RWANDA AGRI BUSINESS INDUSTRIES v GRAND LACS SUPPLIER

[Rwanda URUKIKO RW'IKIRENGA – RCOMAA 0029/13/CS (Kayitesi z., P.J., Kayitesi R. na Rugabirwa, J.) 4 Ukuboza 2015]

Amategeko agenga imiburanishirize y'imanza z'ubucuruzi – Guhuza imanza – Nta manza zishobora gusabirwa guhuzwa ku rwego rw'ubujurire ngo byakirwe kuko aba ari ikirego gishya kiba kitarasuzumwe ku rwego rwa mbere.

Amategeko agenga amasezerano – Inshingano zo kwishyura inyungu z'umwenda wafashwe – Uwashyize umukono ku masezerano y'inguzanyo niwe uba ufite inshingano zo kuwishyura n'inyungu ziwukomokaho – Ntashobora gusaba ko inyungu zakwishyurwa n'utaramwishyuye ku gihe mu yandi masezerano bagiranye mu gihe ntamasezerano yateganyije ko utishyuriye ku gihe azirengera n'inyungu zizacibwa uwafashe inguzanyo.

Amategeko agenga imiburanishirize y'imanza z'ubucuruzi – Irangiza rubanza ry'agateganyo – Iyo irangiza ry'urubanza ry'agateganyo ritakozwe urubanza rukarinda rugera ku rwego rwa nyuma, ntiryongera gusabwa kuri urwo rwego kuko icyemezo gifatwa gihita gishyirwa mu bikorwa.

Incamake y'ikibazo: Grand Lacs Supplier Ltd (GLS Ltd) yagiranye na Rwanda Agri Business Industries Ltd (RABI Ltd) amasezerano yo kugemura ibiribwa bigizwe n'ibigori n'ibishyimbo bifite agaciro k'amafaranga 300.158.550. Grand Lacs Supplier Ltd yagemuye ibyo biribwa nk'uko bari barabisezeranye ariko RABI ntiyubahiriza igihe cyo kwishyura, bituma Grands Lacs Supplier Ltd itanga ikirego mu Rukiko rw'Ubucuruzi rwa Huye rwemeza ko ikirego cya Grand Lacs Supplier Ltd gifite ishingiro, rutegeka RABI Ltd kuyishyura amafaranga yose hamwe 335.234.533 Frw akubiyemo umwenda wa 300.156.550 Frw + 31.075.983 Frw y`inyungu z`ubukererwe + 400.000 Frw y`indishyi z`ikurikiranarubanza n`igihembo cya Avoka.

Rwanda Agri Business Industries (RABILtd) Ltd yajuririye mu Rukiko Rukuru rw'Ubucuruzi ivuga ko itishimiye imikirize y'urubanza ku rwego rwa mbere maze rwemeza ko ubujurire bwayo nta shingiro bufite ariko ko ubujurire bwuririye ku bundi bwa Grand Lacs Supplier Ltd bufite ishingiro, rutegeka Rwanda Agri Business Industries kwishyura inyungu z'ubukererwe ku rwego rw'ubujurire zingana na 22.768.470 Frw ziyongera kuzagenwe mu rubanza rwajuririwe ni ukuvuga 31.075.983 Frw y`inyungu z`ubukererwe n'indishyi z'ikurikiranarubanza zingana na 500.000 Frw. Runayitegeka kandi kurangiza urubanza by'agateganyo ku mwenda w'amafaranga 300.158.550.

Rwanda Agri-Business Ltd (RABI Ltd) yajuririye Urukiko rw'Ikirenga, ivuga ko Urukiko Rukuru rw`Ubucuruzi rutahuje urubanza RABI Ltd yaburanaga na Grands Lacs Supplier Ltd n'urwo yaburanaga n'Ikigo cya Leta gishinzwe Amagereza (RCS) ku mpamvu zitumvikana, ko kandi RABI Ltd yaciwe indishyi z'umurengera no kuba rwaremeje ko habaho irangizarubanza ry'agateganyo. Grand Lacs Suppliers Ltd yireguye ivuga ko ko nta rubanza izi RABI Ltd yayirezemo kandi ko mu byo bazi yajuririye mu Rukiko Rukuru rw'Ubucuruzi nta kibazo cyo guhuza imanza cyarimo. ku bijyanye n'irangizarubanza, Grand Lacs Suppliers Ltd yireguye ivuga

urubanza rwaragombaga kurangizwa by’agateganyo ku mwenda remezo kuko RABI Ltd yawemeye; bityo ko ubujurire kuri iyi ngingo nta shingiro bufite.

Incamake y’icyemezo: 1. Ikirego cyo guhuza imanza bwa mbere ku rwego rw’ubujurire ntigishobora kwakirwa ngo gisuzumwe kuko aba ari ikirego gishya.

2. Uwafashe umwenda niwe ufite inshingano yo kwishyura uwo mwenda n`ibiwukomokaho kuko ariwe uba ugaragara ko yashyize umukono ku masezerano uwo mwenda ushingiyeho.

3. Icyemezo cy`urukiko mu gihe kidashobora kujuririrwa binyuze mu nzira zisanzwe ntigishobora kurangizwa by`agateganyo kuko byaba nta mpamvu.

Ikirego cyatanzwe na RABI Ltd gisaba ihuzwa ry`imanza nticyakiriwe.
Ikirego cyatanzwe na GLS Ltd gisaba kugobokesha BRD mu rubanza ku rwego rw`ubujurire nticyakiriwe.
Ubujurire bwa RABI Ltd nta shingiro bufite
Ubujurire bwuririye ku bundi bwa GLS Ltd bufite ishingiro kuri bimwe.
Amagarama aherereye kuri RABI Ltd.

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Amategeko yashingiweho:
Itegeko nº 21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize y`imanza z`imbonezamubano, iz`ubucuruzi, iz`umurimo n`iz`ubutegetsi.
Itegeko n0 45/2011 ryo kuwa 25/11/2011 rigenga amasezerano.

Ibitekerezo by’abahanga byifashishijwe:
C.Giverdon, J-CI-Civ., fasc.2460, No 100 et 101.

Nta manza zifashishijwe.

Urubanza

IMITERERE Y’URUBANZA

[1] Grand Lacs Supplier Ltd (GLS Ltd) yagiranye na Rwanda Agri Business Industries Ltd (RABI Ltd) amasezerano yo kugemura ibiribwa bigizwe n’ibigori n’ibishyimbo bifite agaciro k’amafaranga 300.158.550. Grand Lacs Supplier Ltd yagemuye ibyo biribwa nk’uko bari barabisezeranye ariko RABI ntiyubahiriza igihe cyo kwishyura, bituma Grands Lacs Supplier Ltd itanga ikirego mu Rukiko rw’Ubucuruzi rwa Huye, ruca urubanza kuwa 31/5/2013, rwemeza ko ikirego cya Grand Lacs Supplier Ltd gifite ishingiro, rutegeka RABI Ltd kuyishyura amafaranga yose hamwe 335.234.533 Frw akubiyemo umwenda wa 300.156.550 Frw + 31.075.983 Frw y`inyungu z`ubukererwe + 400.000 Frw y`indishyi z`ikurikiranarubanza n`igihembo cya Avoka.

[2] Rwanda Agri Business Industries (RABI Ltd) Ltd ijuririra urwo rubanza mu Rukiko Rukuru rw’Ubucuruzi, ruca urubanza kuwa 14/11/2013, rwemeza ko ubujurire bwayo nta shingiro bufite ariko ko ubujurire bwuririye ku bundi bwa Grand Lacs Supplier Ltd bufite ishingiro, rutegeka Rwanda Agri Business Industries kwishyura inyungu z’ubukererwe ku rwego rw’ubujurire zingana na 22.768.470 Frw ziyongera kuzagenwe mu rubanza rwajuririwe ni ukuvuga 31.075.983 Frw y`inyungu z`ubukererwe n’indishyi z’ikurikiranarubanza zingana na 500.000 Frw. Runayitegeka kandi kurangiza urubanza by’agateganyo ku mwenda w’amafaranga 300.158.550.

[3] Rwanda Agri-Business Ltd (RABI Ltd) yajuririye Urukiko rw’Ikirenga, ivuga ko Urukiko Rukuru rw`Ubucuruzi rutahuje urubanza RABI Ltd yaburanaga na Grands Lacs Supplier Ltd n’urwo yaburanaga n`Ikigo cya Leta gishinzwe Amagereza (RCS) ku mpamvu zitumvikana, ko kandi RABI Ltd yaciwe indishyi z’umurengera no kuba rwaremeje ko habaho irangizarubanza ry’agateganyo.

[4] Urubanza rwaburanishijwe mu ruhame kuwa 27/10/2015, Rwanda Agri Business Ltd ititabye kandi yari yahamagajwe ahatazwi mu buryo bukurikije amategeko, naho Grand Lacs Supplier Ltd ihagarariwe na Me Twagirayezu Christophe, asaba ko urubanza rwaburanishwa uwajuriye adahari (RABI Ltd) ashingiye ku ngingo ya 58 y`Itegeko nº 21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize y`imanza z`imbonezamubano, iz`ubucuruzi, iz`umurimo n`iz`ubutegetsi, Urukiko rufata icyemezo cyo kuburanisha urubanza RABI Ltd idahari kuko yahamagajwe ahatazwi mu buryo bukurikije amategeko ntiyitaba nta n’impamvu yagaragarije Urukiko yatumye ititaba.

II. ISESENGURA RY’IBIBAZO BIGIZE URUBANZA.

1. Ku kibazo cy’igobokesha rya BRD risabwa na Grand Lacs Supplier Ltd mu bujurire bwuririye ku bundi.

[5] Uburanira Grand Lacs Supplier Ltd avuga ko mu bujurire bwuririye ku bundi yatanze, asaba igobokeshwa rya BRD, asobanura ko mu rubanza R.COMA 0401/13/HCC, Urukiko Rukuru rw`Ubucuruzi rwategetse irangiza ry`urubanza ry`agateganyo ku mwenda remezo ungana na 300.158.550 Frw, ariko Umuhesha w`inkiko aza gusanga irangiza ryarwo ridashoboka, kubera ko umutungo wa RABI Ltd wose ari ingwate ya BRD, ukaba udashobora kugurishwa ngo habonekemo n`ubwishyu bwa G L S Ltd. Avuga kandi ko mu ibaruwa yo kuwa 23-5-2013 RABI Ltd yandikiye BRD iyisaba ko mu mafaranga yose yishyurwa, BRD yajya ifataho igice kugirango nayo ishobore kwishyura indi myenda ifitiye abandi harimo na GLS Ltd.Yongeraho ko hari ubufatanye (partenariat) bwagombye kugaragara hagati ya RABI Ltd na RCS na BRD nkuko bigaragara mu ibaruwa ya Cabinet yo kuwa 29-7-2014 avuga ko hakwiye kubaho imikoranire hagati y`Ibigo. Arangiza asaba ko hashingirwa ku ngingo ya 117 y’Itegeko No 21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize y`imanza z`imbonezamubano, iz`ubucuruzi, iz`umurimo n`iz`ubutegetsi, BRD ikwiye kugobokeshwa, ko kandi ntaho biyibangamiye mu gihe ntacyo izacibwa, ko icyo bakurikiranye ari ukugira ngo GLS Ltd igire uruhare ku ngwate za RABI Ltd zifitwe nayo.

[6] Urukiko rwafatiye icyemezo mu ntebe, rwemeza ko BRD idashobora kugobokeshwa bwa mbere ku rwego rw`ubujurire mu gihe icyemezo gifashwe gishobora kugira ingaruka ku ngwate

RABI yamaze guha BRD, hashingiwe ku biteganywa n`ingingo ya 118 y`Itegeko No 21/2012 ryo kuwa 14/06/2012 rivuzwe haruguru iteganya ko ``Kugoboka bigamije gusaba ko uhatiwe kugoboka agira ibyo acibwa ntibishobora gukorwa bwa mbere ku rwego rw`ubujurire``.

2. Ku kibazo cy'ihuzwa ry`imanza Urukiko rwanze nta mpamvu zumvikana rushingiyeho.

[7] Mu myanzuro yayo, Rwanda Agri-Business Ltd ivuga ko yasabye ihuzwa ry`urubanza yaregagamo Grands Lacs Suppliers Ltd n`urundi yaregagamo Leta y'u Rwanda (Minisiteri y'Umutekano, Ikigo cya Leta gishinzwe amagereza (RCS) kugira ngo uburyozwe bwa Leta y'u Rwanda bubashe gusobanuka neza, cyane cyane ku byerekeye imigenzereze yayo yo kutishyura amafaranga y'ibiribwa byari byaragemuriwe amagereza ari nayo yatumye RABI Ltd itabasha kubahiriza amasezerano yari ifitanye na Grand Lacs Supplier Ltd, ko ihuzwa rero ry'izo manza ryari gufasha Urukiko kumva no gufatira rimwe ikibazo cy'iyishyurwa rya Grand Lacs Supplier Ltd ndetse n'irya RABI Ltd kuko ibibazo byavutsemo byose byatewe na RCS, asobanura ko iyo izo manza zihurizwa hamwe byari kuvanaho ivuguruzanya ryazo.

[8] Me Twagirayezu Christophe uburanira Grand Lacs Supplier Ltd avuga ko nta rubanza izi RABI Ltd yayirezemo kandi ko mu byo bazi yajuririye mu Rukiko Rukuru rw'Ubucuruzi nta kibazo cyo guhuza imanza cyarimo.

[9] Na none kuri iki kibazo, Urukiko rwafatiye icyemezo mu ntebe, rwemeza ko kuba Rwanda Agri Business Industries Ltd yarajuririye ko Urukiko Rukuru rutahuje imanza yaregagamo Grand Lacs Supplier Ltd na RCS zavuzwe haruguru ari ikirego gishya, kikaba kitagomba kwakirwa ngo gisuzumirwe bwa mbere ku rwego rw'ubujurire, hashingiwe ku biteganywa n`ingingo ya 168 y`Itegeko n0 21/2012 ryo kuwa 14/6/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi iteganya ko ``Ku rwego rw'ubujurire hadashobora gutangwa ikirego gishya keretse kuregera guhwanya imyenda, cyangwa gutanga ikirego cyo kwiregura ku kirego cy'ibanze cyatanzwe mu Rukiko rw'ubujurire``.

3. Kumenya ufite inshingano zo kwishyura inyungu zo kutishyurira igihe n`urugero rw`inyungu (taux d`intérêt) zigomba kubarirwaho.

[10] Rwanda Agri-Business Industries Ltd mu myanzuro yayo, ivuga ko nta bushake buke yigeze igira mu kutishyura ku gihe Grand Lacs Supplier Ltd kuko yagaragarije Urukiko ko byatewe na RCS nayo itarayishyuriye igihe kugira ngo ishobore nayo kwishyura GLS Ltd yayigemuriye ibyakoreshejwe mu isoko rya RCS, ko kandi inyungu zagenwe n'Urukiko zo ku rugero rwa 18% ku mwaka ari nyinshi kandi Grand Lacs Supplier Ltd itarigeze yereka Urukiko ko irimo kwishyura inguzanyo yahawe na Banki mu rwego rwo kurangiza isoko yari ifitanye na RABI Ltd, Uyihagarariye akaba yari yasabye ko izo nyungu ziramutse zitanzwe zabarirwa ku kigereranyo cy`inyungu cya Banki Nkuru mu mwaka wa 2013, kiri hagati ya 9% na 10% ku mwaka.

[11] Me Twagirayezu Christophe uburanira GLS Ltd avuga ko nkuko Urukiko rwabisobanuye mu gika cya 7 cy'urubanza rwajuririwe, amasezerano yose RABI Ltd yagiranye na Grand Lacs Supplier Ltd, ntaho Leta y'u Rwanda (RCS) igaragara nk`ifite inshingano zo kwishyura uwo mwenda, ko rero n'ingaruka zituruka kutubahiriza amasezerano zireba uruhande rutayubahirije nk'uko biteganyijwe mu ngingo za 64 na 113 z'Itegeko No 45/2011 ryo kuwa 25/11/2011 rigenga

amasezerano naho ku bijyanye n'inyungu RABI Ltd yaciwe, asobanura ko mu rubanza R.COM 0054/13/TC/HYE, Urukiko rwasobanuye ko amasezerano yabaye hagati ya RABI Ltd na Grand Lacs Supplier Ltd ndetse n'umwenda wishyuzwa n'indishyi ziwukomokaho byishyuzwa RABI Ltd, Grand Lacs Supplier Ltd ikaba ntaho yahera yishyuza Leta y'u Rwanda/RCS.

[12] Naho ku bijyanye nuko inyungu za 18% ari umurengera, uburanira GLS avuga ko ataribyo, kuko zabazwe hakurikijwe urugero rw`inyungu (taux d`interet) rukoreshwa n`amabanki nkuko Urukiko rw`Ubucuruzi rwabisobanuye mu gika cya 7 n`icya 8 cy`urubanza, akaba ari narwo rugero rw`inyungu HCC rwagendeyeho, ko ku birebana no kutishyura ku gihe, RABI Ltd itakwitwaza ko nayo Leta yatinze kuyishyura kuko mu masezerano itigeze ivuga ko izishyura GLS Ltd aruko yishyuwe na Leta, ko ibyo bihura ibyo bihuza na n`ingingo ya 113 y`Itegeko rigenga amasezerano. Avuga kandi ko uburyo inkiko zibanza zabaze inyungu bifite ishingiro hashingiwe ku ngingo za 135 na 144 z`itegeko ryavuzwe haruguru mu buryo ko mu gihe RABI Ltd yemera umwenda, ikemera ko itawishyuye, ntabwo GLS Ltd yumva impamvu ivuga ko inyungu yaciwe ari umurengera.

UKO URUKIKO RUBIBONA

a. Ku birebana n'ugomba kwishyura umwenda n'ibiwukomokaho

[13] Ingingo ya 64 y'Itegeko n0 45/2011 ryo kuwa 25/11/2011 rigenga amasezerano iteganya ko ``Amasezerano akozwe ku buryo bukurikije amategeko aba itegeko kubayagiranye...... Agomba kubahirizwa nta buriganya``.

[14] Nkuko Inyandiko y`amasezerano iri muri dosiye ibigaragaza, umwenda wishyuzwa ushingiye ku masezerano RABI Ltd ihagarariwe n`umuyobozi wayo yagiranye na GLS Ltd nayo ihagarariwe n`umuyobozi wayo ndetse na `` accountant- Commercial`` kuwa 03/08/2012, aho GLS Ltd yiyemeje kugemurira RABI LTd ibiribwa (ibishyimbo n`ibigori biyunguruye), naho GLS Ltd yiyemeza kwishyura ikiguzi cyabyo no gukurikiza gahunda yatanzwe yo kuriha ibimaze kugemurwa n`ibindi bikubiye muri ayo masezerano.

[15] Urukiko rusanga rero ari RABI Ltd ariyo ifite inshingano yo kwishyura uwo mwenda n`ibiwukomokaho kuko ariyo igaragara ko yashyize umukono ku masezerano uwo mwenda ushingiyeho, Ikigo cya Leta gishinzwe amagereza (RCS) kikaba kitawukurikiranwaho kuko ntaho gihuriye nawo, hashingiwe ku biteganywa n`ingingo ya 135 y`Itegeko rivuzwe haruguru. Naho kuba Leta yaratinze kwishyura RABI Ltd ngo nayo ishobore kwishyura bikaba byatuma ikurikiranywaho indishyi kubera inyungu z`ubukererwe, Urukiko rusanga na none mu masezerano ntahateganyijwe ko RABI LTD izishyura bitewe nuko nayo izaba yishyuwe na Leta, uretse ko n`amafaranga Leta yari iyifitiye yayiyishyuye iyacishije kuri konti yayo muri BRD, yishyurwa abandi RABI LTd yarifitiye imyenda.

b. Ku bijyanye n'urugero rw'inyungu zigomba kubarirwaho

[16] Ingingo ya 144 y'Itegeko n0 45/2011 ryo kuwa 25/11/2011 rigenga amasezerano iteganya ko ``Iyo kwica amasezerano birebana no kutishyura amafaranga cyangwa kudakora igisabwa gishobora kubarwa mu mafaranga azwi, inyungu zibarwa uhereye igihe igisabwa cyagombaga gukorwa hakuwemo ibyo uruhande rwishe amasezerano rufiteho uburenganzira``**.** Naho iya 145

y`iryo tegeko ikavuga ko nta ``**I**ndishyi zihana zishobora gutangwa kubera ko kwica amasezerano, uretse gusa mu gihe iyo myitwarire yavuyemo ari icyaha urega ashobora gusabira indishyi nk`igihano``.

[17] Hashingiwe ku biteganywa n`ingingo ivuzwe haruguru, Urukiko rusanga inyungu ku mwenda remezo utarishyuwe zigomba gutangwa, RABI ltd nayo ikaba ikomeje kubyemera, zikaba kandi zigomba kubarwa haherewe igihe buri factrure yagombaga kwishyurirwa nkuko impande zombi zabyumvikanyeho mu masezerano zagiranye, akaba ari no muri ubwo buryo Inkiko zibanza zagiye zibara izo nyungu. Urukiko rusanga ariko izi nyungu zitakumvikana nk`indishyi z`igihano kubera ko RABI Ltd itishe amasezerano bitewe n`imyitwarire mibi, ko ahubwo itishyuye kubera ubushobozi buke.

[18] Ku byerekeye urugero rw`inyungu, nkuko bigaragara muri dosiye kimwe n`imanza zibanziriza uru, Grand Lacs Supplier Ltd ikora ibikorwa by`ubucuruzi, ikaba yarashoye amafaranga kugirango ishobore gukora isoko yahawe na RABI Ltd ryo kuyigemurira ibiribwa nkuko amasezerano yabiteganyaga ariko ntiyashobora kwishyura kugera magingo aya.

[19] Urukiko rusanga RABI Ltd yaraburanye isaba ko itacibwa inyungu z`ubukererwe *ku* rugero rwa 10% ku kwezi nkuko GLS Ltd yabisabaga, ahubwo isaba ko inyungu zagenwa hashingiwe ku rugero rw`inyungu rukoreshwa na za banki kandi ku rugero rwemewe na BNR, irabyemererwa, inkiko zombi zibarira kuri 18% ku mwaka kubera ko ari umwenda w`ubucuruzi. Kuba noneho isaba uru Rukiko ko inyugu agomba kwishyura zabarirwa ku kigereranyo cy`inyungu cya Banki Nkuru y`igihugu mu mwaka wa 2013 kiri hagati ya 9% na 10% ku mwaka, Urukiko rusanga rero ntaho rwahera rubyemeza kuko icyo kigereranyo gikoreshwa mu kubara inyungu ku bijyanye n`umwenda utarebana n`ubucuruzi, kandi uwo yishyuzwa ari umwenda w`ubucuruzi. Urukiko rubanza rukaba ntaho rwibeshye rubarira inyungu ku rugero rw`inyungu rwa 18%.

c. Ku birebana n'inyungu zisabwa kuri uru rwego rw'ubujurire.

[20] Uhagarariye GLS Ltd avuga ko ashingiye ku ngingo ya 168 y`Itegeko No 21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize y`imanza z`imbonezamubano, iz`ubucuruzi, iz`umurimo n`iz`ubutegetsi, asaba ko RABI LTD igomba gukomeza kwishyura inyungu ku rugero rwa 18% ku mwaka ziyongera ku zari zemejwe n`Urukiko Rukuru rw`Ubucuruzi zingana na 22.768.470 Frw uhereye igihe urubanza rwaciriwe ni ukuvuga ko kuva kuwa 14-11- 2013 kugeza igihe ruciriwe burundu, yiyongeraga kuri 31.075.983 Frw yari yaciwe n`Urukiko rw`Ubucuruzi rwa Huye, yerekana mu myanzuro ye uko yagendaga abarwa.

UKO URUKIKO RUBIBONA

[21] Ku byerekeye inyungu, ingingo ya 168 mu gika cya 2 y'Itegeko N0 21/2012 ryavuzwe haruguru iteganya ko ``... ababuranyi bashobora kwaka inyungu, ibyishyuwe ku bukode n'ibindi bintu by'inyongera byabonetse kuva aho urubanza rwaciriwe, n'indishyi z'akababaro z'igihombo umuburanyi yagize kuva urubanza ruciwe``.

[22] Hashingiwe ku biteganywa n`ingingo y`itegeko ivuzwe haruguru, Urukiko rurasanga indishyi zigomba gukomeza kubarwa mu gihe umwenda wishyuzwa utarishyurwa, ariko ugomba

kubarirwa ku rugero rwa 18% ku mwaka atari ku kwezi nkuko uhagarariye GLS Ltd abisaba hakurikijwe ibyasobanuwe haruguru, inyungu zikagomba kubarwa kuri uru rwego mu gihe cy`imyaka ibiri (24 mois) ishize kuva kuwa 14/11/2013 urubanza rwajuririwe ruciwe kugeza kuwa 04-12- 2015, zikiyongera kuzagenwe n'inkiko zombi hagendewe kuri factures Rwanda Agri Business Industries Ltd yemera zabariweho n`inkiko zibanza, izo nyungu zikabarwa mu buryo bukurikira :

i. Inyungu zigomba kwishyurwa mu gihe cy`amezi 24 kuri Facture ya 61.875.000 Frw yo kuwa 28/8/2012: [61.875.000 Frw x 18 x24] : [100x12] =22.275.000 Frw.

ii. Inyungu zigomba kwishyurwa mu gihe cy`amezi 24 kuri Facture ya 61.875.000 Frw yo kuwa 28/9/2012: [61.875.000 frw x 18 x24] : [100 x12] = 22.275.000 Frw.

iii. Inyungu zigomba kwishyurwa mu gihe cy`amezi 24 kuri Facture ya 17.108.550 Frw yo kuwa 28/9/2012 : [17.108.550 x 18 x 24] :100 x 12 = 6.159.078 Frw.

iv. Inyungu zigomba kwishyurwa mu gihe cy`amezi 24 kuri Facture ya 79.650.000 Frw yo kuwa 15/11/2012: [79.650.000 Frw x 18 x 24]: 100 x 12 = 28.674.000 Frw.

v. Inyungu zigomba kwishyurwa mu gihe cy`amezi 24 kuri Facture ya 79.650.000 Frw yo kuwa 20/12/2012: [79.650.000 Frw x 18 x 24]: 100x 12] = 28.674.000 Frw. Igiteranyo cy`inyungu zose kuri izi factures zose uko ari eshanu (5) 22.275.000 Frw + 22.275.000 Frw + 6.159.078 Frw + 28.674.000 Frw + 28.674.000 Frw = 108.057.078 Frw.

[23] Urukiko rurasanga inyungu zose RABI Ltd igomba kwishyura Grand Lacs Supplier Ltd kuva igihe ntarengwa yagombaga kwishyuriraho kugeza urubanza ruciwe burundu zingana na 108.057.078 Frw ku rwego rwa nyuma, ziyongera ku za 22.768.470 Frw zagenwe n`Urukiko Rukuru rw`Ubucuruzi na 31.075.983 Frw zagenwe ku rwego rwa mbere, zose hamwe zingana na 161.901.531 Frw.

4. Kumenya niba irangizarubanza ry'agateganyo ryategetswe n'Urukiko Rukuru rw`Ubucuruzi ryari rifite ishingiro.

[24] RABI Ltd mu myanzuro yayo ivuga ko urukiko rwumvise nabi imiburanire yayo, rwemeza ko yemera umwenda wa Grand Lacs Supplier Ltd kandi yaragaragaje ko amafaranga y'ibiribwa byagemuwe na Grand Lacs Supplier Ltd yose akwiye kuryozwa RCS kuko ariyo yashyikirijwe inyemezabuguzi zari zakozwe, ntiyishyurira igihe bituma na Grand Lacs Supplier Ltd itishyurwa, ko ariko ibyo bitafatwa nk'aho yemeye umwenda mu iburanisha ku buryo byatuma RABI Ltd itegekwa kurangiza urubanza by`agateganyo, dore ko nta n`ahandi hantu yakura ubwishyu, uretse kwishyurwa na RCS.

[25] Uburanira GLS Ltd avuga ko nk'uko byari byasabwe mu rubanza rwa mbere, Grand Lacs Supplier Ltd isanga urubanza rwaragombaga kurangizwa by'agateganyo ku mwenda remezo kuko RABI Ltd iwemera, ko byari kuba ikibazo iyo iba itawemera, akaba asanga iyi ngingo y`ubujurire nta shingiro ifite.

UKO URUKIKO RUBIBONA

[26] Ingingo ya 212 igika cya 2 y'Itegeko No 21/2012 ryavuzwe haruguru iteganya ko irangizwa ry'urubanza ry'agateganyo ryemezwa n'Urukiko rubyibwirije ndetse nta ngwate, iyo ikiburanwa ari umwenda wemewe mu rubanza n'uregwa.

[27] Bigaragara ko Urukiko Rukuru rw'Ubucuruzi rwemeje ko urubanza rugomba kurangizwa by'agateganyo ku mwenda remezo uhwanye na 300.158.550 rushingiye ko RABI Ltd yemera umwenda, kuba rero muri uru Rukiko ivuga ko itawemera nta shingiro bifite kuko mu myanzuro yayo ndetse no mu miburanire yayo mu Rukiko Rukuru itawuhakanaga, ahubwo yasabaga ko uwo mwenda wakwishyurwa na RCS kuko ariyo Grand Lacs Supplier yagemuriye ibiribwa.

[28] Kuba ariko Grand Lacs Supplier Ltd yaratanze ubujurire Industries Ltd mu Rukiko Rukuru rw'Ubucuruzi isaba irangizarubanza ry'agateganyo ku mwenda remezo wumvikanyweho, ikaryemererwa hashingiwe ku ngingo ya 212 igika cya 2 yavuzwe haruguru, Urukiko rusanga iryo rangizarubanza ry'agateganyo ryaratanzwe mu buryo bukurikije amategeko, urukiko rubanza rukaba ntaho rwibeshye.

[29] Kubijyanye no kuba icyo cyemezo cy'irangizarubanza ry'agateganyo kitarigeze gishyirwa mu bikorwa kugeza ubu urubanza ruburanishwa ku rwego rwa nyuma, ibyo kandi bikaba aribyo Grand Lacs Supplier Ltd ishingiraho isaba ko iryo rangizarubanza ry'agateganyo ryagumaho, Urukiko rusanga nta rangizarubanza ry`agateganyo ryakwemezwa kuko ubujurire bwa Grand Lacs Supplier Ltd buri ku rwego rwa nyuma, icyemezo cyarwo kikaba kigomba guhita gishyirwa mu bikorwa kubera ko nta yindi nzira y`ubujurire isanzwe ishoboka kandi izindi nzira zose zidasanzwe zatuma urubanza rusubirwamo, zikaba zitabangamira irangizwa ry`urubanza. Ibi bishimangirwa n`umuhanga C.Giverdon, J-CI-Civ., fasc.2460,No 100 et 101, aho avuga ko icyemezo cy`urukiko mu gihe kidashobora kujuririrwa binyuze mu nzira zisanzwe kidashobora kurangizwa by`agateganyo kuko byaba nta mpamvu (sans objet).

6. Ubujurire bwuririye ku bundi bwatanzwe na Grand Lacs Supplier Ltd.

[30] Me Twagirayezu avuga ko Rwanda Agri Business Industries Ltd igomba kwishyura Grand Lacs Supplier Ltd indishyi z'akababaro zingana na 10.000.000 Frw zari zasabwe mu rukiko rubanza ariko ntizihabwe, kubera guhangayikishwa no kwishyura umwenda wa Banki kandi ntacyo yunguka no kuba yaragize igihombo mu bucuruzi bwe, avuga kandi ko Grand Lacs Supplier Ltd igomba kugenerwa indishyi z'ikurikiranarubanza n'igihembo cya Avoka ku rwego rw'ubujurire bingana na 5.000.000 Frw.

UKO URUKIKO RUBIBONA

[31] Ku birebana n'indishyi z'akababaro, Urukiko rurasanga Grand Lacs Supplier nta ndishyi z'akababaro igomba guhabwa kuko impamvu isobanura arizo ishingiraho isaba inyungu Urukiko rukazimugenera nkuko zasobanuwe haruguru.

[32] Ku bijyanye n`indishyi z`ikurikiranarubanza n`igihembo cya Avoka, Urukiko rusanga hari ibyo GLS Lt yatanze ikurikirana urubanza kandi yariyambaje Avoka wayiburaniye, ariko ayo mafaranga isaba akaba ari ikirenga, mu bushishozi bw`Urukiko, ikaba igomba kugenerwa indishyi z'ikurikiranarubanza n'igihembo cy'Avokat bingana na 700.000 Frw kuri uru rwego, hashingiwe ku biteganywa n`ingingo ya 258 CC LIII, aya mafaranga akaba yiyongera kuri 500.000 Frw

y`indishyi z'ikurikiranarubanza n'igihembo cya Avoca yagenwe ku rwego rubanza, yose hamwe akaba ari 700.000 Frw + 500.000 Frw= 1.200.000 Frw.

7. Kumenya niba igihano gihatira RABI Ltd kurangiza urubanza GLS Ltd gifite ishingiro.

[33] Me Twagirayezu avuga ko Grand Lacs Supplier Ltd isaba ko Rwanda Agri Business Industries Ltd yahabwa igihano kiyihatira kurangiza urubanza gihwanye kwishyura buri kwezi 10.000.000 Frw harebwe igihombo yatejwe no kutishyurwa.

[34] Urukiko rusanga RAB Ltd itacibwa igihano gihatira kurangiza urubanza kuko ntakigaragaza ko ifite ubushake buke bwo kururangiza.

III. ICYEMEZO CY'URUKIKO

[35] Rwemeje ko ikirego cyatanzwe na Rwanda Agri Business IndustriesLtd (RABI Ltd) gisaba ihuzwa ry`imanza kitakiriwe;

[36] Rwemeje ko ikirego cyatanzwe na Grand Lacs Supplier Ltd (GLS Ltd) gisaba kugobokesha BRD mu rubanza ku rwego rw`ubujurire kitakiriwe;

[37] Rwemeje ko ubujurire mu mizi bwatanzwe na Rwanda Agri Business Industries Ltd (RABI Ltd) nta shingiro bufite;

[38] Rwemeje ko ubujurire bwuririye ku bundi bwatanzwe na Grand Lacs Supplier Ltd (GLS Ltd) bufite ishingiro kuri bimwe;

[39] Rutegetse Rwanda Agri Business Industries Ltd (RABI Ltd) kwishyura Grand Lacs Supplier Ltd (GLS Ltd) inyungu zose hamwe zingana na 161.901.531 Frw nkuko zasobanuwe, 1.200.000 Frw y`indishyi z`ikurikiranarubanza n`igihembo cya Avoka nkuko byasobanuwe, yose hamwe angana na 163.101.531 Frw yiyongera k`umwenda remezo wemejwe n`inkiko n`inyungu wa 335.234.533 Frw, umwenda wose ukaba: 335.234.533 Frw + 163.101.531 Frw = 498.336.064 Frw.

[40] Rutegetse Rwanda Agri Business Industries Ltd (RABI Ltd) kwishyura amagarama y`urubanza 100.000 Frw.