IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMMERCIAL ARBITRATION PETITION (L) NO.24453 OF 2023
WITH
INTERIM APPLICATION (L) NO.33894 OF 2023

Shanklesha Construction and others … Petitioners

Vs.

Ashok Mohanraj Chhajed … Respondent

WITH

COMMERCIAL ARBITRATION PETITION NO.368 OF 2023

Mr. Mayur Khandeparkar a/w. Mr. Anosh Sequieria, Mr. Ativ Patel and Mr.Harshad Vyas i/b. AVP Partners for Petitioners in CARBPL/24453/2023 and for Respondent in CARBP/368/2023.

Dr. Abhinav Chandrachud a/w. Mr. Nirman Sharma, Mr. Bhavesh Bellam and Mr.A. Pawar i/b. Karma Vivan for Petitioners in CARBP/368/2023 and for Respondent in CARBPL/24453/2023.

CORAM : MANISH PITALE, J.

Reserved on : 20TH DECEMBER, 2023

Pronounced on: 05TH JANUARY, 2024

ORDER :

. The rival parties have both approached this Court invoking Section 29-A of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the 'Arbitration Act') for extension of mandate of the learned arbitrator. The only dispute between the parties pertains to the fact that the petitioners in Commercial Arbitration Petition (L) No.24453 of 2023 i.e. M/s. Shanklecha Constructions and others, are also seeking substitution of the learned arbitrator. In that light, the said petitioners have invoked Section 14 of the Arbitration Act also, claiming that the learned arbitrator has been rendered *de facto* unable to perform her functions. This is seriously disputed by the petitioner in Commercial Arbitration Petition No.368 of 2023 i.e. Ashok Mohanraj Chhajed, who in turn claims that no ground is made out either under Section 14 or

under Section 29-A(6) of the Arbitration Act for substitution of the learned arbitrator. For the sake of convenience, the parties are being referred to as per their status in Commercial Arbitration Petition (L) No.24453 of 2023 i.e. M/s. Shanklecha Construction and others as the petitioners and Ashok Mohanraj Chhajed as the respondent.

2. The facts leading upto filing of these two petitions are that a partnership deed was executed on 21.07.2017 between the parties. Disputes arose between the parties and upon invocation of arbitration, an application under Section 11 of the Arbitration Act was filed. By an order dated 19.03.2019, this Court disposed of the said application by appointing a sole arbitrator, being a former Judge of this Court. The said order was silent on the aspect of fees to be charged by the learned arbitrator.

3. On 11.04.2019, a preliminary meeting was held by the learned arbitrator. It was specified therein that the learned arbitrator would charge fees as per Schedule IV to the Arbitration Act. The modality for payment of fees was specified as per the claim, while the modality for payment of fees for the counter-claim was to be indicated later on.

4. On 16.04.2019, the statement of claim was filed. On 18.04.2019, the learned arbitrator passed order on an application filed under Section 17 of the Arbitration Act. The order was passed in favour of the original claimant i.e. the respondent. On 10.06.2019, the petitioners filed their statement of defence and counter-claim, to which on 18.06.2019, the respondent filed reply to the counter-claim.

5. On 25.09.2019, the arbitrator passed an order holding that since capping limit of the fees had been reached, no fees could be charged on the counter-claim except 1/4th of the *ad-valorem* amount payable to the learned arbitrator. On 18.10.2019, additional statement of defence came

to be filed to the amended statement of claim and accordingly, the pleadings stood completed on the said date.

6. The respondent i.e. the original claimant proceeded to place evidence in support of the claim and on 28.02.2020, his evidence was closed. On 26.11.2020, the learned arbitrator directed the parties to pay her balance fees. On 05.12.2020, the petitioners i.e. the respondents before the learned arbitrator filed their affidavit of evidence. On 17.04.2021, the learned arbitrator again directed the parties to pay her fees. On 05.06.2021, the learned arbitrator passed an order, making some observations against the petitioners, indicating that they were not proceeding with the matter on dates that had been selected by their own witnesses. On 06.09.2021, the evidence of the petitioners was closed.

7. On 30.08.2022, the Supreme Court pronounced its judgement in the case of *Oil and Natural Gas Corporation Limited (ONGC) Vs. Afcons Gunanusa JV*, **2022 SCC OnLine SC 1122**. In the said judgement, the Supreme Court held that fees under Schedule IV of the Arbitration Act has to be computed separately for the claim and the counter-claim.

8. On 19.12.2022, the learned arbitrator took note of the aforesaid judgement of the Supreme Court in the case of **ONGC Vs. Afcons Gunanusa JV** *(supra)* and directed that the parties would have to pay remaining fees in terms of the position clarified by the Supreme Court. The learned arbitrator also noted that unless such fees was paid, she would not be able to proceed further in the matter.

9. On 15.01.2023, the mandate of the learned arbitrator expired by efflux of time. On 24.02.2023, the learned arbitrator indicated that only final hearing remained in the arbitral proceedings for which five clear days were being fixed. In the meanwhile, a third party had filed an

application before the learned arbitrator, seeking relief against the petitioners. On 21.06.2023, the learned arbitrator passed an order on the said application, indicating that such an application could not be entertained under the provisions of the Arbitration Act. Nonetheless, certain observations were made in the said order, on the basis of which, the petitioners claim that the learned arbitrator had rendered herself disqualified from continuing as the arbitrator. On 04.08.2023, the respondent filed the petition under Section 29-A of the Arbitration Act, seeking extension of mandate of the learned arbitrator. On 01.09.2023, the petitioners filed their petition under Sections 14 and 29-A of the Arbitration Act, not only seeking extension of mandate, but they also sought substitution of the learned arbitrator. Both the petitions were taken up for hearing together.

10. Mr. Mayur Khandeparkar, learned counsel appearing for the petitioners, submitted that since the mandate of the learned arbitrator had expired, there could be no dispute about the fact that extension of mandate was necessary, but at the same time, there were sufficient grounds, in the facts and circumstances of the present case, to seek substitution of the learned arbitrator under Sections 14 and 29-A(6) of the Arbitration Act.

11. It was submitted that the conduct of the learned arbitrator, in the present case, was such that she had been rendered *de facto* unable to perform her functions and that the manner in which the proceedings were conducted by the learned arbitrator, continuing the said learned arbitrator while extending the mandate would certainly delay the proceedings, warranting her substitution under Section 29-A(6) of the Arbitration Act.

12. In order to support the prayer for substitution of the learned arbitrator, the learned counsel appearing for the petitioners submitted

that the learned arbitrator had unilaterally revised and increased the quantum of the fees, which was impermissible. By relying upon the aforesaid judgement of the Supreme Court in the case of **ONGC Vs. Afcons Gunanusa JV** *(supra)*, the learned counsel for the petitioners submitted that once the fees were fixed in the preliminary meeting on 11.04.2019, it amounted to a tripartite agreement between the parties and the learned arbitrator, which could not have been unilaterally revised or changed. Much emphasis was placed on the order / minutes of the meeting dated 19.12.2022, wherein the learned arbitrator, upon revising and increasing her fees unilaterally, had also specifically stated that unless her fees were paid, she would no longer be able to act as an arbitrator in the matter. According to the petitioners, this amounted to the learned arbitrator being rendered *de facto* unable to perform her functions, thereby justifying invocation of Section 14(1)(a) of the Arbitration Act. It was further submitted that the learned arbitrator wrongly entertained the application filed by the third party, whereby reliefs were sought against the petitioners. After referring to the order dated 21.06.2023 passed by the learned arbitrator on the said application, it was submitted that while the application was kept pending, advice was given to the third party applicant, which rendered the learned arbitrator disqualified from continuing as an arbitrator. This was also sought to be covered under Section 14(1)(a) of the Arbitration Act, alleging that the learned arbitrator, by such conduct, had become *de facto* unable to perform her functions as an arbitrator.

13. It was further submitted that the learned arbitrator wrongly rejected witness summons sought by the petitioners to the Income Tax Department for production of relevant documents, due to which, the petitioners had to move a writ petition before this Court. Reference was made to an order dated 24.06.2021 passed by a Division Bench of this Court in the said writ petition bearing Writ Petition (L) No.13526 of

2021, to indicate the alleged gross error committed by the learned arbitrator. Thereupon, the learned counsel for the petitioners submitted that the learned arbitrator was insisting upon more than 100 vendors deposing in respect of project expenses, which would obviously lead to immense delay in the arbitral proceedings. It was alleged that the learned arbitrator had refused to appoint an auditor, claiming that the exercise of accounting and considering the rival submissions would be undertaken by the learned arbitrator herself, thereby further indicating that the proceedings would be delayed due to the procedure adopted by the learned arbitrator. The approach of the learned arbitrator was further criticized on the ground that she had wrongly insisted upon presence of R.W.1 during cross-examination of R.W.2 and that multiple rounds of cross-examination of the witnesses of the petitioners had been undertaken, further delaying the arbitral proceedings.

14. On the basis of such allegations, as regards the manner in which the arbitral proceedings were being conducted, it was emphasized that since the delay was on account of the peculiar procedure being adopted by the learned arbitrator, sufficient cause was available for exercising power under Section 29-A(6) of the Arbitration Act for substitution of the learned arbitrator. It was submitted that this Court could certainly take note of the manner in which the arbitral proceedings were being conducted and in that context, look at the orders passed by the learned arbitrator, without going into the merits of such orders, only with a view to consider whether the learned arbitrator ought to be substituted in the interest of justice, while extending the mandate. It was emphasized that in a given set of facts, this Court could certainly exercise power under Sections 14 and 29-A(6) of the Arbitration Act to substitute the learned arbitrator. Reliance was placed on judgement of the Delhi High Court in the case of *Angelique International Limited Vs. SSJV Projects Private Limited and another*, **2018 SCC OnLine Del 8287**, in support of the

contention that when the Court finds delay having occurred in arbitral proceedings attributable to the arbitrator or arbitral tribunal, power could certainly be exercised under Section 29-A(6) of the Arbitration Act to substitute one or all the arbitrators. On this basis, it was submitted that this Court may allow the petition seeking substitution of the learned arbitrator and then to extend the mandate.

15. On the other hand, Dr. Abhinav Chandrachud, learned counsel appearing for the respondent submitted that on the aspect of extension of mandate, there was no dispute between the parties and that the only area of disagreement was on the question of substitution of the learned arbitrator.

16. It was submitted that even though the petitioners had filed their petition under Sections 14 and 29-A of the Arbitration Act, sufficient grounds would have to be made out by the petitioners to show that in the facts and circumstances of the present case, the learned arbitrator had been rendered *de facto* unable to perform her functions.

17. It was submitted that on the aspect of fees claimed by the learned arbitrator, the clarification as regards the correct position of law was rendered by the Supreme Court in the aforesaid judgement in **ONGC Vs. Afcons Gunanusa JV** *(supra)*. It was submitted that although the said judgement was pronounced on 30.08.2022, the correct position as regards fee to be charged by the learned arbitrator as per Schedule IV of the Arbitration Act, must always be presumed to be the position as clarified in the said judgement by the Supreme Court. It was submitted that although in the preliminary meeting dated 11.04.2019, the learned arbitrator did specify her fees, it was only under Schedule IV to the Arbitration Act. Upon the said judgement being delivered by the Supreme Court in the case of **ONGC Vs. Afcons Gunanusa JV** *(supra)*, all that the learned arbitrator did was to claim further fees as per the

position clarified by the Supreme Court, but at the same time only within the scope of Schedule IV to the Arbitration Act. Thus, according to the respondent, the order / minutes of meeting dated 19.12.2022, does not show any departure on the part of the learned arbitrator from the agreed position as per the preliminary meeting held on 11.04.2019. It was submitted that merely because the learned arbitrator observed in the said order that unless her fees were paid, she would no longer be able to act as the arbitrator, cannot render the learned arbitrator *de facto* unable to perform her functions. If the contention of the petitioners is to be accepted, it would amount to allowing the petitioners to take advantage of their own wrong of not paying the fees due and payable to the learned arbitrator under Schedule IV to the Arbitration Act.

18. It was further submitted that a simple arithmetical calculation would show that as per the order dated 19.12.2022 passed by the learned arbitrator, the rival parties would have to pay additional amount of Rs.11,39,764.50 each. But if the prayer being pressed on behalf of the petitioners for substitution of the learned arbitrator is to be accepted, both parties would have to pay the entire fee afresh to the substituted arbitrator. According to the respondent, this makes absolutely no sense, apart from the fact that the contention of the petitioners in the said context is legally untenable.

19. As regards all the other grounds, pertaining to the manner in which the learned arbitrator had conducted the arbitral proceedings and the procedure adopted by her, raised on behalf of the petitioners to seek her substitution, the learned counsel appearing for the respondent submitted that under Section 19 of the Arbitration Act, the learned arbitrator and the parties are free to agree on the procedure. The learned arbitrator is not bound by the Code of Civil Procedure, 1908 (CPC) or the Indian Evidence Act, 1872 (Evidence Act). All that the learned

arbitrator needs to do is to follow a reasonable procedure in consonance with the principles of natural justice. It was submitted that even if the petitioners had a grievance with regard to certain procedural aspects of the matter, the only forum for redressal of such grievance would be at the stage of filing a proceeding under Section 34 of the Arbitration Act to challenge the eventual award. It was further submitted that such an eventuality would arise, only if the award were to go against the petitioners. On this basis, it was submitted that none of the grounds raised on behalf of the petitioners for seeking substitution of the learned arbitrator indicate satisfaction of the requirement under Section 14(1)(a) of the Arbitration Act. It was submitted that the petitioners themselves were not claiming that the learned arbitrator had been rendered *de jure* unable to perform her functions. They had also failed to make out any ground to claim that the learned arbitrator had become *de facto* unable to perform her functions.

20. It was specifically submitted that the learned arbitrator had not entertained the application of the third party and observations made in the order dated 21.06.2023 make it amply clear that the learned arbitrator did not think it fit to entertain the application, although the application remained formally pending. It was further submitted that the observations made in the said order were nothing but a recording of a dialogue that took place between the learned arbitrator and the petitioners' counsel, which could never be a ground to make allegations against the learned arbitrator. It was further submitted that the petitioners were not being fair in seeking substitution of the learned arbitrator, only because they perceive that the eventual award may go against them, perhaps because the application under Section 17 of the Arbitration Act was allowed in favour of the respondent and that certain observations during the course of the arbitral proceedings were made against the petitioners. On this basis, it was submitted that this Court may allow the

petition filed by the respondent by extending the mandate of the learned arbitrator and that the prayer made by the petitioners in their petition for substitution of the learned arbitrator may be rejected.

21. In the light of the rival submissions, this Court finds that the disagreement between the parties concerns the question of substitution of the learned arbitrator. There is no dispute between the parties that the mandate of the learned arbitrator has expired and that extension of mandate is necessary in the facts and circumstances of the present case. Having considered the stage of the arbitral proceedings and the rival submissions, this Court is inclined to favourably consider the prayer made on behalf of the rival parties for granting extension of mandate. But, the question with regard to substitution of the learned arbitrator needs to be examined in the light of Sections 14(1)(a) and 29-A(6) of the Arbitration Act, being specifically invoked by the petitioners.

22. There are two major grounds raised by the petitioners in this context, while seeking substitution of the learned arbitrator. Firstly, that the learned arbitrator has illegally sought to increase the fees, going against the agreement manifested in the preliminary meeting dated 11.04.2019, on the basis that the law laid down by the Supreme Court in the case of **ONGC Vs. Afcons Gunanusa JV** *(supra)* has been violated. In this regard, much emphasis is placed on the observations made by the learned arbitrator in the minutes of the meeting / order dated 19.12.2022, whereby the learned arbitrator indicated that unless the revised fees were paid, she would no longer be able to act as the sole arbitrator. Secondly, the petitioners have highlighted various orders passed by the learned arbitrator during the arbitral proceedings and the procedure adopted by her, to contend that it has led to delay attributable to the learned arbitrator, insisting upon her substitution under Section 29-A(6) of the Arbitration Act. In fact, by relying on both the grounds, the petitioners

claim that the learned arbitrator has rendered herself *de facto* unable to perform her functions. It is claimed that unless the learned arbitrator is substituted, there will be undue delay in the arbitral proceedings.

23. As regards the first ground pertaining to revision of fees of the learned arbitrator, it would be appropriate to refer to Schedule IV of the Arbitration Act and the judgement of the Supreme Court rendered in the case of **ONGC Vs. Afcons Gunanusa JV** *(supra)*. A perusal of Schedule IV of to the Arbitration Act shows that fee has been prescribed in proportion to the sum in dispute between the parties. In the aforesaid judgement in the case of **ONGC Vs. Afcons Gunanusa JV** *(supra)*, the Court issued guidelines to be followed on the aspect of determination of fees of the arbitrator / arbitral tribunal. It was laid down that the arbitrator must set out the components of fees, which would serve as a tripartite agreement between the parties and the arbitrator. It was further laid down that there can be no unilateral deviation from the terms of reference as they amount to a tripartite agreement, further stipulating that any amendments, revisions or modifications may only be made with the consent of the parties. This is significant to test the argument raised on behalf of the petitioners herein.

24. In the said judgement, the Supreme Court clarified that the '*sum in dispute*' means the whole, aggregate or the total amount in dispute, which is to be adjudicated upon. On this basis, it was held that the arbitrator or the arbitral tribunal is entitled to compute and charge fees for the claim as well as the counter-claim. This position of law was clarified in the context of Schedule IV to the Arbitration Act.

25. Both the parties herein have relied upon the said judgement of the Supreme Court in the case of **ONGC Vs. Afcons Gunanusa JV** *(supra)* in support of their respective stands. According to the petitioners, by issuing the order / minutes of meeting dated 19.12.2022, the learned

arbitrator in the present case had unilaterally revised the fees, in violation of the tripartite agreement manifested in the preliminary meeting dated 11.04.2019. This Court has perused the minutes of the meeting dated 11.04.2019. The learned arbitrator, with the consent of the rival parties, specified that the fees would be charged as per Schedule IV to the Arbitration Act. On the basis of understanding of Schedule IV to the Arbitration Act, the learned arbitrator specified her fees and subsequently observed in the minutes of the meeting dated 25.09.2019 that the capping limit of the fees had been reached, and that therefore, fees could not be charged on the counter-claim except 1/4th of the *ad-valorem* amount payable to the learned arbitrator. The subsequent order / minutes of meeting dated 19.12.2022 indicates that the learned arbitrator took into account the position of law and interpretation of Schedule IV to the Arbitration Act clarified by the Supreme Court in the aforesaid judgement in the case of **ONGC Vs. Afcons Gunanusa JV** *(supra)*. Thereupon, the learned arbitrator found that additional fee was payable by the parties.

26. This Court finds that the observations made in the minutes of meeting / order dated 19.12.2022 by the learned arbitrator do not amount to unilateral revision or any deviation from the tripartite agreement pertaining to fees, manifested in the preliminary meeting dated 11.04.2019. In the said preliminary meeting, the tripartite agreement or the understanding as regards fees was clearly to the effect that the learned arbitrator would charge fees as per Schedule IV to the Arbitration Act. In that context, the learned arbitrator was certainly entitled to claim fees specifically as per Schedule IV to the Arbitration Act, interpreted and clarified by the Supreme Court in the said judgement in the case of **ONGC Vs. Afcons Gunanusa JV** *(supra)*. Thus, there is no question of the learned arbitrator, having unilaterally revised the fees, in violation of the tripartite agreement / understanding,

manifested in the minutes of the meeting dated 11.04.2019. Hence, the said ground raised against the learned arbitrator, while seeking her substitution, cannot be sustained.

27. The argument advanced on behalf of the petitioners by placing emphasis on the observations made by the learned arbitrator in the minutes of the meeting dated 19.12.2022 that unless the fees as specified were paid, she would not be able to act as the arbitrator, is stated only to be rejected. Once it is found that the fees specified by the learned arbitrator in the minutes of the meeting / order dated 19.12.2022, was well within the ambit of Schedule IV to the Arbitration Act, such fees was certainly legally payable to the learned arbitrator. Therefore, none of the parties could refuse to pay such fees. The petitioners cannot refuse to pay the fees and then emphasize upon the aforesaid observation of the learned arbitrator that she had herself indicated that non-payment of fees would result in her not being able to act as the arbitrator. If the contention of the petitioners is to be accepted that this amounts to a ground under Section 14(1)(a) of the Arbitration Act rendering the learned arbitrator *de facto* unable to perform her functions, it would amount to allowing the petitioners to take advantage of their own wrong. Thus, the said contention is also rejected.

28. This brings us to the second ground raised on behalf of the petitioners pertaining to the manner in which the proceedings have been conducted by the learned arbitrator, allegedly leading to undue delays and thereby indicating that if the learned arbitrator continues with the arbitral proceedings upon extension of mandate, such proceedings would be further unduly delayed. The petitioners claim that this aspect is also covered under Section 14(1)(a) of the Arbitration Act, apart from giving rise to a specific ground under Section 29-A(6) thereof for substitution of the learned arbitrator. This Court has considered each of the grounds

raised on behalf of the petitioners with regard to the manner in which proceedings were conducted by the learned arbitrator and the procedure adopted at various stages. This Court is conscious of the fact that the learned arbitrator under Section 19 of the Arbitration Act is not bound by the CPC or the Evidence Act. Thus, the learned arbitrator is free to adopt procedure that is reasonable and which is in consonance with the principles of natural justice, while conducting the arbitral proceedings. The petitioners have made allegations against the learned arbitrator pertaining to rejection of witness summons sought by the petitioners to the Income Tax Department for production of relevant documents; failing to appoint auditor and indicating that the examination of accounts would be done by the learned arbitrator herself; multiple rounds of cross-examination of the witnesses of the petitioners were allegedly illegally permitted; procedure was adopted in such a manner that evidence would have to be led of more than 100 vendors in the context of various bills of expenditure; and the third party application being entertained for reliefs against the petitioners.

29. The grievances with regard to the said aspect of the matter, in the opinion of this Court, have to be raised at the stage of proceedings under Section 34 of the Arbitration Act, if at all the arbitral award goes against the petitioners. This Court is not in agreement with the contention raised on behalf of the petitioners that while in the present proceedings, this Court may not go into the merits of the orders / minutes of the meetings, as also procedure adopted by the learned arbitrator, but the said orders and procedure could be examined from the angle of undue delay that has already occurred and the delay that would occur in the future if the learned arbitrator is not substituted. This Court is of the opinion that the aforesaid allegations made against the learned arbitrator cannot form a substratum for considering as to whether the learned arbitrator has been rendered *de facto* unable to perform her functions under Section 14(1)(a)

of the Arbitration Act. The petitioners are inviting this Court to tread on a dangerous path, for the reason that venturing on such an enquiry or rendering findings in that context would amount to interfering with the independence of the learned arbitrator as a private tribunal and it would open a *Pandoras* box for the parties to repeatedly approach the Court, in turn leading to repeated interference with the arbitral proceedings. This would go against the very object of the Arbitration Act and it would be against the settled position of law that the Court must be slow in interfering with arbitral proceedings during the pendency of the arbitration.

30. If at all the petitioners are aggrieved by the manner in which the learned arbitrator has proceeded and if eventually, the arbitral award does go against the petitioners, they can certainly raise all such grounds that may be available in proceedings under Section 34 of the Arbitration Act. If held otherwise, it would lead to a party approaching the Court for substitution of the arbitrator or the arbitral tribunal at the drop of a hat when such party perceives that the arbitrator or the arbitral tribunal is proceeding against the party during the pendency of the arbitral proceedings. Such an eventuality cannot be countenanced and therefore, the contentions raised on behalf of the petitioners, in the facts and circumstances of the present case, that the learned arbitrator has been rendered *de facto* unable to perform her functions due to the manner in which she has conducted the proceedings till date, deserve to be rejected.

31. This Court is of the opinion that the aspect of the learned arbitrator being rendered *de facto* unable to perform her functions necessarily pertains to certain facts in relation to and in the context of the arbitrator that may render her unable to conduct arbitration. It cannot be that a party seeks substitution, on the basis of the manner in which the arbitral proceedings have been conducted, in order to claim that the

arbitrator or the arbitral tribunal has been *de facto* rendered unable to perform functions. The aspect of delay or undue delay can be the only exception.

32. In this context, the petitioners have relied upon the judgement of the Delhi High Court in the case of **Angelique International Limited Vs. SSJV Projects Private Limited and another** *(supra)*. There cannot be any quarrel with the proposition laid down therein that when the Court finds that the arbitral proceedings have been delayed for reasons attributable to the arbitrator or the arbitral tribunal, power can be exercised under Section 29-A(6) of the Arbitration Act to substitute one or all the arbitrators. But, before exercising such power under Section 29-A(6) of the Arbitration Act, the Court will first have to come to the conclusion that there has been delay in the arbitration proceedings and thereafter conclude that the delay is attributable to the arbitrator or the arbitral tribunal.

33. In the present case, even after taking into consideration the allegations levelled by the petitioners against the learned arbitrator, this Court is unable to come to the conclusion that there has been undue delay in the proceedings or that delay could be attributable to the learned arbitrator. Therefore, even on the ground of alleged delay, the petitioners have not been able to make good their contentions.

34. Thus, this Court finds that the petitioners have failed to make out both the grounds raised for seeking substitution of the learned arbitrator and accordingly, the prayer made in their petition to that effect is rejected.

35. As noted hereinabove, in view of the stage of the arbitral proceedings and the fact that both the parties have agreed for extension of mandate of the learned arbitrator, the prayer made in that context can

certainly be accepted.

36. In view of the above, the mandate of the learned arbitrator is extended upto 31.12.2024. The prayer made for substitution of the learned arbitrator stands rejected.

37. Both the petitions are disposed of in above terms.

38. Pending applications, if any, stand disposed of accordingly.

(MANISH PITALE, J.)

Minal Parab