

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMMERCIAL ARBITRATION PETITION NO. 246 OF 2024
WITH
INTERIM APPLICATION NO. 2458 OF 2020

Konkan Railway Corporation Ltd.

.....PETITIONER

: **VERSUS** :

UAN Raju IVRCL Construction (JV)

....RESPONDENT

Mr. Sarosh Bharucha with Mr. D.J. Kakalia, Ms. Bhavna Singh Jaipuria, Mr. Paresh Patkar, Mr. Ayaan Zariwalla and Ms. Bhakti Chandan i/b. M/s. Mulla & Mulla & Cragie Blunt & Caroe, *for the Petitioner.*

Ms. Shilpa Kapil with Mr. Chidanand Kapil, Ms. Shruti Bhatt and Mr. Darshit Jain, *for the Respondent.*

CORAM : SANDEEP V. MARNE, J.

DATED : 9 DECEMBER 2025.

P.C :

1) This petition filed by the Petitioners-Konkan Railway Corporation Ltd. (**KRCL**) under Section 34 of the Arbitration and Conciliation Act 1996 (**Arbitration Act**) seeks invalidation of the Arbitral Award dated 9 March 2020.

2) It must be observed at the outset, that though several claims of the Respondent are allowed by the Arbitral Tribunal, challenge

is raised in the petition in respect of only two awarded claims. However during the course of oral submissions before me, Petitioner—KRCL has restricted the challenge only in respect of awarded Claim No.32.

3) Claim No.32 was in respect of recovery of Rs.1.9 crores from 49th and final Bill. The Arbitral Tribunal has allowed the claim by directing refund of Rs.1.90 crores recovered from the Respondent in the final bill.

4) I have heard Mr. Bharucha, the learned counsel appearing for the Petitioner and Ms. Kapil, the learned counsel appearing for the Respondent. I have gone through the findings recorded by the Arbitral Tribunal qua Issue No. 28 dealing with Claim No. 32. I have also perused the relevant records of the case filed alongwith the petition, particularly the relevant clauses of the contract between the parties.

5) The only objection raised on behalf of the Petitioner-KRCL to Claim No.32 before the Arbitral Tribunal was about maintainability thereof in view of failure to follow the prescribed procedure before raising the claim before the Arbitral Tribunal. Mr. Bharucha would contend that the procedure prescribed in Clauses 2.5.1 to 2.5.8 was not followed before raising Claim No.32. It is sought to be contended that Clauses 2.5.1 to 2.5.8 envisaged a procedure of raising the claim first before the Engineer and also after rejection of claim by the Engineer, reference to the Arbitral Tribunal could be made.

6) Clause 2.5.8 of the Contract deals with the procedure relating to Final Bill and reads thus :

2.5.8. After receiving the intimation from the KRCL that the final bill is ready for payment, the Contractor shall within 50 (sixty) days of such intimation make a detailed statement of claims if any arising after the submission of the last half yearly statement mentioned in clause 2.6.1 above, to the KRCL, and also submit a copy of the same to the ARBITRAL TRIBUNAL. If the claimed is refuted or the payment is not made within 3 (three) months from the receipt of the said statement, a dispute would be deemed to have arisen in respect of such claims, which will be decided by the ARBITRAL TRIBUNAL in the same manner as clause 2.6.4, 2.6.5 and 2.6.6 above. If no such claims are raised, the contractor would be deemed to have no claims.

7) There appears to be some typographical error in Clause-2.5.8 and Clauses-2.6.1, 2.6.4, 2.6.5 and 2.6.6 quoted therein and Mr. Bharucha submits that the correct clause numbers are Clauses-2.5.1, 2.5.4, 2.5.5 and 2.5.6 respectively. Be that as it may. Clause-2.5.8 envisaged that once the Final Bill is submitted by the Contractor and after the Contractor receives intimation from KRCL that the bill is ready for payment, the Contractor was required to make a detailed statement of claim arising out of such final bill and submit the same to KRCL alongwith copy thereof to the Arbitral Tribunal. It is only after the claim is repudiated by the KRCL or where payment is not made within 3 months, the dispute could be arbitrated before the Arbitral Tribunal.

8) While repelling the objection to Claim No. 32, the Arbitral Tribunal has recorded following findings:

In our view, the Respondent could not have made this recovery. **The only defence taken is that the procedure was not followed and the claim was referred directly to Arbitration. However, in this case it is to be seen that the Arbitral Tribunal was not appointed for a long time. Even after appointment, the original Tribunal did not hold any sittings and the Supreme Court had to thereafter appoint the Presiding Arbitrator and constitute the Tribunal. Even otherwise, this recovery was only made in the 49th and Final bill i.e. in the year 2013. Therefore, there is no question of the claim not being maintainable.** The only justification which the Respondent has given (not in their reply to the claim but in correspondence) was that an independent agency had to be appointed to carry out the work of alignment of the tunnel and payment was therefore required to be deducted from the Final bill. However, we find that there is no particulars/details given by the Respondent as to whether they have made any payments to any third party for fixing the alleged misalignment and if so, when and how much. Even if they had they had to prove such payment. In the absence of any such details/proof, we hold that this recovery is not justified and the Respondent should repay to the Claimant the sum of Rs 1.90 crores. Accordingly, there will be an Award in favour of Claimant and against the Respondent in the sum of Rs. 1.90 crores. **It must be mentioned that the actual recovery was of a higher amount but as the Claimant has claimed only Rs 1.90 crores the Award is being restricted to that amount.**

(emphasis and underlining added)

Thus, award of claim No. 32 is justified by the Arbitral Tribunal by recording detailed reasons.

9) However, in the present case, what has happened is that Petitioner-KRCL has imposed levy in the form of recovery of amount of Rs.2,73,07,395/- from the final bill under the head 'Rectification of T-6 and T-10'. Thus, the case does not involve reduction of any amount from Final Bill on account of quantum of work measurement. The letter dated 16 December 2011 of KRCL giving intimation of amount payable under the Final Bill

contained a decision to recover the stipulated amount. Therefore, it was futile to once again give an intimation to the Engineer of KRCL in respect of recovery of amount of Rs.2.73 crores. Since the Engineer had already take a 'decision' to make the recovery of amount of Rs.2.73 cores, no purpose would have been served in raising the claim before him for such 'decided' amount. This aspect is appreciated by the Arbitral Tribunal in para-194 of the Award while holding that the recovery was made only in the 49th and final bill.

10) Mr. Bharucha would submit that the above reason deduced by this Court from observations in para-194 of the Award is actually missing in para-194 of the Award. Though Mr. Bharucha may not be entirely wrong in submitting so, I am of the view that by holding that the recovery was made in the Final Bill, the Arbitral Tribunal has meant thereby that since recovery is made directly from the Final Bill, it was not necessary to follow the required procedure under Clause-2.5.8. In OPG Power Generation Private Limited vs. Enexio Power Cooling Solutions India Private Limited & Anr.¹, the Apex Court has held in para-148 as under:

148. We have given due consideration to the above submission. In our view, a distinction would have to be drawn between an arbitral award where reasons are either lacking/unintelligible or perverse and an arbitral award where reasons are there but appear inadequate or insufficient (see paragraphs 71.2 to 71.6 of this judgment). In a case where reasons appear insufficient or inadequate, if, on a careful reading of the entire award, coupled with documents recited/ relied therein, the underlying reason, factual or legal, that forms the basis of the award, is discernible/ intelligible, and the same exhibits no perversity, the Court need not set aside

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the award while exercising powers under Section 34 or Section 37 of the 1996 Act, rather it may explain the existence of that underlying reason while dealing with a challenge laid to the award. In doing so, the Court does not supplant the reasons of the arbitral tribunal but only explains it for a better and clearer understanding of the award.

11) Thus, upon reading of the Award, the exact reason assigned by the Arbitral Tribunal can clearly be discerned. Therefore, the findings recorded in para-194 of the impugned Award cannot be termed as perverse.

12) More importantly, Claim No. 32 was not opposed by KRCL before the Arbitral Tribunal on merits, which means that the wrong done in recovering the amount of Rs. 1.90 crores was virtually admitted. Only objection raised was not following the procedure of first raising the claim before the Engineer and then approaching the permanent Arbitral Tribunal

13) Mr. Bharucha has also relied upon judgments of the Apex Court in *Ssangyong Engineering and Construction Company Ltd Versus. National Highway Authority of India*² and *State of Goa Versus. Praveen Enterprises*³ in support of his contention that the Arbitral Tribunal has traveled beyond the contractual stipulations while awarding Claim No. 32. I am unable to agree. The Tribunal has construed the terms of Clause-2.5.8 while holding that procedure was not required to be followed since the recovery is made directly in the Final Bill. The error, if any in interpreting the contractual clauses, would be the jurisdiction within the Contract and not outside the Contract. Even otherwise, it is well

2 (2019) 15 SCC 131

3 (2012) 12 SCC 581

settled position of law that construction of contract is in the exclusive domain of the Arbitral Tribunal.

14) No grounds are argued before this Court. Since the singular objection raised in respect of Claim No. 32 does not fit in any of the enumerated grounds under Section 34 of the Arbitration Act, the petition must fail. The petition is accordingly **dismissed**.

15) With dismissal of the petition, the Interim Application also stands disposed of.

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[SANDEEP V. MARNE, J.]