested on the touchstone of *Wednesbury* principle [*Associated Provincial Picture Houses Ltd. v. Wednesbury Corporation* MANU/UKWA/0001/1947:(1948) 1 KB 223 : MANU/UKWA/ 0001/1947 : (1947) 2 All ER 680 (CA)] of reasonableness. Decisions that fall short of the standards of reasonableness are open to challenge in a court of law often in writ jurisdiction of the superior courts but no less in statutory processes wherever the same are available.

40. It is neither necessary nor proper for us to attempt an exhaustive enumeration of what would constitute the fundamental policy of Indian law nor is it possible to place the expression in the straitjacket of a definition. What is important in the context of the case at hand is that if on facts proved before them the arbitrators fail to draw an inference which ought to have been drawn or if they have drawn an inference which is on the face of it, untenable resulting in miscarriage of justice, the adjudication even when made by an Arbitral Tribunal that enjoys considerable latitude and play at the joints in making awards will be open to challenge and may be cast away or modified depending upon whether the offending part is or is not severable from the rest..”

(emphasis in original)

29. It is clear that the juristic principle of a "judicial approach" demands that a decision be fair, reasonable and objective. On the obverse side, anything arbitrary and whimsical would obviously not be a determination which would either be fair, reasonable or objective.

30. The Audi Alteram Partem principle which undoubtedly is a fundamental juristic principle in Indian law is also contained in Sections 18 and 34(2)(a)(iii) of the Arbitration and Conciliation Act. These Sections read as follows:

18. Equal treatment of parties.--The parties shall be treated with equality and each party shall be given a full opportunity to present his case.

34. Application for setting aside arbitral award.-

(1) ***

(2) An arbitral award may be set aside by the Court only if
(a) the party making the application furnishes proof that-

(iii) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case;

31. The third juristic principle is that a decision which is perverse or so irrational that no reasonable person would have arrived at the same is important and requires some degree of explanation. It is settled law that where-

1. a finding is based on no evidence, or
 2. an arbitral tribunal takes into account something irrelevant to the decision which it arrives at; or
 3. ignores vital evidence in arriving at its decision,
- such decision would necessarily be perverse.

32. A good working test of perversity is contained in two judgments. In **H.B. Gandhi, Excise and Taxation Officer-cum-Assessing Authority v. Gopi Nath and Sons** 1992 Supp (2) SCC 312 at p. 317, it was held:

“7. ...It is, no doubt, true that if a finding of fact is arrived at by ignoring or excluding relevant material or by taking into consideration irrelevant material or if the finding so outrageously defies logic as to suffer from the vice of irrationality incurring the blame of being perverse, then, the finding is rendered infirm in law.”

In **Kuldeep Singh v. Commr. of Police** MANU/SC/0793/1998 : (1999) 2 SCC 10 at para 10, it was held:

“10. A broad distinction has, therefore, to be maintained between the decisions which are perverse and those which are not. If a decision is arrived at on no evidence or evidence which is thoroughly unreliable and no reasonable person would act upon it, the order would be perverse. But if there is some evidence on record which is acceptable and which could be relied upon, howsoever compendious it may be, the conclusions would not be treated as perverse and the findings would not be interfered with.”

33. It must clearly be understood that when a court is applying the "public policy" test to an arbitration award, it does not act as a court of appeal and consequently errors of fact cannot be corrected. A possible view by the arbitrator on facts has necessarily to pass muster as the arbitrator is the ultimate master of the quantity and quality of evidence to be relied upon when he delivers his arbitral award. Thus an award based on little evidence or on evidence which does not measure up in quality to a trained legal mind would not be held to be invalid on this score¹. [Very often an arbitrator is a lay person not necessarily trained in law. Lord Mansfield, a famous English Judge, once advised a high military officer in Jamaica who needed to act as a Judge as follows: "General, you have a sound head, and a good heart; take courage and you will do very well, in your occupation, in a court of equity. My advice is, to hear both sides patiently, to decide with firmness in the best manner you can; but be careful not to assign your reasons, since your determination may be substantially right, although your reasons may be very bad, or essentially wrong". It is very important to bear this in mind when awards of lay arbitrators are challenged.]Once it is found that the arbitrators approach is not arbitrary or capricious, then he is the last word on facts.

In P.R. Shah, Shares and Stock Brokers (P) Ltd. v. B.H.H. Securities (P) Ltd. (2012) 1 SCC 594, this Court held:

"21. A court does not sit in appeal over the award of an Arbitral Tribunal by reassessing or reappreciating the evidence. An award can be challenged only under the grounds mentioned in Section 34(2) of the Act. The Arbitral Tribunal has examined the facts and held that both the second Respondent and the Appellant are liable. The case as put forward by the first Respondent has been accepted. Even the minority view was that the second Respondent was liable as claimed by the first Respondent, but the Appellant was not liable only on the ground that the arbitrators appointed by the Stock Exchange under Bye-law 248, in a claim against a non-member, had no jurisdiction to decide a claim against another member. The finding of the majority

is that the Appellant did the transaction in the name of the second Respondent and is therefore, liable along with the second Respondent. Therefore, in the absence of any ground Under Section 34(2) of the Act, it is not possible to reexamine the facts to find out whether a different decision can be arrived at.”

13. A Co-ordinate Bench of this Court in the case of *Shiam Cooperative Group v. M/s Kamal Construction Co. Ltd*, [FAO(OS).120/2017] decided on 10.08.2017, has culled out the principles enunciated in *Associate Builder*(supra) regarding judicial review of Section 34 of the Arbitration and Conciliation Act, which is reproduced as under:

“(i) The four reasons motivating the legislation of the Act, in 1996, were

- (a) to provide for a fair and efficient arbitral procedure,
- (b) to provide for the passing of reasoned awards,
- (c) to ensure that the arbitrator does not transgress his jurisdiction, and
- (d) to minimize supervision, by courts, in the arbitral process.

(ii) The merits of the award are required to be examined only in certain specified circumstances, for examining whether the award is in conflict with the public policy of India.

(iii) An award would be regarded as conflicting with the public policy of India if

- (a) it is contrary to the fundamental policy of Indian law, or
- (b) it is contrary to the interests of India,
- (c) it is contrary to justice or morality,
- (d) it is patently illegal, or

(e) it is so perverse, irrational, unfair or unreasonable that it shocks the conscience of the court.

(iv) An award would be liable to be regarded as contrary to the fundamental policy of Indian law, for example, if

(a) it disregards orders passed by superior courts, or the binding effect thereof, or

(b) it is patently violative of statutory provisions, or

(c) it is not in public interest, or

(d) the arbitrator has not adopted a “judicial approach”, i.e. has not acted in a fair, reasonable and objective approach, or has acted arbitrarily, capriciously or whimsically, or

(e) the arbitrator has failed to draw an inference which, on the face of the facts, ought to have been drawn, or

(f) the arbitrator has drawn an inference, from the facts, which, on the face of it, is unreasonable, or

(g) the principles of natural justice have been violated.

(v) The “patent illegality” had to go to the root of the matter. Trivial illegalities were inconsequential. Neither would the possibility of a different view being taken on the material before the arbitrator, constitute a legitimate ground to interfere with the award.

(vi) Apart from the above contingencies, an award could, additionally, be set aside if

(a) either party was under some incapacity, or

(b) the arbitration agreement is invalid under the law, or

(c) the applicant was not given proper notice of appointment of the arbitrator, or of the arbitral proceedings, or was otherwise unable to present his case, or

(d) the award deals with a dispute not submitted to arbitration, or decides issues outside the scope of the dispute submitted to arbitration, or

(e) the composition of the Arbitral Tribunal was not in accordance with the agreement of the parties, or in accordance with Part I of the Act, or

(f) the arbitral procedure was not in accordance with the agreement of the parties, or in accordance with Part I of the Act, or

(g) the award contravenes the Act, or

(h) the award is contrary to the contract between the parties.

Condition (h) would, however, apply subject to the preeminent right of the arbitrator to construe the terms of the contract, and it is only if such construction is such as no fair-minded or reasonable person would do, that interference would be warranted.

(vii) “Perversity”, as a ground for setting aside an arbitral award, has to be examined on the touchstone of the Wednesbury principle of reasonableness. It would include a case in which

(a) the findings, in the award, are based on no evidence, or

(b) the Arbitral Tribunal takes into account something irrelevant to the decision arrived at, or

(c) the Arbitral Tribunal ignores vital evidence in arriving at its decision.

(viii) At the same time,

(a) a decision which is founded on some evidence, which could be relied upon, howsoever compendious, cannot be treated as “perverse”,

(b) if the view adopted by the arbitrator is a possible view, it has to pass muster,

(c) neither quantity, nor quality, of evidence is open to reassessment in judicial review over the award.

(ix) “Morality” would imply enforceability, of the agreement, given the prevailing mores of the day. “Immorality”, however, can constitute a ground for interfering with an arbitral award only if it shocks the judicial conscience.

(x) The court cannot sit in appeal over an arbitration award. Errors of fact cannot be corrected under Section 34. The arbitrator is the last word on facts.

(xi) For examining the above aspects, the pleadings of the parties and materials brought on record would be relevant.”

14. Mr. Kumar, learned counsel for the appellant submits that the learned Single Judge failed to consider that the impugned Award is fallacious and against public policy. Mr. Kumar contends that the learned Single Judge failed to appreciate that the sole Arbitrator acted with material irregularity in passing the impugned Award, which is contrary to documents.
15. Mr. Kumar submits that the learned Single Judge has failed to take into account the clause titled ‘Audit System’, which is part of the Action Plan for Price Support Operations of Cotton for 2012-13 Season. Learned counsel submits that no amount could have been

released in favour of the respondent till the claim of the respondent was audited by the office of Chief Advisor Cost (CAC). Learned counsel has also drawn the attention of the Court to Clause 20(b) of the agreement dated 10.11.2012 entered into between the appellant and the respondent in support of an alternative plea raised by him that in any case 25% of the administrative charges are to be retained by the appellant in the form of a refundable deposit which would carry interest @ 6% per annum till finalization of accounts. Counsel contends that the learned Single Judge has failed to take into account that the communication dated 22.09.2014 is not an admission of debt. Without denying the issuance of aforesaid communication, learned counsel contends that firstly, the signatory of the communication was not authorized to bind the appellant and secondly, post the issuance of this communication it was learnt that a sum of Rs.42,71,199/- was deductible from the claimant respondent herein on account of short realization of sale proceeds of cotton seeds.

16. Learned counsel also contends that the learned Single Judge has failed to take into account the aforesaid terms of the agreement and thus, the order of the learned Single Judge is liable to be set aside, the objections are to be allowed and the impugned Award is also liable to be set aside.
17. Additionally, learned counsel for the appellant submits that the Arbitrator did not take into account the evidence placed on record, more particularly, the cross-examination of the respondent witness Ashutosh Mahajan, the Branch Manager.

18. Mr. Munjal, learned Senior Counsel appearing on behalf of the respondent submits that the present appeal is a gross abuse of the process of law. The appellant has failed to raise a single ground which would require consideration while dealing with an appeal under Section 37 of the Arbitration and Conciliation Act, 1996. He submits that after the procurement by the appellant, the respondent has handed over the bales of the cotton to the appellant, and in turn the appellant has sold the bales, recovered the money and deposited the money in their account. It is also contended that till date there is no protest or complaint of any nature in this regard. It is thus contended by Mr. Munjal that once the bales were received and sold by the appellant and amount received, there is no justification for not making payment to the respondent. Mr. Munjal contends that the argument raised with regard the vetting by the CAC is an after-thought for the reason that part amount pertaining to the year 2008-09 and part payment pertaining to the year 2012-13 have already been made and without any vetting and moreover the clause regarding 'Audit System' is an internal system between the appellant and the CAC and not binding on the respondent. He contends that the respondent would only remain bound by the terms of the agreement dated 10.11.2012.
19. Mr. Munjal, learned Senior Counsel relies on Clause 21(a) of the agreement, which pertains to payment. Elaborating his argument further, he submits that Clause 21(a) does not talk of any vetting of claims. Even otherwise, the respondent is not bound by the internal *inter se* arrangement between the appellant and the CAC. Mr. Munjal also contends that initially the respondent had raised a claim of

Rs.93.0 Crores and subsequent upon negotiations, the claim was reduced to Rs.68,37,03,859/-. This figure was arrived at mutually between the parties on the basis of documents and in terms of the agreement and thereafter, a sum of Rs.4,26,65,104/- was reduced at the instance of the appellant. Thus, counsel contends, that at this late stage the appellant cannot be allowed to wriggle out of the figure mutually agreed upon by the parties.

20. We have heard the learned counsels for the parties.
21. As we have noticed hereinabove that the appellant has not pressed his Claim towards the season 2008-09. A short question which arises for our consideration based on the statement of accounts filed by the learned counsels for the parties, is whether the appellant was within their right to withhold the claim of the respondent till the claim was vetted by the CAC. The learned counsel for the appellant has placed reliance on the Clause titled 'Audit System', which reads as under:

“AUDIT SYSTEM

NAFED shall submit the claim for handing of PSS operation to Ministry of Agriculture, Deptt of Agriculture & Cooperation, Govt. of India after liquidation of the entire stock, duly certified by Chartered Accounts. Ministry of Agriculture, Deptt. Of Agriculture & Cooperation, Govt. of India will forward the claim of NAFED to Ministry of Finance, Deptt of Expenditure, Office of The Chief Advisor(Cost) for vetting.

All the claims and expenses are subject to spot verification of records by Ministry of Finance, Deptt. of Expenditure, office of The Chief Advisor(Cost), New Delhi. In case of disallowance of any expenses by them, the same shall be debited to the concerned State Level Supporter/society.”

22. Mr. Munjal, learned Senior Counsel for the respondent has relied upon Clause 21(a) of the title 'Payment', which reads as under:

"F.PAYMENT

21(a) the funds for the payment to the cotton grown will be arranged by SLS(other than the administrative mark Up) by hypothecation of cotton and providing necessary margin to the banks. The hypothecation loan needs to be re-paid/nullified by SLS. The interest on cash credit loan will be reimbursed by NAFED. Once the bales of requisite quality are given in the possession of NAFED, the principal will pay the aforementioned amount within 15 days failing which interest on the overdue amount at the rate charged by SBI/other banks for the scheme or the amount actually paid by concerned SLS, whichever is less, will be reimbursed by NAFED. The SLS is required to produce and submit to NAFED the documentary evidence for the interest are as well as other relevant aspects relating to it."

23. Another material aspect which is to be considered while deciding the appeal is the communication dated 22.09.2014 strongly relied upon by the learned Senior Counsel for the respondent in support of his plea that the communication is a categorical admission on the part of the appellant regarding the amount due and payable by the appellant to the respondent. The letter dated 22.09.2014, reads as under:

**"National Agricultural Cooperative Marketing Federation
of India Ltd.(NAFED),
5-10-193, HACA Bhawan, 2nd Floor, Opp. Public Gardens,
Hyderabad-500004**

HYD/MK/36/2014-15/1370

22th Sep, 2014

Managing Director & CEO
National Spot Exchange Limited

FT Tower, CTS No.256 & 257
4th Floor, Suren Road, Chakala
Andheri (East), Mumbai-400093.

Sub: Settlement of expenses and against purchase of
Cotton under PSS during 2012-13

Dear Sir,

This is with reference to various communications regarding settlement of expenses and account against purchase of Cotton under PSS during the year 2012-13. As per document made available by NSEL and as per terms of the agreement, we have settled your claim as per detailed statement enclosed herewith and accordingly, Rs.68,37,03,859.00 stands payable to NSEL. Besides above Rs.4,26,65,104.00 stands receivable from parties against seed sales. Thus net amount payable comes to Rs.64,10,38,755.00.

This is for your kind information and necessary adjustment at your end please.

Thanking you,

Yours faithfully

Sd/-
BRANCH MANAGER

Encl: as stated.”

24. Mr. Munjal, learned Senior Counsel has also handed over in Court a copy of statement of account which, he submits, was part of the arbitral record and, in fact, forms part of letter dated 22.09.2014 which he submits has been intentionally withheld from this Court. This statement of account was also withheld before the learned Single Judge, as observed by the learned Single Judge in para 38 of the judgment.

25. The first question which arises for consideration is whether the communication dated 22.09.2014 is an unconditional and unequivocal admission on the part of the appellant. Closely connected to this argument is whether the signatory to this letter was authorized and could bind the appellant in terms of the aforesaid communication. The learned Single Judge has considered this argument of the appellant and as observed that this letter has been signed by the Branch Manager, who was also a signatory to the agreement dated 10.11.2012 and further the same Branch Manager had appeared in the matter as a witness. We have also examined the cross-examination pertaining to the said witness. Nothing has been pointed out to this Court that during his examination-in-chief, Sh. Ashutosh Mahajan has disputed his authorization or denied that he was not authorized to issue this letter to the appellant. Taking into consideration that he was also a signatory to the agreement and produced as a witness by the appellant, would also show that he was closely connected with the agreement and its execution and was dealing with the respondent. Reading of this communication would also leave no room for doubt that the said communication was unequivocal and unconditional. A submission has been made by the learned counsel for the appellant that post-issuance of this communication, it was noticed that a sum of Rs.42.0 lakhs was deductible, but as no such communication/document has been placed on record in support of this plea, nor there is any communication withdrawing the letter dated 22.09.2014, hence the submission is liable to be rejected. The reliance made by the learned counsel for the appellant on the Action Plan for Price Support Operations of Cotton

for 2012-13 Season under the heading ‘Audit System’, in our view, firstly is not applicable and secondly would not bind the respondent as the respondent is not a party to this document. Even otherwise, the Clause ‘Audit System’ relied upon by the learned counsel, in our view, does not preclude the appellant from releasing the claim of the respondent, firstly, for the reason that the appellant has done so in the past and secondly, the claim is only to be vetted by the office of Chief Advisor Cost(CAC) and in case any claim is disallowed, the same is to be debited to the concerned State Level Agency/society. In our view, the claim can only be debited after the payment has been made.

26. We also find that the relevant clause of the agreement dated 10.11.2012 entered into between the parties is Clause 21(a) titled ‘Payment’, which has been reproduced in paragraph 20 aforegoing. A reading of Clause 21(a) would show that, in fact, payment is to be paid within 15 days and there is no reference that this amount is to be paid only after the claim is vetted by the Controller of Accounts.
27. We, accordingly, find no merit in this appeal. We cannot help but notice that along with the communication dated 22.09.2014, the annexure which is duly signed statement of account by Mr. Ashutosh Mahajan, which forms part of the communication, was not filed before the learned Single Judge and despite the learned Single Judge making an observation, the same was withheld from this Court as well. This lapse on the part of the appellant cannot be justified.
28. The appeal is dismissed with cost of Rs.25,000/- to be paid to the respondent.

CM.APPL 39393/2017(stay)

29. The application is dismissed in view of the order passed in the appeal.

G.S.SISTANI, J.

V.KAMESWAR RAO, J.

NOVEMBER 07, 2017

pst



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