



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

IN ITS COMMERCIAL DIVISION

COMMERCIAL ARBITRATION PETITION (L) NO. 12314 OF 2025

Chenab Bridge Project Undertaking ...Petitioner

Versus

Konkan Railway Corporation Limited ...Respondent

WITH

COMMERCIAL ARBITRATION PETITION (L) NO. 12318 OF 2025

WITH

COMMERCIAL ARBITRATION PETITION (L) NO. 12323 OF 2025

WITH

COMMERCIAL ARBITRATION PETITION (L) NO. 12326 OF 2025

WITH

COMMERCIAL ARBITRATION PETITION (L) NO. 12333 OF 2025

WITH

COMMERCIAL ARBITRATION PETITION (L) NO. 12337 OF 2025

WITH

COMMERCIAL ARBITRATION PETITION (L) NO. 12340 OF 2025

WITH

COMMERCIAL ARBITRATION PETITION (L) NO. 12376 OF 2025

WITH

COMMERCIAL ARBITRATION PETITION (L) NO. 12396 OF 2025

WITH

COMMERCIAL ARBITRATION PETITION (L) NO. 12397 OF 2025

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Mr. Zal Andhyarujina, Senior Advocate *a/w Mr. Karl Tamboly, Mr. Punit Damodar, Ms. Raveena Kinkhabwala, Mr. Hitesh Singhvi, Mr. Akshay Dhayalkar, i/b Kanga & Co., for the Petitioner in CARBPL/12376/2025.*

Mr. Ashish Kamat, Senior Advocate, *a/w Mr. Sarosh Bharucha, Mr. D.J. Kakalia, Ms Bhavna Jaipuria, Mr Paresh Patkar & Kartik Hede i/b Mulla & Mulla & CBC, for Respondent.*

CORAM : SOMASEKHAR SUNDARESAN, J.

RESERVED ON : MAY 6, 2025

PRONOUNCED ON : JUNE 9, 2025

JUDGEMENT:

Context and Background:

1. These Petitions are essentially applications under Section 29-A of the Arbitration and Conciliation Act, 1996 (“***the Act***”) seeking an extension of mandate of the Arbitral Tribunal, which is said to have expired on March 1, 2024. The extension sought is for until December 31, 2026.

2. It would be important to record some background to the nature of the multiple references to arbitration that form subject matter of these Petitions, since the factual matrix is unique.

3. The parties have executed a contract dated November 24, 2004 (“**Contract**”) governing the design and construction of a special rail bridge across the river Chenab on the Katra-Laole Section of the Udhampur-Srinagar-Baramulla Rail Link Project. The Contract was governed by the standard terms and conditions of the Northern Railways. However, given the peculiar nature and complexity of the Contract and the experience with the nature of disputes between them, the parties specifically executed an arbitration agreement dated February 28, 2012 (“**Arbitration Agreement**”) by which a three-member ‘Standing Arbitral Tribunal’ (“**SAT**”) was constituted.

4. Under the Arbitration Agreement, disputes and differences between the parties under the Contract were to be adjudicated by the SAT. It was agreed that claims would be raised on a half-yearly basis and these could be considered by the SAT from time to time. The same body having jurisdiction over all claims, all of which form part of the same project, the SAT was meant to conduct proceedings across all claims relating to all disputes under the Contract.

5. The SAT’s composition was significantly under the influence, if not control of the Respondent, Konkan Railway Corporation Ltd. (“**Konkan Railway**”), which had to present a curated list of names of arbitrators,

essentially former railwaymen. From the panel of names, the Petitioner, a joint venture named Chenab Bridge Project Undertaking (“**Chenab**”) had to pick two names, from which one name would be picked by Konkan Railway as Chenab’s nominee arbitrator. The Managing Director of Konkan Railway would pick Konkan Railway’s nominee arbitrator and the Presiding Arbitrator.

6. The SAT was initially constituted but the Presiding Arbitrator was not able to take up the proceedings. Thereafter, on Chenab’s application under Section 11 of the Act, the High Court appointed the Presiding Arbitrator. On a challenge by Konkan Railway, the Supreme Court, by consent of the parties, appointed Justice (Retd.) R.V. Raveendran, a former judge of the Supreme Court as the Presiding Arbitrator, with the two members remaining the same (“**Raveendran SAT**”) on September 23, 2013. The Raveendran SAT was to adjudicate all claims made until then. Meanwhile, Konkan Railway had appointed one Mr. Anirudh Jain as the Presiding Arbitrator with the same two arbitrators (“**Jain SAT**”). Chenab raised claims from time to time. In all there are 24 half-yearly claims submitted to the SAT. The Supreme Court clarified that the half-yearly claims no. 1 to 3 raised until then would be dealt with by the Raveendran SAT while all other claims would go to the Jain SAT.

7. The Jain SAT fixed timelines for consideration of claims no. 4 to 9. Thereafter, half-yearly claims no. 10 to 15 were raised. While there is a total of 24 half-yearly claims to be adjudicated, each of these half-yearly claims, comprises multiple sub-heads of claims.

8. Although the framework for creating the SAT appears to have been intended to create a stable and continuous dispute resolution platform, it is common ground that the SAT did not have institutional support such as a standing secretariat that one would associate with a permanent “standing tribunal.” It operated as any other *ad hoc* arbitral tribunal would, with the three members having to co-ordinate to convene, and having to deal with the conventional litigation strategies that each side would throw at it.

9. By an application dated January 3, 2020, Chenab sought termination of the Jain SAT on the premise of undue delay in conduct of arbitration. This was denied by the Jain SAT, asserting that admissibility of the claims was to be considered by the Raveendran SAT and only quantification of claims would be in the jurisdiction of the Jain SAT. Chenab wrote to Konkan Railway pointing out that the Jain SAT was refusing to conduct arbitration and sought replacement of the arbitrators, also nominating an arbitrator from the panel on January 2, 2021. Konkan Railway too appointed its

nominee and one Mr. Aditya Kumar Mittal, a new Presiding Arbitrator on January 16, 2021, creating a new SAT (“**Mittal SAT**”). Therefore, the meandering of the matter under the Jain SAT stood addressed by Konkan Railway agreeing with Chenab and constituting the Mittal SAT. The Mittal SAT is now seized of disputes and differences under the Contract ranging from the fourth half-yearly claim to the twenty-fourth half-yearly claim.

10. The captioned Petitions primarily relate to the half-yearly claims no. 10 to 19. Submissions in the proceedings in respect of these half-yearly claims were concluded on February 6, 2025 and written submissions were filed by April 5, 2025. Since the SAT was taking up the matters sequentially, after that date, it commenced issuing directions for the half-yearly claims no. 10 to 24. It is apparent that the half-yearly claims no. 10 to 19 entails 105 sub-heads of claims. The consideration of the half-yearly claims no. 10 to 19 lie at the heart of the objections by Konkan Railway.

Analysis and Findings:

11. I have given my anxious consideration to Konkan Railway’s spirited and trenchant opposition to the grant of extension of mandate of the Mittal SAT. I have considered the record with the assistance of Learned Senior Counsel, Mr. Zal Andhyarujina on behalf of Chenab and Mr. Ashish Kamat on

behalf of Konkan Railway. I permitted a reply and a rejoinder in respect of all the Petitions to enable the Court to have a crystallised picture of the nature of the proceedings and the scope of objections. I called upon Chenab, by an order dated May 6 2025, to submit a list of dates to demonstrate all actions taken by the Mittal SAT in the same timeframe as covered in Paragraph 5.17 of Konkan Railway's affidavit-in-reply. This has been filed and is taken on record.

12. At the threshold, one must be mindful of the scope of the jurisdiction in which these Petitions are heard. Under Section 29-A of the Act, the parties would need approval of this Court for extension of the mandate of the arbitral tribunal beyond a period of 12 months, which period is extendable by consent of the parties by only another six months.

13. On behalf of Konkan Railway, it has been strenuously contended that these Petitions deserve to be dismissed, thereby bringing to an end, the mandate of the SAT in relation to the claims covered by them. It is also contended that this Court should replace the constituents of the SAT. The core objections to these Petitions presented on behalf of Konkan Railway may be summarised thus:-

- a) The operational and procedural decisions of the Mittal SAT are allegedly in conflict with the Arbitration Agreement – reliance is sought to be placed on dates and deadlines contemplated in the Arbitral Agreement and how Chenab has raised claims outside the deadlines permissible under the half-yearly claims no. 10 to 19;
- b) The Mittal SAT is not proceeding without undue delay and alacrity;
- c) The Mittal SAT may permit amendment of the Statement of Claim for half-yearly claims no. 10 to 19 (in the manner it permitted amendment in relation to half-yearly claims no. 4 to 9), which will cause more delay; and
- d) This Court must replace the constituents of the SAT and must bring in a retired judge of a High Court or the Supreme Court, exercising its power to do so under Section 29-A of the Act.

14. The arbitral tribunal is the master of proceedings and has full freedom on how to conduct the proceedings and sequence the actions necessary for

appropriate adjudication. The scope for this Court to interfere with the conduct of arbitration is minimal and in any case, under Section 29-A of the Act, this Court cannot sit in judgement on the wisdom of operational and procedural decisions of the arbitral tribunal. Suffice it to say, the parties had no quarrel with the sequential nature of dealing with the matter.

15. The very conceptualisation of the SAT was to have one set of minds being consistently applied to all the issues involved in disputes and differences relating to the Contract. The Raveendran SAT has rendered award in respect of half-yearly claims no. 1 to 3. The Mittal SAT has reserved judgment in respect of half-yearly claims no. 4 to 9. Cross-examination of witnesses and related proceedings have been conducted throughout the Covid-19 Pandemic period. The parties, including Konkan Railway have also sought additional time and adjournments in the arbitration. Hearings scheduled for January 2022 had to be rescheduled to February 2022 owing to legal teams being infected during the Pandemic. Thereafter, oral submissions in respect of claims continued and were completed in respect of multiple claims. Thereafter in March 2022, Chenab sought to amend the Statement of Claim in respect of half-yearly claims no. 1 to 5, 8, 10, 12, 13 and 15. This was met with serious opposition. Eventually, after hearing the parties, the amendment was allowed on July 23, 2022.

16. By an email dated July 25, 2022, Konkan Railway sought suspension of the arbitration proceedings on the premise that it would challenge the decision permitting amendment in this Court. This request was rejected and deadlines were fixed, with the next hearings scheduled for September 2022. Konkan Railway sought extension of time for filing its amended Statement of Defence. Meanwhile, this Court rejected Konkan Railway's request for intervention against the order granting amendment, by an order dated September 16, 2022. An amended Statement of Defence was filed by Konkan Railway on September 30, 2022.

17. To cut a long story short, without a prolix reproduction of every step in the activity of the SAT being recorded here, it is noteworthy that the parties and the SAT engaged and grouped the claims on the basis of their nature into four groups. Throughout 2023, hearings on various groups of claims were conducted. Eventually, on February 8, 2024, Konkan Railway filed an application for framing issues, deciding issues of *res judicata*, limitation and jurisdictional objections, with a prayer to take these up as preliminary issues. There have been multiple applications by Konkan Railway too including an application seeking termination of the arbitration reference relating to half-yearly claims no. 10 to 19.

18. How to club claims and how to achieve efficiency of scale and optimise resources in the adjudication is purely a matter of the SAT's domain. It is not for this Court to interfere and direct the SAT on how to conduct its proceedings. When considering applications under Section 29-A of the Act, this Court may impose terms and conditions and even replace the arbitrators should that become necessary. However, on examination of the material on record and the flow of proceedings, in my opinion, it would be totally counter-productive and wasteful of public resources to interfere in the manner Konkan Railway would desire.

19. The half-yearly claims have been presented chronologically and sequentially but given the nature of the claims and issues involved, it was found fit to merge them into groups for a more effective adjudication. Refusing to extend the mandate in respect of some half-yearly claims out of the 24 half-yearly claims would skew the entire terrain and would be disruptive of the arbitration proceedings. Such an intervention, apart from not being tenable and appropriate, would also be counterproductive to the intent behind Section 29-A of the Act. This would set at naught a component of the arbitration even while the other components of arbitration would still be continued before the Mittal SAT. This would be wholly untenable and

absurd. The Court cannot find fault with the manner of management of the docket by the SAT, and that too when it has been done in consultation with the parties.

20. Konkan Railway's affidavit in reply raises issues about decisions of the Mittal SAT being allegedly in conflict with the Arbitration Agreement. Konkan Railway has also raised contentions about what Chenab ought to have done before the Jain SAT. These contentions, I am afraid, are not something this Court can get into at this stage and under the jurisdiction of Section 29-A of the Act. It is true that Konkan Railway itself re-constituted the SAT to bring into office the Mittal SAT to replace the Jain SAT. It must be remembered that the constitution of the SAT was entirely under the strong influence, if not control of Konkan Railway. Therefore, it would not lie in the mouth of Konkan Railway to now make any submissions about the Jain SAT and what ought to have been done before that forum.

21. That apart, the parties have themselves jointly submitted to the SAT that they have consensus on getting the mandate extended. The work before the SAT is ongoing and the half-yearly claims no. 20 to 24 are now before the SAT. These too may have related issues that need adjudication. The very institution of the SAT was to create a permanent standing tribunal that would

be seized of all facets of the Contract for appropriate adjudication. To refuse extension of mandate for one component of the claims under the Contract is therefore not only inappropriate but also in conflict with this basic intent of the parties in executing the Arbitration Agreement. It would also not be possible for this Court to simply substitute the SAT constituents without a whisper of any absence of impartiality or independence about them as objectively discernible from their conduct. What is apparent is that Konkan Railway is unhappy with the SAT constituted by it from among railway officials, only because it disagrees with the appropriateness and wisdom of its decisions. However, that would hardly present a ground for replacement of the SAT.

22. I cannot be unmindful of the fact that the SAT appears to be entirely in the nature of a unilaterally-appointed arbitral tribunal. A five-judge Constitutional Bench of the Supreme Court has declared such appointments to be illegal being in conflict with the fundamental principle of independence and impartiality under the Act, but has taken care to make such declaration prospective in effect¹. The Jain SAT and the Mittal SAT have been entirely products of the appointment by Konkan Railway's Managing Director in

¹ *Central Organisation for Railway Electrification v. ECI SPIC SMO MCML (JV) a Joint Venture Co. – 2024 SCC OnLine SC 3654*

accordance with the Arbitration Agreement. Precious time and resources have been expended not only by Chenab but also by Konkan Railway.

23. To be fair to the Mittal SAT, it has expended its energies through the Covid-19 Pandemic hearing the parties and conducting the proceedings. A total of 24 half-yearly claims have fallen for consideration – apart from the first three, all the rest are on the table for the Mittal SAT. Judgement is reserved in respect of half-yearly claims no. 4 to 9. As regards half-yearly claims no. 10 to 19, significant effort has been undertaken by the Mittal SAT as well as by all parties including Konkan Railway. There is no cause for this Court to make an intervention in relation to half-yearly claims no. 20 to 24 filed before the SAT. Both parties have filed a total of 10 applications in respect of the half-yearly claims no. 10 to 24. Judgement is reserved on these applications. The parties have also thrown the kitchen sink at the proceedings and loaded the SAT with their applications and submissions. It is not in dispute that material to be sifted through runs into lakhs of pages.

24. In these circumstances, considering the serious effort involved and the parties' own commercial and legal bargain contained in the Arbitration Agreement, that there is a need for one set of minds to adjudicate all disputes relating to the Contract for which the SAT was constituted as a standing i.e.

stable forum. It would only be proper to extend the mandate of the SAT. Having examined the dates and events and activity carried out, I am not satisfied that a case has been made out to conclude that the SAT has conducted the proceedings with undue delay.

25. Even if Konkan Railway is right about the procedural decisions of the SAT being in conflict with the Arbitration Agreement, that would give Konkan Railway a ground for challenging the arbitral award under Section 34 of the Act. By no stretch of imagination would it give Konkan Railway a right to seek this Court's intervention in the nature of refusing to extend the mandate for a portion of the claims, or worse, for all the claims, including those in respect of which adjudication is yet to commence.

26. That apart, Konkan Railway has already made an attempt by challenging a procedural order permitting amendment to the pleadings relating to half-yearly claims no. 4 to 9, treating it as an award. A Learned Single Judge was pleased to dismiss such challenge by an order dated September 16, 2022. To now state that there is an apprehension that amendments may be permitted in respect of half-yearly claims no. 10 to 24 presents no rational or reasonable ground – an apprehension that something

that was not interfered with may be repeated in future, is no basis to replace the SAT.

27. It is also noteworthy that the piecemeal references and consequential expiration of mandate is something the parties and the SAT had notice of. In May 2024, the parties actually agreed to seek extension of mandate jointly. By an order dated January 15, 2025, I had occasion to extend the mandate of the SAT for some references, taking such consent into consideration. I have no reason to take a different view now having examined the detailed objections raised on behalf of Konkan Railway. In the result, I have no hesitation in dismissing the objections and in allowing these Petitions. Considering the sheer scale of the disputes involved and the time taken to consider the issues that have been presented to the SAT so far, I think it would be appropriate to extend the mandate by a further period of 12 months.

Order and Directions:

28. Towards this end, the following order is passed:-

- a) Konkan Railway has not made out a case to demonstrate that the Mittal SAT is proceeding with undue delay;

- b) Whether to permit amendments is a matter for consideration by the SAT. The permission granted in the past in respect of some claims was challenged before this Court and was repelled by a Learned Single Judge. This contention is outside the scope of jurisdiction of this Court under Section 29-A of the Act.
- c) Should any step taken by the SAT be in conflict with the fundamental law and policy of India, that would be a ground to challenge under Section 34 of the Act, and not a ground for seeking replacement of the SAT under Section 29-A of the Act;
- d) Since no case for substitution of the arbitrators is made out, it is unnecessary to examine the request for introducing retired judges of a High Court or the Supreme Court into the SAT;
- e) The mandate of the SAT in respect of the references covered by the captioned Petitions is hereby extended to ***June 30, 2026***. I am consciously not extending it to December 31, 2026 as prayed. While the objections of Konkan Railway are rejected, it would stand to reason to expect the parties to assist the SAT by being punctual in compliance with the directions of the SAT to enable

completion by the aforesaid deadline. I do note that a number of adjournments are also at the request of Konkan Railway. Both parties are directed to ensure strict adherence to the timelines without seeking adjournments unless it is wholly unavoidable and attributable to unforeseen emergencies;

- f) The SAT is requested to indicate to the parties any shortcomings and constraints in logistics that have been faced so far. I note that although the SAT is meant to be a “standing” tribunal, it has to function like any other *ad hoc* arbitral tribunal. The parties shall confer and ensure that adequate resources are available to the SAT to address any capacity constraints that may be faced by it in dealing with the humongous scale of documents and issues that it has to deal with; and
- g) The SAT is requested to fix dates as close as possible and not refrain from considering imposition of costs should it find that any requests for adjournments or any applications are frivolous and unnecessary.

29. I must mention that I find it unnecessary to deal with the case law sought to be pressed into service by Mr. Kamat. The judgements relied upon

by him indicate that the Court should first come to a conclusion that there has been undue delay for it to exercise the power to substitute the arbitrators. Since I have come to a finding that the SAT cannot be faulted on the premise of undue delay, it is unnecessary to deal with principles of law declared in these judgements, which one can have no quarrel with. As regards the judgement in ***Rohan Builders***² rendered by the Supreme Court, it is indeed noteworthy that extension of mandate of the arbitral tribunal must not be routinely allowed without examining if there is a need to substitute the arbitral tribunal. Having examined this facet, I have concluded, for the reasons set out above, that no case has been made out to substitute the constituents of the SAT.

30. I may mention that in my opinion, merely because there is a power to substitute an arbitrator, such power must not be mechanically deployed to substitute the arbitrator – more so by substituting the arbitrator’s wisdom in taking procedural decisions with the Court’s wisdom on what such decisions ought to have been. The substitution too is not a power to be mechanically exercised, and one must have careful regard to the factual matrix. In my assessment of the factual matrix, no case for substitution has been made out.

² *Rohan Builders (India) Private Limited. vs. Berger Paints India Limited – 2024 SCC OnLine SC 2494*

31. Therefore, all these captioned Petitions are ***finally disposed of*** in the aforesaid terms. Considering the untenable nature of the objections raised to these Petitions, and the expenditure of time and resources this Court has been forced to expend on the matter, the jurisdiction exercised being that of a commercial court, in my opinion, costs have to follow the event – a token cost of Rs. 1 lakh is imposed on Konkan Railway, payable to Chenab within a period of six weeks from the date of upload of this judgement on the website of this Court.

32. All actions required to be taken pursuant to this order shall be taken upon receipt of a downloaded copy as available on this Court's website.

[SOMASEKHAR SUNDARESAN, J.]