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

Judgment pronounced on: 20.11.2024

\+ **FAO(OS) (COMM) 139/2021, CM APPLs.40566/2021, 55976/2023**

DR. R.N. GUPTA TECHNICAL EDUCATIONAL SOCIETY THROUGH ITS CHAIRMAN SHRI DEVENDRA GUPTA & ANR. ..... Appellants

Through: Mr. Aseem Mehrotra and Ms. Deeksha Mehrotra, Advocates.

versus

M/S INTEC CAPITAL LTD. THR. ITS DIRECTOR .... Respondent

Through: Mr. Shivam Batra, Mr. Akhil Ranganathan and Mr. Ankit Bhushan, Advocates.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU
HON'BLE MR. JUSTICE SACHIN DATTA

JUDGMENT

SACHIN DATTA, J.

1. The appellant, Dr. R.N. Gupta Technical Educational Society (hereinafter ***RNGTE***) has filed the present intra-court appeal under Section 37(1)(c) of the Arbitration and Conciliation Act, 1996 (hereinafter ***the A&C Act***) impugning a judgment dated 30.09.2021 (hereinafter ***the impugned judgment***) passed by the learned Single Judge of this Court in OMP (COMM) No. 290/2021 captioned *Dr. R.N. Gupta Technical Educational Society & Anr v. Intec Capital limited.*

2. The impugned judgment dismisses the application filed by RNGTE under Section 34 of the A&C Act assailing an arbitral award dated 01.05.2019 (hereinafter ***the impugned award***).

3. The impugned judgment found the challenge to the impugned award to be outside the purview of Section 34 of the A&C Act. However, the learned Single Judge after noticing an apparent arithmetical error in the impugned award, confined the principal amount awarded in the impugned award to ₹ 72,03,750/- (as opposed to the amount of ₹77,03,950/-). The interest amount was also reworked out accordingly.

4. The arbitral proceedings arose in the context of a Composite Agreement for Loan and Guarantee (hereinafter ***the agreement***) entered into between the parties. RNGTE was the borrower under the said agreement whereas Intec Capital Limited (hereinafter ***Intec***) was the lender. In terms of the agreement, Intec agreed to make available a financial facility as referred to in the Schedule 1 of the said agreement. The said schedule also prescribes the rate of interest and the schedule for repayment. The same is reproduced hereunder:-

> *"This Schedule is an integral part of the Composite Agreement for Loan and Guarantee as per Clause 17(ii) mentioned agreement.*
>
> *1. Loan Facility Amount Rs. 3,00,00,000/- (Rupees Three Crore Only*
>
> *2. Loan Tenure 24 Months 3.Interest Rate 4.65% per annum calculated on Flat basis*
>
> *4. Number of installments 24* *5. Value of installments:-*
>
> *All installments are Rs. 13,66,250/- (Rupees Thirteen Lacs Sixty Six Thousand Two hundred fifty only*
>
> *OR*
>
> *Installments – to – are of Rs. – (Rupees --*
>
> *Installments – to – are of Rs. – (Rupees --*
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> *Installments – to – are of Rs. – (Rupees --*
>
> *Installments – to – are of Rs. – (Rupees --*

6. No. of advance installments 01 7. No. of balance installments 23

8. Due Date of Balance EMI 01-06-10 9. Delay charges 3% per month 9(a). Processing charges N

10. Cheque Dishonoring Charges a. First Presentation Rs.500/-
b. Subsequent Presentation Rs.1000/-
c. Any others:- As per sanction letter if greater than above.

PLACE:- New Delhi DATE:- 31-03-10.

NAME OF THE BORROWER: Dr. R.N.Gupta Technical Education Society.

ADDRESS OF THE BORROWER: 107/9 Kishan Garh Vasan Kunj, New Delhi

STATUS OF BORROWER: Society

NAME OF THE AUTHORISED SIGNATORY Mr. Devendra Gupta

AGREEMENT DETAILS: AGREEMEN NO.: 009/197 AMOUNT :- Rs. 3,00,00,000/-

NAME OF THE GUARANTOR: Mr. Devendra Gupta

ADDRESS OF THE GUARANTOR: B-1/28, 2nd Floor, Malviya Nagar, New Delhi

STATUS OF GUARANTOR : Individual

NAME OF THE AUTHORISED SIGNATORY:- -

WITNESS WHEREOF THE GUARANTOR HAS/HAVE PUT ITS SIGNATURE/SEAL ON THESE PRESENTS ON THE DAY, MONTH WRITTEN.

-Sd- -Sd-

BORROWER GUARANTOR"

5. The loan sanction letter on the basis of which the loan was disbursed also contained a condition that a cash collateral of 35% of the loan amount would be given by the borrower.

6. According to Intec, a sum of ₹1,05,00,000/- was retained by it out of the total loan amount of ₹3,00,00,000/- and a sum of ₹1,95,00,000/- was disbursed to RNGTE. It has been specifically averred in the statement of claim as under:

> *"9. That in pursuance to the loan agreement dated 31.03.2010, the loan amount of Rs. 3,00,00,000/- was paid and disbursed. It is pertinent to mention that the Respondents have represented and assured that they will make deposit of Rs.1,05,00,000/- with the Claimant Company to prove their bonafide and since they were not having funds available, they requested the Claimant Company to keep a sum of Rs.1,05,00,000/- out of total disbursed amount of Rs.3,00,00,000/-, Rs. 1,05,00,000/- have been retained and a sum of Rs.1,95,00,000/- has been paid to the Respondent No. 1 vide cheque/DD no. 000758 dated 07/06/2010 drawn on Bank of India, which was duly encashed by the Respondent No. 1.*
>
> *10. That however, after disbursement of the loan amount, the Respondent No. 1 continuously defaulted in making payment as per the schedule as mentioned in the "**Composite Agreement for Loan and Guarantee**" and only a sum of Rs.1,22,96,250/- has been received by the Claimant towards the installments/repayment of the loan. It is pertinent to mention that several post-dated cheques have been given by the Respondents under the terms of the "**Composite Agreement for Loan and Guarantee**" dated 31.03.2010 were returned dishonoured/unpaid."*

7. However, according to RNGTE, it provided a cash amount of ₹1,05,00,000/- to the respondent as cash collateral in terms of the conditions stipulated in the sanction letter. Further, it is the case of RNGTE that instead of releasing a sum of ₹3,00,00,000/-, Intec only released a sum of ₹1,95,00,000/- to RNGTE. It has been averred in para 15 of the statement of defence as under: -

> *"15. The Respondents state that no amount is due to the Claimant inasmuch as the Claimant released only Rs 1,95,00,000/- on 7.6.2010 even though the loan agreement was for Rs 3,00,00,000.00. It is stated that a sum of Rs 46,62,500/- is lying with the Claimant, since 1.2.2011. i.e. Rs 1,95,00,000/- having been released, the Respondent No 1 having paid 10 instalments i.e. Rs 1,36,62,500/- plus Rs 1,05,00,000/- which was lying with the Respondent w.e.f. 31.3.2010 apart from the interest which*

> *the sum of Rs 1,05,00,000/- was to carry from 31.3.2010 @ 24% p.a. Thus, it is the Claimant who are to refund the amount lying with them to the Respondents. The Respondents had sent a legal notice on 21.2.2012 to the Claimant on these fact which is annexed as Annexure R-6 to the reply. However, the Claimant failed to send a reply to the legal notice.*
>
> *That in view of the above facts, more particularly, that only Rs 1,95,00,000/- was released and that the Respondents had deposited Rs 1,05,00,000/- with the Claimant as cash collateral, and that the Respondents have paid 10 instalments, no amount is due to the Claimant. The Statement of Claim is liable to be dismissed on these facts and the Claimant be directed to refund Rs 46,62,500/- with interest @ 24% p.a. from 1.2.2011, till payment. The Claimant are also liable to pay interest on Rs 1,05,00,000/- which was lying with since 31.3.2010 till its repayment. The Respondents are claiming damages which is quantified at Rs 20 lacs for the frivolous litigation which they have initiated against them."*

8. A sole Arbitrator was appointed by this Court *vide* order dated 18.01.2017 in ARB.P. No.597/2016 for adjudication of the disputes between the parties. This was done after the previously appointed Arbitrators recused themselves from the matter.

9. Elaborate evidence was adduced by the respective parties before the learned sole Arbitrator in support of their respective case.

10. In the impugned award, the learned sole Arbitrator, at the very outset, considered the divergent factual versions given by the parties as regards the alleged cash collateral of ₹1,05,00,000/-. The learned sole Arbitrator, after considering the evidence adduced by the parties and taking note of the attendant facts and circumstances, held that there was no transaction involving payment of cash amount of ₹1,05,00,000/- by RNGTE to Intec. It was concluded in the impugned award as under:-

> *"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 installments 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.

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 deductions 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 CW1 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."

11. Having rendered the above findings, the impugned award proceeds to hold that since no deposit of cash collateral of ₹1,05,00,000/- was made by RNGTE to Intec, the monetary claim of RNGTE was untenable.

12. The award also rejects the version of Intec that a sum of ₹1,05,00,000/- was retained from the loan amount. Having reached the conclusion that only a sum of ₹1,95,00,000/- was disbursed by Intec to RNGTE, it was held as under :-

> *"72. I further find Respondent No. 1 is liable to pay Rs1,95,00,000-Rs.1,22,96,250 = Rs.77,03,950 to the Claimant after adjustment of installments Cheque encashed. The Respondent No. 2 is liable to pay the said amount as guarantor which guarantee is not disputed. The Respondent No. 3 is not liable to pay any amount to the Claimant. The claim to the extent of Rs.2,57,45,362/- is rejected. Dispute is decided accordingly."*

13. The award further proceeds to grant interest @12% p.a. on the sum of ₹1,95,00,000/- which was actually disbursed to the appellant. It was held as under:-

> *"75. …… I find that interest @ 12%p.a. on a sum of Rs.1,95,00,000/- which has admittedly been exchanged between the parties would be just and reasonable for a financial institution like the Claimant, while taking note that interest is awarded by superior Court from 9% to 12% generally. The interest is to be calculated on the amount of Rs.1,95,00,000/- from the date of disbursement i.e. 07.06.2010 with credit of the installment recovered from time to time reducing the principal amount at each payment. Issue is decided accordingly."*

14. The impugned judgment, dismissed RNGTE's application under Section 34 of the A&C Act after taking note of the elaborate factual findings rendered in the impugned Arbitral Award. It was held that the same did not warrant any interference under Section 34 of the A&C Act. It was held as under:-

> *"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."*

15. As regards the rate of interest awarded in the impugned award, it was held as under:-

> *"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."*

16. Thus, the impugned judgment finds no infirmity in the reasoning contained in the impugned award. However, the impugned judgment noticed an arithmetical error in the impugned award as under:-

> *"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 installments Cheque encashed."*

17. Thereafter, the impugned judgment taking note of the submission of the learned counsel for the Intec to the effect that the award be restricted to an amount of ₹72,03,750/- (instead of ₹77,03,950/-) along with applicable interest, held as under:-

"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."

SUBMISSIONS OF RESPECTIVE COUNSEL

18. In the present proceedings the appellant has sought to re-agitate the factual issues concerning the loan transaction with the respondent. It is contended that the learned sole Arbitrator has wrongly construed the transaction between the parties. In particular, the learned Arbitrator failed to take into account the receipt dated 31.03.2010 evidencing the payment of cash amount of ₹1,05,00,000/- by the appellant to the respondent.

19. It is contended that it was impermissible for the learned Arbitrator to disregard the terms of the written agreement based on oral evidence inasmuch as the same results in contravention of Section 91 and 92 of the Indian Evidence Act, 1872. Reliance in this regard has been placed on the judgment of the Supreme Court in case of ***Roop Kumar v. Mohan Thedani*** (2003) 6 SCC 595. It is contended that from the material on record before the learned sole Arbitrator, it is evident that the respondent released only a sum of ₹1,95,00,000/- to the appellant even though the loan agreement was for ₹3,00,00,000/-. It is contended that the appellant having paid 10

instalments + sum of ₹1,05,00,000/- in cash (on which the respondent is liable to pay interest @ 24% p.a.), the respondent is liable to refund an excessive sum of ₹46,62,500/- that was lying with the respondent as on 01.02.2011. In any event, there was no occasion to award any amount to the respondent.

20. On the other hand, learned counsel for the respondent has relied upon the elaborate factual findings rendered in the impugned award and has emphasised that the said findings rendered could not be reopened in proceedings under Section 34 and/or Section 37 of the A&C Act.

ANALYSIS AND FINDINGS

21. Having considered the aforesaid contentions, we find the present appeal to be devoid of merit.

22. As noticed hereinabove, the learned Sole Arbitrator has carefully scrutinized the material and evidence on record and has arrived at certain conclusions as regards the real nature of the transaction that actually took place between the parties.

23. The Arbitrator after undertaking a threadbare analysis of the material on record and taking note of the elaborate evidence adduced by the parties, comprehensively rejected the contention of the appellant that a sum of ₹1,05,00,000/- was disbursed in cash by the appellant to the respondent as "cash collateral". It was also found that the actual amount disbursed by the respondent to the appellant was only to the tune of ₹1,95,00,000/- as against an amount of ₹3,00,00,000/- as mentioned in the loan agreement.

24. In reaching the aforesaid conclusion, the award takes into account the following circumstances:-

(i) In terms of Section 269SS of the Income Tax Act, it was impermissible for the claimant (Intec), being a Non-Banking Financial institution to accept cash amount of the magnitude of ₹1,05,00,000/-. (Para 53 of the award)

(ii) Although there was reference to the cash collateral of ₹1,05,00,000/- in the appendix to the loan sanction letter, the said provision was not implemented. (Para 53 of the award)

(iii) If the cash collateral was required to be taken, there was no necessity for the sanction letter to contain a stipulation regarding providing a bank security to the tune of ₹1,10,00,000/-. (Para 54 of the award)

(iv) The payment of cash collateral by the borrower to the tune of ₹1,05,00,000/- was incongruous inasmuch as there was no necessity for the borrower to avail loan to the extent of ₹3,00,00,000/- if a sum of ₹1,05,00,000/- was already available with it. It has been held in para 55 of the award as under: -

> *"55. …….. No evidence has been adduced by the Respondents to show that for what purpose the amount of Rs.1,95,00,000/- which is not disputed by the parties, was considered necessary. If indeed Rs.1,05,00,000/- was given by the Respondent to the Claimant, since the Respondent no.1 in return was getting only an additional Rs.90,00,000/- in the form of Cheque."*

(v) The concerned officers of the claimant (Intec) who were involved in the transaction, had not been produced by the claimant. (Para 56 of the award).

(vi) RNGTE did not produce the relevant account books relating to transfer of money by the RNGTE to Intec. During the deposition of RW-1 cash books of only a limited period had been sought to be produced. (Para 57 of the award).

(vii) In any event, the claim of RNGTE that it paid to Intec in cash a sum of ₹1,05,00,000/- being against the public policy under the Taxation Laws and RBI policy cannot be looked into.

25. There is no basis for this Court to take a different view in the matter in these proceedings.

26. The legal position is well settled to the effect that a merit based review of an arbitral award involving reappraisal of factual findings is impermissible. It has been held by the Supreme Court in case of ***Konkan Railway Corporation Limited Vs. Chenab Bridge Project Undertaking*** [2023 INSC 742] as under:-

> *"14. ..... At the outset, we may state that the jurisdiction of the Court under Section 37 of the Act, as clarified by this Court in MMTC Ltd. Vs. Vedanta Ltd., is akin to the jurisdiction of the Court under Section 34 of the Act. Scope of interference by a court in an appeal under Section 37 of the Act, in examining an order, setting aside or refusing to set aside an award, is restricted and subject to the same grounds as the challenge under Section 34 of the Act.*
>
> *15. Therefore, the scope of jurisdiction under Section 34 and Section 37 of the Act is not akin to normal appellate jurisdiction. It is well-settled that courts ought not to interfere with the arbitral award in a casual and cavalier manner. The mere possibility of an alternative view on facts or interpretation of the contract does not entitle courts to reverse the findings of the Arbitral Tribunal. In Dyna Technologies Private Limited v. Crompton Greaves Limited (2019) 20 SCC 1, this Court held:*
>
> > *"24. There is no dispute that Section 34 of the Arbitration Act limits a challenge to an award only on the grounds provided therein or as interpreted by various courts. We need to be cognizant of the fact that arbitral awards should not be interfered with in a casual and cavalier*

> *manner, unless the court comes to a conclusion that the perversity of the award goes to the root of the matter without there being a possibility of alternative interpretation which may sustain the arbitral award. Section 34 is different in its approach and cannot be equated with a normal appellate jurisdiction. The mandate under Section 34 is to respect the finality of the arbitral award and the party autonomy to get their dispute adjudicated by an alternative forum as provided under the law. If the courts were to interfere with the arbitral award in the usual course on factual aspects, then the commercial wisdom behind opting for alternate dispute resolution would stand frustrated.*
>
> *25. Moreover, umpteen number of judgments of this Court have categorically held that the courts should not interfere with an award merely because an alternative view on facts and interpretation of contract exists. The courts need to be cautious and should defer to the view taken by the Arbitral Tribunal even if the reasoning provided in the award is implied unless such award portrays perversity unpardonable under Section 34 of the Arbitration Act."*

27. Moreover, we find that the findings arrived at in the impugned award as regards the real nature of the transaction between the parties are plausible and merited based on the attendant facts and circumstances.

28. The contention raised by the appellant as regards infraction of the principles embodied in Section 91 and 92 of the Indian Evidence Act, 1872, is also misconceived. A perusal of the award reveals that the learned Arbitrator has not misconstrued/misapplied or ignored any terms of the agreement arrived at between the parties. The learned Sole Arbitrator has merely taken note of the amount actually exchanged between the parties. It would have been wholly incongruous to ignore the same. If anything, the same would have caused serious detriment to the appellant itself inasmuch as the loan agreement mentioned the loan amount to be ₹3,00,00,000/- and the repayment amount was ₹3,27,29,000/-, whereas in actual fact, the amount that was actually disbursed by the respondent to the appellant was only ₹1,95,00,000/-. The impugned award cannot be faulted for taking cognizance of the actual transaction between the parties, as it took place.

29. The Arbitral Tribunal also took note of the fact although the disbursed amount was to the tune of ₹1,95,00,000/-, the amount actually repaid by the appellant was to the tune of ₹1,22,96,250/-. This repayment of amount to the extent of ₹1,22,96,250/- is also admitted by the appellant in para 69 (A) of the present appeal. The learned Sole Arbitrator concluded as under:-

> *"72. 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. The Respondent No. 2 is liable to pay the said amount as guarantor which guarantee is not disputed. The Respondent No. 3 is not liable to pay any amount to the Claimant. The claim to the extent of Rs.2,57,45,362/- is rejected. Dispute is decided accordingly."*

30. Although it is rightly noticed that the amount repaid by the appellant was to the tune of ₹1,22,96,250/-, while deducting the said amount from the disbursed amount of ₹1,95,00,000/- an inadvertent arithmetical error kept in the award. This has been taken note of in para 15 of the impugned judgment as under:-

> *"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."*

31. The learned counsel for the respondent has rightly contended that the said arithmetical error has no bearing on any of the factual and legal findings rendered in the impugned award. Moreover, the learned counsel for the respondent reiterates that the respondent is agreeable to restrict the principal awarded amount to a sum of ₹72,03,750/- (which is less than the amount

awarded in the impugned award) and that the respondent is also willing for the interest to be worked out on the basis of this lesser amount.

32. On the basis of the aforesaid submissions on behalf of the respondent, the impugned judgment has restricted the principal award amount to ₹72,03,750/- and has also directed that interest be worked out on the said basis.

33. We find nothing amiss in the impugned judgment restricting the award amount, as acceded to by the respondent.

34. In the aforesaid circumstances, we find no merit in the present appeal and the same is, accordingly, dismissed. All pending applications are also disposed of.

SACHIN DATTA, J

VIBHU BAKHRU, J

NOVEMBER 20, 2024
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