



2024:DHC:1606



\$~P-1 to 8.

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

Decided on: 29th February, 2024

+ **ARB. A. (COMM.) 19/2022**

INTEX TECHNOLOGIES INDIA LTD

..... Petitioner

versus

RUGBY RENERGY PVT LTD

..... Respondent

+ **O.M.P. (COMM) 320/2021, I.A. 13769/2021 & I.A. 10586/2022**

RUGBY RENERGY PRIVATE LIMITED

..... Petitioner

versus

INTEX TECHNOLOGIES (INDIA) LIMITED

..... Respondent

+ **O.M.P. (COMM) 321/2021 & I.A. 13771/2021**

RUGBY RENERGY PRIVATE LIMITED

..... Petitioner

versus

SH NARENDRA BANSAL

..... Respondent

+ **ARB. A. (COMM.) 45/2022 & I.A. 11560/2022**

RUGBY RENERGY PVT LTD

..... Petitioner

versus

NARENRA BANSAL

..... Respondent

+ **ARB. A. (COMM.) 46/2022 & I.A. 11564/2022**

RUGBY RENERGY PRIVATE LIMITED

..... Petitioner

versus

INTEX TECHNOLOGIES
(INDIA) PVT. LIMITED

..... Respondent

+ **ARB.A. 6/2022 & I.A. 11926/2022**

NARENDRA BANSAL

..... Appellant

versus



2024:DHC:1606



RUGBY RENERGY PVT LTD Respondent
+ O.M.P. (COMM) 354/2022 & I.A. 13464/2022
RUGBY RENERGY PRIVATE LIMITED Petitioner
versus
SHRI NARENDRA BANSAL Respondent
+ O.M.P. (COMM) 355/2022 & I.A. 13468/2022
RUGBY RENERGY PRIVATE LIMITED Petitioner
versus
INTEX TECHNOLOGIES (INDIA) LIMITED Respondent

Appearance: Mr. Sanjoy Ghose, Sr. Advocate with Mr. Amandeep Singh, Mr. Pradeep Desodya, Mr. Karmvir, Mr. Rohan Mondal, Mr. Dilip K. Niranjana, Advocates for Intex Technologies (India) Ltd.
Mr. Ramesh Singh, Sr. Advocate with Mr. Amit Ranjan Singh, Advocate for Rugby Renergy Private Limited.

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CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

JUDGMENT

1. These four petitions under Section 34 of the Arbitration and Conciliation Act, 1996 [“the Act”], and four appeals under Section 37 of the Act, all arise out of arbitration proceedings under two contracts, dated 07.05.2019 and 09.05.2019 and amendments thereto [collectively, “the Agreements”] for sale of three windmills.

A. The Agreements

2. By contract dated 07.05.2019, Rugby Renergy Private Limited [“Rugby”] agreed to purchase two 1.5 MW windmills situated in Rajasthan (alongwith associated rights in land, buildings, equipment and



machinery, etc.) from Intex Technologies (India) Limited [“Intex”]. The contract dated 09.05.2019 was similar in terms, and concerned the purchase of one 1.25 MW windmill by Rugby from one of the promoters of Intex, Mr. Narendra Bansal, in his capacity as the sole proprietor of Intex Industries. Mr. Narendra Bansal and Intex are hereinafter collectively referred to as “the Vendors”.

B. Background of these proceedings

3. Both the Agreements contained arbitration clauses, under which claims and counterclaims were referred to a learned sole arbitrator for adjudication.

4. Rugby was the claimant in the arbitration proceedings and principally sought specific performance of the Agreements. The Vendors raised several counter claims. Both parties also filed applications under Section 17 of the Act before the learned arbitrator. Rugby additionally assailed the jurisdiction of the learned arbitrator in respect of two of the Vendors’ counter claims by way of an application under Section 16 of the Act.

5. The learned arbitrator rendered a decision dated 01.09.2021 by which she disposed of the pending applications under Section 17 of the Act, allowed Rugby’s application under Section 16 of the Act in respect of two of the Vendors’ counter claims, and also disposed of the claims made by Rugby, holding that nothing survived for trial. This decision is assailed by Rugby in O.M.P.(COMM.) 320/2021 and O.M.P.(COMM.) 321/2021, filed under Section 34 of the Act. Although some of the grounds and prayers indicate a challenge to the orders passed under



Section 17 of the Act also, no separate appeal under Section 37 of the Act has been filed by Rugby against the decision dated 01.09.2021.

6. To the extent that the learned arbitrator allowed Rugby's claim under Section 16 of the Act in respect of two of the Vendors' counter claims, the Vendors have challenged the decision dated 01.09.2021 in ARB.A.6/2022 and ARB.A.(COMM.) 19/2022.

7. The matter thereafter proceeded before the learned arbitrator for hearing of the Vendors' remaining counter claims. At this stage, the learned arbitrator made a further order dated 21.05.2022 under Section 17 of the Act, which Rugby has challenged in ARB.A.(COMM.) 45/2022 and ARB.A.(COMM.) 46/2022.

8. These counter claims were finally decided in favour of the Vendors by an award dated 02.06.2022. Rugby's challenge to this award is in O.M.P.(COMM.) 354/2022 and O.M.P.(COMM.) 355/2022.

C. Attempt at amicable settlement

9. During the hearing of these petitions, an attempt was made to see whether these proceedings could be resolved amicably between the parties. I first heard Mr. Ramesh Singh, learned Senior Counsel for Rugby, and Mr. Sanjoy Ghose, learned Senior Counsel for the Vendors, on the challenge to the two awards [dated 01.09.2021 and 02.06.2022]. In the course of hearing, a consensus emerged, both with regard to the impugned awards and the interim arrangements, reflected in the orders dated 01.09.2021 and 21.05.2022.

10. However, on 25.01.2024, Mr. Amit Ranjan Singh, learned counsel for Rugby, withdrew the consent given by Mr. Ramesh Singh with regard to the interim arrangements. The parties were heard on those aspects and



judgment was reserved. It was expressly stated by Mr. Amit Ranjan Singh on 25.01.2024 that the consensus, with regard to the final awards, remains.

11. The petitions were thereafter listed on 30.01.2024 at my instance, as I required some clarification from Mr. Ghose. At this juncture, Mr. Amit Ranjan Singh, submitted that Rugby would like all aspects of the matter to be decided on merits, and if it succeeds in its petition for setting aside of the award dated 01.09.2021, it would seek liberty to the parties for arbitration proceedings to be invoked and prosecuted *de novo* on all points. Mr. Amit Ranjan Singh, therefore, submitted that all the proceedings be decided on merits. Learned counsel on both sides were, therefore, heard conclusively on the merits of all the proceedings, without binding them to any concessions, consents or statements made during the course of hearing.

D. Decision dated 01.09.2021

12. By the decision dated 01.09.2021, challenged in O.M.P. (COMM.) 320/2021 and O.M.P. (COMM.) 321/2021, the learned arbitrator has disposed of applications filed by the parties under Section 16 and 17 of the Act, and also rendered an award dismissing Rugby's claim for specific performance.

13. The learned arbitrator has taken note of the following aspects of the Agreements:

- a. The transfer of the windmills turned out to be a long-drawn affair that required transfer of Operation and Maintenance ["O&M"]



Contractor and Power Purchase Agreements with power distributors¹.

- b. Clause 5.1 of the Agreements sets out the Vendors' liability to supply the windmills alongwith various documents, signifying nodues and noobjection letters from O&M contractors, lenders, etc.
- c. With regard to the consideration payable under the Agreements, the learned arbitrator refers to Clause 6.1 of the contract between Intex and Rugby, which provides as follows:

"6.1. PURCHASE PRICE:

The total "Purchase Price" payable to the Seller shall not exceed Rs. 7,61,00,000/- (Rupees Seven Crores Sixty one Lacs only) including all taxes, duties, dues, levies, charges, Cess, costs etc., on a "Slump Sale" and "going concern" basis for acquisition of 100% ownership of the Wind Business. There shall be no escalation of the Purchase Price under any circumstances.

6.1 (A) REVISED PURCHASE PRICE

Any reference to **"Revised Purchase Price" or "revised purchase price" in this Agreement shall mean adjustment of the following in the Purchase Price,**

- i. Any **Interim Payments** made by the Buyer to the Seller prior to Completion date
- ii. **Adjustments of revenues which are due or become due prior to completion date and when Buyer calls for such adjustments in writing.**
- iii. **Expenses incurred** by the Buyer as per Clause 12."²

- d. An amendment to the contract between Intex and Rugby was executed on 08.05.2019, which provides *inter alia* as follows:

"Subject: Amendment-1 to agreement dated 7th May 2019 ("Agreement")
Dear Sir(s),

This has reference to the discussions we had with you on the sale agreement dated 7th May 2019 ("Agreement") signed by both of us. Accordingly, we (the "Seller") hereby agree & undertake to

¹ Paragraph 3 of the award dated 01.09.2021.

² The contract dated 09.05.2019, between Narendra Bansal and Rugby, is in substantially similar terms except that the figure "₹7,61,00,000/-" is replaced with "₹1,81,25,000/-"; emphasis supplied.



amend the following terms & conditions of the Agreement, which shall be binding on us for all purposes.

1. Any reference to agreement shall also mean and include this Amendment-1.
2. **Seller confirms that all Generation, Revenue & Receivable (net of O&M and agreed expenses) from the wind business with effect from 1st April 2018 till completion date is achieved and Buyer is in a position to raise invoice on its own, exclusively belongs to the account of Buyer.** All such revenue amounts shall be paid by the Seller separately to the Buyer as and when instructed by the Buyer.
3. Seller also confirms that **an amount of Rs. 2,17,25,000/-** (Two Crores seventeen lacs twentyfive thousand Rupees) **has become payable to the Buyer for the period from 1st April 2018 till 31st March 2019 towards Revenue** (Net of O&M and agreed Expenses).
4. Any income tax incidence payable on the Revenue from April 2018 onwards shall be borne by the Buyer.
5. **Sellers shall pay the amounts for the Energy supplied to the Discoms (Jodhpur & Jaisalmer Circles) for the period 1st April 2019 till Completion date, which shall be payable by the Seller to the Buyer definitely 30 days before the completion date** without fail or upon failure the amounts for the energy supplied shall be adjusted from the balance purchase price payable as per clause 6.2.3 of sale agreement dated 07th May, 2019. Seller shall send the copy of Invoices to Buyer which shall be raised on time by the Seller every month. ”³

- e. On 09.05.2019, Rugby entered into a contract with Mr. Narendra Bansal for purchase of one windmill. The terms of the said contract were admittedly in *para materia* with the terms of the contract dated 07.05.2019 between Intex and Rugby, as amended on 08.05.2019.
- f. In both cases, a subsequent amendment was executed on 11.10.2019. The amendment dated 11.10.2019, to the contract

³ Emphasis supplied.



dated 07.05.2019 between Rugby and Intex, provides *inter alia* as follows:

“Addition in clause 5 in Amendment-1 dated 8th May, 2019 shall be as follows:-

The operational expenses from 01.04.2019 till completion date shall be payable by Seller Only. The amount of same shall be adjusted at the time of payment of purchase price or revised purchase price as the case may be.”⁴

- g. While dealing with the applications for interim relief, the learned arbitrator noted a contention raised on behalf of the Vendors with regard to enforceability of the Agreements⁵. She came to the conclusion that Clause 6.1, read with the amendment, did not provide for the quantum of consideration with sufficient certainty. She found that the terms, as provided in the Agreements, may ultimately lead to the Vendors giving Rugby the windmills without any amount being paid by Rugby. She also found that the parties were not *ad idem* on the issue of consideration.
- h. Having recorded these findings, the learned arbitrator rendered the following conclusions:

“69. The conclusions that emerge from the above analysis are:

*1 In the matter of **Rugby vs. Intex Technology (India Ltd.)**, the contract dated 07.05.2018 as amended by Amendment-I of 08.05.2018 and Amendment-II of 11.10.2019 is **contract without a valid clause of consideration and hence void and not enforceable.***

*2 Similarly in the matter of **Rugby vs Narendra Bansal**, the contract of 09.05.2018 read with the Amendment dated 11.10.2019 **is void and unenforceable.***

3 The claimant does not have a prima facie case for specific performance of the contracts.

⁴ Emphasis supplied.

⁵ Paragraph 57 of the award dated 01.09.2021.



4 Even if the aforesaid contracts are assumed to be valid, the claimant, and not the respondents, was in breach in performing the contracts. Hence the claimant is not entitled to seek an award for specific performance of the contracts.

5 The claimant can be enjoined from taking the benefit of the two amended PPAs dated 19.12.2019 forwarded with letter of 23.12.2019 being document C/52 (Collectively) in the statement of claim of the claimant Rugby against Intex and the amended PPA dated 08.01.2020 forwarded with letter of 10.01.2020 being document C/51 (Collectively) in the statement of claim of Rugby against Narendra Bansal.”⁶

- i. The learned arbitrator thereafter held that counter claims Nos.1 and 2, preferred by the Vendors, were outside her jurisdiction and allowed the applications of Rugby under Section 16 of the Act to this extent.
- j. The operative orders of the learned arbitrator recorded in the award are as follows:

“72. DECISIONS

As a consequence of the above analysis the following decisions are reached and ordered accordingly.

1 The applications in the two matters u/s 16 of the Arbitration and Conciliation Act, 1996 challenging the maintainability of the counter claims 1 & 2 are allowed. The counter claims for declaration that the contracts stood determined on 15.12.2019 is redundant and hence infructuous and the counter claims 2 therein are rejected as not maintainable in the absence of necessary parties. No cost.

2 The petition u/s 9 filed by the claimant and heard by this tribunal u/s 17 of the Arbitration and Conciliation Act, 1996 is dismissed with a cost as mentioned in sub para 6 below.

3 The applications filed by the claimant u/s 17 are dismissed. No costs

4The applications seeking withdrawal of the BGsfurnished by the claimant issued in favour of the respondents on behalf of M/s Goyal MG Gases Pvt. Ltd. dated 22.10.2019 and the subsequent ones and for

⁶ Emphasis supplied.



permission to submit a fresh BGs on behalf of the claimant Rugby Renergy Pvt. Ltd. are dismissed. No costs.

5 The petitions u/s 9 of the Arbitration and Conciliation Act, 1996, filed by the respondents Intex Technology (India) Ltd and by Narendra Bansal are allowed with costs assessed at ₹ 1,00,000/- (Rupees One Lakhs Only) in each case, in the following terms:

a) The claimant Rugby and its agents are restrained from executing any further documents or agreements on behalf of the respondents Intex Technologies (India) Ltd and Narendra Bansal for the purpose of transfer of windmills business on the basis of agreements dated 07.05.2019 and 09.05.2019 with subsequent amendments and the POA dated 18.11.2019 in favor of M/s Goyal MG Gases Pvt. Ltd.

b) The claimant and its agents are restrained from creating any third party interest in the assets which are subject matters of the two contracts dated 07.05.2019 and 09.05.2019 read with subsequent amendments thereto mentioned in paragraphs 7 (i) and 10 above.

c) The claimant and its agents are restrained from causing any interference in the operation and management of the windmills in question, mentioned in paragraphs 7 (i) & 10.

d) The claimant and its agents are restrained from acting upon the assignment of the Power Purchase Agreements dated 19.12.2019 in favour of Rugby Renergy Private Limited forwarded with the letter of Rajasthan Urjavikas Nigam Ltd. dated 23.12.2019 and the assignment of the Power Purchases Agreements in favour of Rugby Renergy Private Ltd. dated 08.01.2020 forwarded by the Rajasthan Urjavikas Nigam Ltd. dated 10.01.2020.

6 In view of the above decisions nothing survives in the two claims as the claimant has prayed for nothing other than Specific Performance and damages in lieu of Specific Performance as well as costs. Hence the two claim petitions filed by Rugby Renergy Private Limited i.e., DAC 2696A/1-20 and DAC 2696B/1-20 are dismissed. The claimant is liable to bear all the costs on the petitions u/s 9 filed before the Hon'ble High Court, heard by this Tribunal as applications u/s 17 of the Act which is assessed at ₹ 1,00,000/- (Rupees One Lakhs only) for each respondent. The claimant is also liable to bear the costs of the two claim petitions, which will be the amount paid by the respondents as charges to DIAC on the claims of the claimant Rugby Renergy Private Limited plus



Lawyer's fee assessed as ₹ 1,00,000/-(Rupees One Lakhs only) for each claim petition.

73. The counter claims 3, 4, 5, 6 and 7 be listed for hearing.

74. It is clarified that all though no prayer had been made by the claimant for the refund of amount paid by it under the agreements the same needs to be considered for final adjudication of the disputes between the parties. Hence this question will be considered along with the counter claims 3, 4, 5, 6, and 7.

75. Since the claims by Rugby Renergy Private Limited in both the matters have been decided by the present order, the same amounts to an award in both claims. The DIAC will take care to recover the appropriate stamp duty from the claimant.”⁷

14. Learned counsel for Rugby assailed the decision, both on grounds of procedural irregularity/natural justice, and on merits. I have heard learned counsel for Rugby and Mr. Sanjoy Ghose, learned Senior Counsel for the Vendors, on both aspects.

E. Challenge on the ground of natural justice

15. Rugby's challenge on the ground of natural justice is essentially that the learned arbitrator has disposed of its claims finally, while deciding the applications under Sections 16 and 17 of the Act. Mr. Ramesh Singh took me through a compilation of orders passed by the learned arbitrator from time to time, commencing with an order dated 11.01.2020, and ending with an order dated 14.07.2021, when orders were reserved, and to the written submissions filed by both parties. He submitted that all the orders, written submissions and indeed the final decision dated 01.09.2021, clearly deal only with the pending applications, and there was no occasion for the claims to be disposed of finally.

⁷ Emphasis supplied.



16. Mr. Ghose, on the other hand, submitted that the learned arbitrator was well within jurisdiction in closing the claims altogether, so long as the findings on the point that the Agreements themselves are void, are found to be correct. He submitted that both sides had been heard extensively on all issues, and the Court ought not to interfere with the award on this ground. In fact, he submitted that Rugby itself, through a communication of its counsel dated 02.06.2021, requested the learned arbitrator to adjudicate the matter finally at that stage. A copy of the said e-mail, addressed by learned counsel for Rugby to the learned arbitrator, Delhi International Arbitration Centre, and counsel for the Vendors was handed up in Court and taken on record. Its contents were not disputed.

17. The communication deals with the Vendors' delay in filing written submissions and opposes the Vendors' submission that oral evidence would be required. The relevant contents of the said e-mail communication are set out below:

"9. It is also a matter of record that the issue has been argued at great length at this stage itself, with every document/ communication being addressed by the parties in detail.

10. There is also no dispute with regard to the genuineness or existence of any material document and the matter pertains largely to interpretation of admitted documents and consideration of relevant authorities.

11. Till date, the Respondent has not been able to give any plausible reason as to why and on what issue evidence has to be led by the Parties.

12. It is also noteworthy that the Respondent is enjoying an ad-interim order since 11.01.2019, which virtually amounts to a grant of all its reliefs under Section 9.

13. Till date the status of the revenues deposited in the escrow account, if any, in terms of the order dated 11.01.2019 is not clear. Nor has the renewed O & M Contract, for which the Respondent was citing great



urgency in December, 2020, been placed on record in terms of the orders of this Tribunal.

14. **It therefore suits the Respondent to on the hand delay the proceedings and on the other hand claim prejudice on this account and plead equities by alleging that for this period of the delay the net revenues from the windmills are getting reduced from the purchase price; and then claim that the agreement is unconscionable.**

15. Had the Respondent not breached the contract, it would have got a substantial sum of money as sale consideration, on 06.08.2019 (the original date of completion) or at the very latest in December, 2019. All further delays in the completion of the transaction, beyond December, 2019 and January, 2020 are solely on account of the Respondent, as were the delays before that; and **if the matter needlessly goes into the rigmarole of evidence, it will only get further delayed by another year or so, given the track record of the Respondent, in complying with the orders of this Hon'ble Tribunal.**

16. The blame for this delay and consequential reduction of the purchase price cannot be laid at the door of the Claimant. From the Respondent's complete disregard towards the accrual of the revenue, it appears that the Respondent believes that it is certain to succeed in these proceedings.

17. Be that as it may, it is prayed that having regard to the facts & circumstances of the present case, either the right of the Respondent to file written submissions be closed or in the alternative, the hearings dated 02.06.2021 and 03.06.2021 be adjourned by two weeks so as to enable the Respondent to comply with the orders of this Hon'ble Tribunal.

18. **In the meanwhile, this Hon'ble Tribunal is humbly requested to bestow its kind consideration on the issue of concluding the arbitral proceedings finally, at this stage itself, having regard to what is stated hereinabove and pass an order thereon, so that the Parties are fully aware of the purport & effect of these hearings. There is no gainsaying the fact that whatever view this Hon'ble Tribunal takes on the interpretation of the admitted documents and state of law relevant to the proceedings, at this stage, will not undergo any substantial change after a dilatory evidence taking process. The same will only delay the proceedings by another year; with the Respondent claiming misconceived equities in its favour, on account of this passage of time.**⁸

⁸ Emphasis supplied.



18. In these circumstances, Mr. Ghose submits that the plea being urged by Rugby now is entirely an afterthought, and an attempt to open a fresh round of arbitration.

19. Having heard learned counsel for the parties, I am of the view that the award cannot, on balance, be held to be vitiated by breach of natural justice. It may first be reiterated that the rules of natural justice are flexible and dynamic. While Section 18 of the Act, which incorporates the most basic notions of fair play, is of prime importance, the question of compliance with its mandate has to be judged on the facts of each case.

20. In the present case, Mr. Singh is right in submitting that the orders of the learned arbitrator do not expressly reflect that she proposed to dispose of the claims finally. However, upon a reading of the orders dated 14.01.2021 and 27.01.2021, it is clear that it is the Vendors who requested permission to lead oral evidence. Rugby's contention to the contrary are clearly reflected in the e-mail dated 02.06.2021 extracted above. Arguments were advanced by learned counsel for the parties on at least nine dates of hearing and they filed detailed written submissions.

21. What, in my view, concludes the matter against Rugby however, is the aforesaid communication dated 02.06.2021. Rugby itself has stated that the issue had been argued at great length by that time, with every document/communication having been addressed by the parties and that the matter pertained largely to interpretation of admitted documents and consideration of relevant authorities. Rugby opposed the Vendors' request to lead evidence, and consequent delay in disposal of the proceedings. It took the position that the learned arbitrator's view is unlikely to change after "*a dilatory evidence taking process*". Having



taken this position, I am of the view that Rugby's contention that it was not fully heard, or that something was left to be decided at trial, does not merit acceptance.

22. With respect, the better course may have been for the learned arbitrator to indicate expressly that she proposed to dispose of the claims finally. However, the fact that she did not do so, does not in my view vitiate the award, when the party seeking setting aside of the award had itself sought a final adjudication. This ground of objection is, therefore, rejected.

F. Objection on merits

23. On merits, the learned arbitrator's finding that the Agreements are void as the consideration was uncertain, is based upon Clauses 6.1 and 6.1(A) of the contract dated 07.05.2019 between Rugby and Intex, Clauses 2 and 3 of the amendment thereto dated 08.05.2019 and amendment dated 11.10.2019. These are reproduced in paragraphs 13(c), 13(d) and 13(f) above. The contract between Mr. Narendra Bansal and Rugby contains broadly similar terms.

24. The learned arbitrator has analysed these clauses in detail as follows:

"57. Respondents have raised yet one more point about the enforceability of the contract. According to Intex the contract (Annexure CC/3 of the counter claim filed by Intex) is not a concluded contract since the price or the sale consideration is entirely uncertain. As stated above the price in clause 6 of the contract is mentioned in the contract dated 07.05.2019 (at page 49 of the counter claim) as,



"shall not exceed ₹7,61,00,000/- (Rupees Seven Crores, Sixty One Lakhs only) including all taxes and duties levied, charging cess, cost, etc....."

The amendment-I executed on the very next date amends the purchase price with following clause in para 2

"Seller confirms that Generation, Revenue and Receivables (net of O&M and Agreed expenses) from the wind business with effect from 1st April, 2018 till completion date is achieved and Buyer is in a position to raise invoice on its own, exclusively belongs to the account of the Buyer. All such revenues amount shall be paid by the seller separately to the buyer as when instructed by the buyer."

*Completion date, defined in the contract is fulfilment of the seller's obligation as per clause 5.1 & 5.2 which included transfer of the wind business i.e., execution of the final sale deed. The paragraph 3 of the amendment date 11.10.2019 quantifies the aforesaid receivables from 01.04.2018 to 31.03.2019 as ₹2,17,25,000/- (Rupees Two Crores, Seventeen Lakhs and Twenty Five Thousand only). Paragraph 5 of the same document says that the amount payable towards revenue be paid 30 days before the completion date and if not so paid would be adjusted in the sale price. **Thus initial price as "shall not exceed ₹7,61,00,000/- (Rupees Seven Crores and Sixty One Lakhs Only)" which was itself vague and uncertain is made further vague and uncertain by saying that the receivables / revenue from 01.04.2018 will be reduced from such purchase price. The amount to be reduced is only ascertained for one year. The claimant does not say that the price to be paid by it is ₹7,61,00,000/- minus ₹2,17,25,000/-, but says that as time goes by and the wind mills continue to earn revenues, the revenue amounts to be deducted from the so called sale price continues to increase, the amount payable by claimant continues to fall.***

58. The Ld. Counsel for the claimant contends that the price became certain and ascertainable when in paragraph 6 of the amendment-I it is said that the bank guarantee amount would stand reduced to ₹5,03,75,000/- (Rupees Fives Crores, Three Lakhs and Seventy Five Thousand Only). This argument could be accepted if the claimant had ever contended that the sale price was fixed at ₹5,03,75,000/- (Rupees Fives Crores Three Lakhs and Seventy Five Thousand Only). In fact this is being interpreted by the respondent as an instruction to pay the receivables. It is also to be noted that the claimant handed over subsequent BGs for even smaller amounts



59. There is no explanation for the strange clause that the revenue for more than a year prior to the contract would be payable by the seller to the buyer. Similarly there is no explanation as to why the revenue/receivables would continue to belong to the buyer even before actual sale has taken place. If the literal meaning of the aforesaid clauses are taken, some day the seller would end up giving to the claimant not only the wind mills but more without seeking a penny by way of sale price. This would be bizarre and absurd.

60. A contract cannot be so interpreted as to make it absurd. The Ld. Counsel for the claimant says that if the contract had actually been performed within three months as stipulated, the claimant would have raised the invoices for the power generated & sold and would have received the revenue generated by the wind mills which the claimant is now claiming. But in that case the claimant would have paid the whole purchase price for the wind mills and could claim the output of the mills. **Even now the claimant is not offering to pay the purchase price of ₹7,61,00,000/- (Rupees Seven Crores and Sixty One Lakhs Only).**

61. The Ld. Counsel for the claimant says that the contract was not only for buying the power plant but also to get the revenue. In fact logic would tell one that if the buyer claims the revenue for the year preceding the contract, the price of the mills should increase to that extent and if the buyer claims revenue immediately since the contract, the amount payable has only to increase. It is absurd to say that the revenue from the mills will continue to be received by the buyer without the price having been paid. Certainly there is something more than what meets the eye. **In any case the consideration money, to say the least, is uncertain and yet to be determined.** It needs to be stated that even when the guarantee was given for the first time, the amount secured was only ₹3,93,00,000/- (Rupees Three Crores and Ninety Three Lakhs Only) and not ₹5,03,75,000/- (Rupees Fives Crores Three Lakhs and Seventy Five Thousand Only) as was stipulated in amendment-I. The respondent immediately objected to the BG as being deficit in value. Clearly the parties had two different ideas about the consideration.

The bank guarantee furnished by the claimant is renewed from time to time. The same is also amended to reduce the assured amount. The recent amended bank guarantee dated 06.07.2021 is for an amount of ₹1,32,00,000/- (Rupees One Crore and Thirty Two Lakhs Only). **This fully explains how the consideration clause or price is working. If the sale of the wind mills are delayed and as per claimant, time thereof extended, in another year the price payable will be reduced by another ₹2,00,00,000/- (Rupees Two Crores Only) approximately and so that even after adjustment of the amount paid so far the price will be a negative figure.**



This certainly was not the intention of the parties, at least of the respondent Intex/Narendra Bansal. When the parties are not ad idem on the issue of consideration, there cannot be a binding contract.

62. The price as stated "shall not exceed ₹7,61,00,000/- (Rupees Seven Crores and Sixty One Lakhs Only)" itself is not a clear and categorical statement regarding the price and price being an essential ingredient of a contract, the contract dated 07.05.2019 (or dated 09.05.2019) with all future amendments cannot be a valid enforceable contract. In Sobhaq Narain Mathu vs. Pragya Agarwal abdOrs. 227 (2016) DCT511 the High Court of Delhi held a contract void although therein the sale consideration had been categorically stated, but the instalments and clauses like whether the entire price has to be paid in advance or whether the price was payable in equated or non-equated instalments and details related thereto had not been stated. This ruling lends support the view of the Tribunal that the contracts sought to be enforced are void."⁹

25. The Agreements have been held to be void on the basis of this reasoning.

26. The findings of the learned arbitrator on an interpretation of the Agreements, are liable to be challenged only if they are found to be manifestly illegal, in the sense that they are perverse or irrational, I do not find the award to suffer from an infirmity which meets this high threshold¹⁰. Upon interpretation of the Agreements, the learned arbitrator has found the consideration to be uncertain and, in given circumstances, the consideration could also be negative. Clause 6.1 of the Agreement refers to a "Purchase Price" which "shall not exceed Rs.7,61,00,000/-" and Clause 6.1(A) of the same Agreements speaks of revision in the purchase price *inter alia* on account of "revenues which are due or become due prior to completion date and when Buyer calls for such adjustments in writing". The quantum of adjustments contemplated in computing the final consideration were also, thus, uncertain. In these

⁹ Emphasis supplied.

¹⁰ *Associate Builders vs. DDA*, (2015) 3 SCC 49.



circumstances, the learned arbitrator's conclusion that the purchase price was not fixed, was subject to adjustments contingent upon future revenues, and also conditional upon Rugby requiring such adjustment, cannot be faulted as a perverse or irrational interpretation. The amendments to the contracts make the case no better. By virtue of Clause 2 of the amendment dated 08.05.2019, Rugby is held entitled to adjustment of revenues with effect from 01.04.2018 – i.e. one year before the principal agreement and until it is in a position to raise invoices on its own– another uncertain contingency. The learned arbitrator has noticed that upon a literal interpretation of the clauses, there would come a point when the Vendors would give the windmills to Rugby without seeking a penny by way of sale price¹¹.

27. In the course of hearing before me, learned counsel for Rugby not only asserted that this interpretation is correct but also claimed that the sale price in terms of the Agreements when subjected to the adjustments provided, was already in the negative – i.e. that specific performance of the Agreements would entail transfer of the windmills from the Vendors to Rugby and also monetary payments being made by the Vendors to Rugby and not *vice-versa*. This demonstrates that the construction of the Agreements in the award is not just plausible, but even according to Rugby, is correct.

28. I do not find any infirmity in the conclusion of the learned arbitrator that such uncertainty as to the consideration renders the contract itself void, or that the clauses are commercially unworkable.

¹¹ Paragraph 59 of the award dated 01.09.2021.



29. The objections of Rugby on the merits are therefore also rejected.

G. Conclusions

30. For the aforesaid reasons, the decision of the learned arbitrator dated 01.09.2021, insofar as it is characterised as an award rejecting Rugby's claim for specific performance finally, does not call for interference in the limited jurisdiction of the Court under Section 34 of the Act. Consequently, Rugby's challenge to the interim directions contained in the same decision are also rejected. O.M.P.(COMM.) 320/2021 and O.M.P.(COMM.) 321/2021 are therefore dismissed.

31. The final award on the Vendors' counter claim number 3 to 7 dated 02.06.2022 is admittedly consequential upon the finding that the Agreements are void in the award dated 01.09.2021. That award having been upheld, the award dated 02.06.2022 follows. O.M.P.(COMM.) 354/2022 and O.M.P.(COMM.) 355/2022 are therefore also rejected.

32. The two appeals filed by Rugby under Section 37 of the Act [ARB.A.(COMM.) 45/2022 and ARB.A.(COMM.) 46/2022] are directed against the interim order dated 21.05.2022 under Section 17 of the Act, passed in the Vendors' counter claims. The award dated 02.06.2022 having been upheld, these appeals are rendered infructuous and are therefore disposed of.

33. The Vendors have also filed two appeals [ARB.A. 6/2022 and ARB.A.(COMM.) 19/2022] against the decision dated 01.09.2021, to the extent that the learned arbitrator held that two of the Vendors' counter claims were beyond the scope of reference as they involved third parties. Mr. Ghosh did not press these appeals, but reserved all rights and contentions of the Vendors to be agitated in appropriate proceedings,



2024:DHC:1606



including in the writ petition filed by them before the Rajasthan High Court (S.B. Civil Writ Petition No. 4143/2022). These arbitration appeals are therefore disposed of as not pressed, with liberty as aforesaid. All rights and contentions of the parties are left open in this regard.

34. For the reasons stated above, Rugby fails in its principal challenge to the decision dated 01.09.2021. It is therefore liable to an order of costs. Additionally, it may be mentioned that the course of hearing was severely hampered by Rugby's prevaricating stands. Considerable time of the Court was wasted in trying to achieve an amicable resolution, only for Rugby to change its stance at each stage. Costs are therefore awarded against Rugby, consolidated at an amount of Rs.1,00,000/-, to be paid in equal shares to each of the Vendors.

PRATEEK JALAN, J

FEBRUARY 29, 2024

"SS/udit"/