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

Date of Decision: 30th September, 2021

+ **O.M.P. (COMM) 290/2021 & I.As. 12773/2021-77/2021.**

DR. R.N. GUPTA TECHNICAL EDUCATIONAL
SOCIETY & ANR.

..... Petitioners

Through: Mr. Aseem Mehrotra, Advocate.

versus

Intec CAPITAL LIMITED

..... Respondent

Through: Mr. Shivam Batra, Advocate.

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

JUDGMENT

[VIA VIDEO CONFERENCING]

SANJEEV NARULA, J. (Oral):

1. The present petition under Section 34 of the Arbitration and Conciliation Act, 1996 [*hereinafter referred to as the 'Act'*] seeks setting aside of the Arbitral Award dated 1st May, 2019 [*hereinafter referred to as the 'Impugned Award'*] passed by the Sole Arbitrator, whereby the claims of the Respondent - Intec Capital Limited (*being* the Claimant in the arbitration) [*hereinafter referred to as 'Intec'*] have been partially allowed and the counter-claims of the Petitioner No. 1 [*hereinafter referred to as 'RNGTE Society'*] have been rejected.

BRIEF FACTS

2. PARTIES TO THE DISPUTE: Intec is a Non-Banking Financial Company. RNGTE Society is an educational society registered under the Societies Registration Act, 1860, operating in and out of Delhi, engaged in various social and charitable activities. Petitioner No. 2 - Mr. Devendra Gupta - is the Founder-Chairman of RNGTE Society and stood as a guarantor for the loan facility availed by RNGTE Society from Intec.

3. THE DISPUTE: On 31st March 2010, Intec – the lender, and RNGTE Society – the borrower (through its authorised signatory Devendra Gupta) entered into a Composite Agreement for Loan and Guarantee for grant of loan of Rs. 3,00,000,00/- for upgrading the colleges run by the Society [hereinafter referred to as the '**Loan Agreement**']. Both parties have taken opposing stands *qua* the said agreement, which are narrated hereinbelow:

3.1. Intec's version:

3.1.1. Intec contends that RNGTE Society applied for a business loan of Rs. 3,00,00,000/-, which was sanctioned by it with an interest rate of 4.65% p.a. Intec claims that against the said loan and accrued interest, sum of Rs. 3,27,29,000/- was recoverable from RNGTE Society, for which twenty four post-dated cheques of Rs. 13,55,250/- each were issued by RNGTE Society [hereinafter referred to as '**PDCs**']. Further, RNGTE Society also agreed to deposit a sum of Rs. 1,05,00,000/- in cash in order to prove its *bona fide*. However, the said amount was not deposited, and instead, RNGTE Society proposed that Intec retain a sum of Rs.

1,05,00,000/- from the original loan amount of Rs. 3,00,00,000/-. As a result, the same was retained and the balance amount [*being* 3,00,00,000 - 1,05,00,000 = 1,95,00,000] of Rs. 1,95,00,000/- was disbursed to RNGTE Society *vide* cheque dated 7th June 2010. After the disbursement of the loan, the post-dated cheques given by RNGTE Society were periodically encashed by Intec to the extent of Rs. 1,22,96,250/-. Some of the PDCs were dishonoured. Thereafter, *vide* notice dated 14th September 2011, Intec called upon RNGTE Society to pay the balance amount of Rs. 1,25,85,300/-, which they failed to comply. Thus, Intec terminated the Loan Agreement *vide* Notice dated 8th November 2011. In arbitration, Intec filed a claim for Rs. 2,97,45,362/- along with *pendente lite* and future interest at 35% p.a. till the date of the payment, along with costs of litigation.

3.2. RNGTE Society's version

3.2.1. RNGTE Society admitted to the execution of the Loan Agreement. It was, however contended that Intec, *vide* Sanction Letter dated 23rd March 2010, sanctioned the loan of Rs. 3,00,00,000/-, subject to the terms and conditions incorporated in Appendix-I annexed thereto. On receipt of the Sanction Letter and in pursuance of the terms and conditions stipulated therein, RNGTE Society, through a Resolution dated 23rd March 2010, resolved to obtain a bank guarantee of Rs. 1,10,00,000/- for availing the loan facility, apart from depositing Rs. 1,05,00,000/- as cash collateral. Accordingly, on 31st March 2010, Intec and RNGTE Society executed the Loan Agreement. Further, RNGTE Society provided a cash amount of Rs. 1,05,00,000/- to Intec, for which a receipt was provided as well. The receipt also stipulated that no interest was payable on the aforesaid deposit for 24

months. Thus, as per the Loan Agreement, Intec was required to release the full sum of Rs. 3,00,00,000/- to RNGTE Society, however, only a sum of Rs. 1,95,00,000/- was disbursed. RNGTE Society cleared instalments of Rs. 13,56,250/- until 1st January 2011, after which a letter was issued to its bank instructing them to stop further payments, since Intec had failed to honour its commitments as per the Loan Agreement. The Society has paid ten instalments of Rs. 13,65,250/- each (totalling Rs. 1,36,62,500/-), plus Rs. 1,05,00,000/- in cash, which have been lying with Intec, since 31st March 2010, apart from the interest which the sum of Rs 1,05,00,000/- was to carry from 31st March 2010 @ 24% p.a. Intec is therefore liable to refund to RNGTE Society an amount of Rs. 46,62,500/- lying with them since 1st February 2011, and no money is due from RNGTE Society to it.

4. THE AWARD: The Sole Arbitrator awarded Intec an amount of Rs. 90,50,000/-, along with future interest @ 12% p.a. payable from 1st February 2011 till the date of the payment, provided that the payment is made by RNGTE Society within three months from the award; upon failure, future interest is to apply @ 15% p.a. from the date of the award till the date of payment. Further, Intec has been awarded costs worth Rs. 2,00,000/-. All other claims raised by both parties have been dismissed, including, RNGTE Society's claim of Rs. 46,62,500/- and interest on the cash collateral amount of Rs. 1,05,00,000/-.

5. Aggrieved with the afore-noted award, RNGTE Society has filed the present petition.

RNGTE SOCIETY'S CONTENTIONS

6. Mr. Aseem Mehrotra, counsel for RNGTE Society, impugns the award by making the following submissions:

6.1. ON CASH COLLATERAL:

6.1.1. The cash collateral amount of Rs. 1,05,00,000/- (viz. 35% of the sanctioned loan amount) was stipulated in the Sanction Letter, under Annexure-I thereto, in the following words:

“Other Condition- Cash Collateral of 35% of the loan amount offered in respect of loan facility by the borrower shall bear interest free.”

6.1.2. This amount was deposited by RNGTE Society, and duly acknowledged by Intec, by issue of a receipt stating that the said amount was interest free for the period described therein i.e., 24 months. This receipt, Mr. Mehrotra submits, is the bone of the contention between the parties. However, the Arbitrator has failed appreciated the said document, as well as the evidence led by the party on the said document. Having stipulated in the Sanction Letter that a cash collateral of 35% was to be offered by the borrower, it was not open to the Arbitrator to hold that the cash could not have been accepted by Intec.

6.1.3. The Arbitrator has himself noted the case of Intec to the following effect:

“8. The Claimant stated in the claim that the Respondents for grant of loan agreed that the Respondents will deposit with the Claimant a sum of Rs. 1,05,00,000/- (Rupees One Crore Five lakhs only) cash in order to prove their bonafide....”

6.1.4. Having noted the said stand of Intec from its statement of claim, the Arbitrator has thereafter given a finding that Intec could not have accepted any amount of cash as the same was not permitted under the Income Tax Act, 1961 as well as RBI guidelines. The said findings / observations are contrary to the case set out by Intec itself as well as the documents issued by Intec.

6.1.5. Having held that only Rs. 1,95,00,000/- was disbursed and paid by Intec to RNGTE Society, the Arbitrator has given a perverse finding that an amount of Rs. 1,05,00,000/- was not paid by RNGTE Society. This finding is completely contrary to the terms of the contract.

6.1.6. The findings of the Arbitrator are contrary to the records as there is no discussion with respect to the Loan Receipt dated 31st March 2010 (Ex. RW 1/2) which was the most crucial document relied upon by RNGTE Society. This document was, in fact, concealed and withheld by Intec in its statement of claim, and ultimately produced by RNGTE Society. The finding/observation of the Arbitrator on the aspect of the cash collateral is *ex facie* contrary to Ex. RW 1/2 as well as the record of the case. Thus, Arbitrator failed to appreciate that RNGTE Society had paid Rs. 1,05,00,000/- to Intec on 31st March 2010 for which receipt shown as Ex. RW 1/2 was issued by Intec on the same day itself.

6.2. ON NO AMOUNT DUE TO INTEC:

6.2.1. No amount was due to Intec inasmuch as Intec only released Rs. 1,95,00,000/- on 7th June 2010, even though the Loan

Agreement was for Rs. 3,00,00,000/-. In fact, according to RNGTE Society, a sum of Rs. 46,62,500/- is lying with Intec since 1st February 2011.

6.2.2. The Arbitrator has made incorrect calculations. According to the Arbitrator, in para 72 of the award, RNGTE Society is liable to pay Rs. 77,03,950/- (i.e., Rs. 1,95,00,000/- minus Rs. 1,22,96,250/-). The said amount, in fact, works out to be Rs. 72,03,750/- and not Rs. 77,03,950/-, as calculated by the Arbitrator.

6.3. ON INTEREST AWARDED:

6.3.1. The Arbitrator has awarded interest contrary to what was agreed between the parties. According to Intec, the agreed rate of interest between the parties was 4.65% p.a. whereas the Arbitrator has awarded 12% p.a., which is tantamount to re-writing the contract, and not permissible under law.

6.3.2. The Arbitrator has further committed an error by awarding interest till 1st February 2011 on the aforementioned miscalculated amount of Rs. 77,03,950/-.

INTEC'S CONTENTIONS

7. Per contra, Mr. Shivam Batra, counsel for Intec, defends the impugned award and makes the following submissions:

7.1. There is no error in the impugned award.

7.2. Intec is not impugning the outcome of the Impugned Award. This is only with a view to bring past litigation to an end. The Arbitrator has carefully analysed all the documents and evidence placed before him to

arrive at the findings of fact, which ought not to be disturbed, under the limited scope of jurisdiction under Section 34 of the Act.

AWARD AND ANALYSIS

8. The award rendered by the learned Arbitrator is based purely on an appreciation of oral and documentary evidence. The following issues/disputes were crystalized for determination:

- “(i) Whether the Claimant is entitled to a sum of Rs. 2,5745362/-? OPC
- (ii) Whether the Claimant is entitled to interest, if so, at what rate? OPC
- (iii) Whether the Respondent is entitled to Rs. 46,62,500 and the amount of Rs. 20 Lakhs as damages? OPR
- (iv) Whether the Respondent is entitled to interest on the amount of Rs. 1,05,00,000/-, if so, at what rate and for what period? OPR
- (v) Whether the signatures of the Respondent No. 3 are forged and fabricated? OPR
- (vi) Relief.”

9. Both the parties produced documentary and oral evidence in support of their stance. The impugned award shows that the learned Arbitrator has analysed the oral evidence produced by the parties as well as the documents placed on record. After meticulous examination thereof, he has rightly come to the crux of the dispute, i.e, how much amount had Intec disbursed to RNGTE Society – whether a collateral of Rs. 1,05,00,000/- was paid in cash by RNGTE Society on 31st March 2010 as per the Sanction Letter; or whether Intec had deducted the said sum from the loan amount.

10. The relevant findings of the learned Arbitrator are as follows:

10.1. On the aspect of cash collateral, the learned Arbitrator held as extracted below:

51. The plea of the parties on the aforesaid question- is already noted herein before in paragraphs above. Ex. RW 1/P2 is the resolution passed

by the Respondent. No. 1 on 23.03.2010, the resolution reads as follows:-

"FURTHER RESOLVED THAT the society agrees to provide the 35% of the Loan-Amount as cash collateral to M/s. Intec Capital Ltd. to secure the above said loan... FURTHER RESOLVED THAT the society agrees to provide Bank Guarantee of Rs, 1,00,10,000/- [Rupees One Crores Ten Thousand only] in favour of M/s. Intec Capital Ltd. to secure the repayment of the loan... FURTHER RESOLVED THAT the society agrees, to issue 24 post dated cheques, to secure the repayment of the loan. The loan shall be paid in 24 monthly instalments..... RESOLVED THAT THE society agrees to provide personal guarantees with cheques of Mr. Devender Gupta and Mrs. Minesh Gupta to secure the repayment of the aforesaid finance facility." Resolved further that Mr. Devender Gupta, chairman / all members of the governing body of the society be and are hereby authorized jointly and severally to execute the composite loan agreement, issue post dated cheques, providing bank guarantee and sign any paper or all such other documents of behalf of the society as may be considered necessary by Intec Capital Ltd. to give effect to the transaction..... Resolved that society agrees to provide personal guarantee with cheque of Mr. Devender Gupta and Mrs. Minesh Gupta to secure the repayment of the aforesaid finance liability."

52. The resolution states that sanction letter has been received. It is dated 23.03.2010. This means sanction letter has been received by the President of the Respondent No. 1 i.e. Respondent No. 2 on 23.03.2010 itself if at all the same had been received. The document Ex. RW 1/Pl negates the version of sanction form claimant on 23.03.2010 Document RW 1/Pl has the date in writing as 31.03.2010. The letter shows that the letter is typed one. It is typed at one and the same time. The typed letter makes reference of sanction and also agreement of sanction by the Respondent No. 2 on the same day. No sanction has been produced on record which is dated prior to- 23.03.2010 or on 23.03.2010. The stand of the Respondents is impossible when one looks at the document. The document records consent of Respondent No. 2 only after resolution which empowers Respondent No. 2. Where any attempt is made to misguide, mistake occurs in such attempts which glitters like gold and tells the truth. The truth is that everything about the document was done on 31.03.2010. The date 23.03.2010 had been incorporated in the resolution on account of some agreement between the parties, which had the motive when one considers the date 31.03.2010 last day of the financial year for which balance sheets are prepared and upto which date the taxes are paid by individual and companies on income. The document which has been made on 31.03.2010 itself shows that the Respondent No. 1 through its signatory, the Respondent No. 2 will abide by the terms and condition set out in appendix. The appendix contains the details which are stated in the resolution. It suggests that Ex. RW/1

which is sanction of the claimant has been prepared after the receipt of the resolution of the Respondent No. 1 by the claimant.

53. The counsel for the claimant during the course of the arguments submitted that in terms of section 269 of the Income Tax act, the claimant being the non banking financial institution is not to accept cash amount of such a magnitude as is claimed by the Respondents since the claimant is bound by RBI guidelines which grants the licence to the claimant. The claimant cannot accept any payment in cash more than 20,000/-. The counsel was questioned why did the claimant incorporated in letter dated 31.03.2010 in its appendix Ex RW 1/P1 that a cash collateral of Rs. 1,05,00,000/- was to be deposited by Respondent No. 1 to the claimant against the public policy as incorporated in section 269 Income tax act and the RBI guidelines. The Counsel submitted that since the Respondent No. 1 mentioned the cash collateral of Rs. 1,05,00,000/-, the same was mentioned in the appendix. This again leads to the inference that there was some mutual understanding between the parties about the managing of the cash collaterals in the documents but the same was not to be implemented.

54. **If the cash collateral was to be taken then why was bank security of Rs. 1,10,00,000/- introduced?** Why the said bank guarantees which were given to the claimant by the Respondents were not encashed? Is it that furnishing of bank guarantees was only a formality to declare that there was indeed a transaction of Rs.3,00,00,000? **Is it not these formalities were made by the parties to show that there was a loan of Rs.3,00,00,000/- but in reality there never was a loan of 3,00,00,000/-** **The loan of Rs.3,00,00,000/- was shown in document for purposes of mutual understanding arrived at between the parties. When I consider the date 31.03.2010 i.e. the last day of the financial year of 2009-10 an inference is drawn that documents are executed to give colour to transaction to show that the transaction was in reality while it was not.**

xx ... xx ... xx

58. **In view of the aforesaid discussion, I find that the claim of the Respondent No. 1 that Respondent No. 1 had parted with a sum of Rs 1,05,00,000/- cash to the claimant is not accepted. Otherwise also the transaction of such an amount in cash is against the public policy and as such the same cannot be accepted. As such, it is held that there was no transfer or transaction of cash amount of Rs. 1,05,00,000/- by the Respondent No. 1 to the claimant. The receipt EX RW 1/2 was prepared to give colour to the transactions that there was indeed transactions of loan of Rs.3,00,00,000/- which in reality was not.**

59. I record the following findings regarding the transaction of Rs.1,05,00,000/- said to be deducted from Rs. 3,00,00,000/- as claimed by the Claimant.

- i. The transaction of Rs.1,05,00,000/- by deduction from Rs.3,00,00,000/- loan is not established by Claimant. **The account books of the Claimant do not reflect Rs.1,05,00,000/-**

was retained as security towards loan of Rs.3,00,00,000/-. The claim that the Respondents did not protest against disbursement of only Rs. 1,95,00,000/- and continued to pay instalments upto 01.01.2011 and why payments of Cheques were stopped suddenly is a matter of inter-se understanding between the parties, which none of parties disclosed. Hence no importance can be attached to the same. ~~Neither party is entitled to take advantage of the same.~~

- ii. The claimants failed to produce before the Arbitral Tribunal the books of accounts as may. show that the transaction took place as claimed.
- iii. The argument that in previous transactions between parties similar deduction were made cannot be considered. Each transaction is to be considered on its own facts and merits. The argument is rejected.
- iv. The best evidence available both oral and documentary has not been adduced. The deposition of Witnesses CW and CW 1 who were not present at the time of transaction does not inspire confidence.

60. For the following reasons the version of cash collateral given by the Respondents to the claimant cannot be accepted.

- (a) The cash transaction is against public policy under Taxation Laws and RBI guidelines.
- (b) The cash transaction of fee collected from the students must have been reflected in the bank account of the institutions of the Respondent No. 1 and should have been produced on record, which were not made part of record after adducing due evidence of proof thereof.
- (c) The transaction of cash was not beneficial to the Respondents. The transaction as claimed was not in reality.
- (d) Respondents claimed in evidence of DW that the representative of the Claimant approached the Respondent for advance of loan to show their business of disbursement for financial year, but pleadings and documents negative the story. Even otherwise, what has been deposed is against the defence taken in the written statement.

61. In view of the findings above I decide the dispute of Rs. 1,05,00,000/- against both the parties." (sic)

[Emphasis supplied]

10.2. The learned Arbitrator, upon a rigorous examination of the evidence produced and facts narrated before him, returned the finding that the issue of cash collateral was decided against both the parties.

The books of accounts of as submitted by Intec, did not reflect that Rs. 1,05,00,000/- was retained as security towards the sanctioned loan amount, and Intec did not produce any other accounts which may have shown the same. At the same time, the Arbitrator also decided to not to accept RNGTE Society's submission that the collateral was paid in cash, for the reason that such a cash transaction was against public policy under Taxation Laws and RBI Guidelines. Moreover, the testimonies of its witnesses were found to be contrary to the defence taken by it.

10.3. Having rendered finding noted above, the Arbitrator proceeded to decide whether RNGTE Society was entitled to Rs. 46,62,500/- along with damages. Naturally, since the fact of deposit of cash collateral of Rs. 1,05,00,000/- was not found to be established, the Arbitrator, rejected the claim of RNGTE Society. Congruently, it was also held that the society shall not be entitled to any interest on the afore-said amount.

10.4. Next, the Arbitrator decided whether Intec was entitled to a sum of Rs. 2,57,45,362/-. Since loan of Rs. 3,00,000,00/- was not proved, and it was held that only Rs. 1,95,00,000/- had been disbursed by Intec to RNGTE Society, the Arbitrator proceeded on that basis. He adjusted instalment cheques of Rs. 1,22,96,250/- paid by RNGTE Society and worked out the liability as Rs. 77,03,950/-.

10.5. As regards Intec's claim for interest of 4.65% p.a., on an

amount of Rs. 3,00,00,000/-, the Arbitrator instead awarded interest @ 12% p.a. on Rs. 1,95,00,000/- from the date of disbursement, with credit of the instalments recovered from time to time, reducing the principal amount at each payment.

11. The above conclusions have been rendered purely on the appreciation of facts and evidence led before the learned Arbitrator. It is trite to say that admissibility and relevance of evidence falls within the jurisdiction of the Arbitrator. He is the best judge of quality and quantity of evidence. In *Associate Builders Versus Delhi Development Authority*,¹ the Supreme Court held that 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 that score. RNGTE Society seeks to rely upon the stand of Intec regarding deposit of Rs. 1,05,00,000/-, but that is of no consequence as the same has been rejected by the Arbitrator due to lack of evidence, and therefore the stance of Intec is not sufficient to sustain a challenge to the award. Further, the reliance on Exhibit RW 1/2 is also of no significance as the Arbitrator has found the entire documentation to be a pretence – a matter of convenience adopted by the parties – not reflecting the actual transaction between them. This document cannot be read and relied upon in isolation, *de hors* the loan transaction. In the circumstances noted above, as per the rule of best evidence, the Arbitrator is legitimately entitled to draw adverse presumptions and accept the genuineness of only such part of the transaction that is corroborated by the banking transactions. The fact that RNGTE Society received the loan to the extent of Rs.1,95,00,000/- and that the

¹ (2015) 3 SCC 49.

entirety of PDCs have not been encashed by Intec, is beyond controversy. Thus, the findings rendered by the Arbitrator are proper, just, reasonable, founded on appreciation of evidence, and call for no interference.

12. For such reasons, within the ambit of Section 34 of the Act, none of the grounds urged by RNGTE Society can be considered by this Court. It is well-settled law that the Court while exercising jurisdiction under Section 34, does not sit in appeal over construction of evidence and cannot re-appreciate the evidence led before the Arbitrator by the parties.

13. The Court also does not find any ground of interference with respect to the rate of interest awarded by the learned Arbitrator. Although the contractual rate of interest on the loan amount of Rs. 3,00,00,000/- was 4.65% p.a., however, since the learned Arbitrator did not accept that the loan transaction was of full amount of Rs. 3,00,00,000/- and held it to be of Rs. 1,95,00,000/- only, he was justified in awarding interest @ 12% p.a. on the said amount from the date of disbursement, with reducing balance. The same is found to be reasonable and there is no ground for interference on this account.

14. In view of the above, this court finds no infirmity in the reasoning adopted by the learned Arbitrator.

15. Before parting, it may be noted that with respect to the amount calculated by the Arbitrator, to be paid by RNGTE Society to Intec, there is indeed an arithmetical error. After subtracting Rs. 1,22,96,250/-, from Rs.

1,95,00,000/-, the amount due and payable by RNGTE Society totals to Rs. 72,03,750/- and not Rs. 77,03,950/-. The award, however, has inadvertently miscalculated the same at para 72, as extracted below:

“I further find Respondent No. 1 is liable to pay Rs.19500000 - Rs.12296250 = Rs. 7703950 to the Claimant after adjustment of instalments Cheque encashed.”

16. At this juncture, Mr. Shivam Batra, counsel for Intec, on instructions, agrees that there is certainly a calculation mistake, and states that the Court may clarify that the amount so awarded is restricted to Rs. 72,03,750/- along with applicable interest as directed by the Arbitrator in para 75 of the award.

17. As there is an *ex facie* computational or typographical error in para 72 of the award, the awarded amount, to the limited extent it exceeds the amount which is actually due after correction of such arithmetical mistake (i.e. Rs. 72,03,750/-) is accordingly set aside.

18. Concomitantly, the interest awarded on Rs. 77,03,950/- would also have to be recalculated in terms of the directions given by the learned Arbitrator in paras 74 and 75 of the award. To elucidate, the awarded amount is restricted to Rs. 72,03,750/-; the interest would now be calculated on the said amount. The reworked interest added to Rs. 72,03,750/- would be the final awarded amount. The difference between the said total amount and Rs. 90,50,000/- is accordingly set aside.

19. The rate of interest and other directions for calculation thereof, and the future interest as awarded by the learned Arbitrator, are not being

disturbed.

20. The present petition, along with pending applications, is accordingly disposed of with the above observations.

SANJEEV NARULA, J

SEPTEMBER 30, 2021

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(corrected and released on 27th October, 2021)

