IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMMERCIAL ARBITRATION APPEAL(L) NO. 27081 OF 2026

IN

COMMERCIAL ARBITRATION PETITION(L) NO. 21029 OF 2026

Shivmoorat Kushwaha, Proprietor of]
M/s. NAMAH ENTERPRISES,]
having office at 001, Ajgaonkar House,]
Kasturba Road No.6,]
Opp. Borivali Railway Station,]
Borivali (East), Mumbai – 400 066.] … Appellant

V/s.

1. Union of India]
Through the General Manager,]
Central Railway, CSMT, Mumbai.]

2. Principal Chief Commercial Manager,]
Central Railway, CSMT, Mumbai.]

3. Divisional Railway Manager,]
Central Railway, Mumbai Division,]
CSMT, Mumbai]

4. Senior Divisional Commercial Manager,]
Central Railway, Mumbai Division,]
CSMT, Mumbai] … Respondents

Adv. Aseem Naphade a/w. Adv. Anduprakash Tripathi and Adv. Chetan Shah for the Appellant.

Adv. T.J. Pandian a/w Adv. Vaishali Barot, Adv. Gautam M. and Adv. Aarti Gupta for the Respondents.

CORAM : A. S. GADKARI AND KAMAL KHATA, JJ.
RESERVED ON : 10th August, 2026
PRONOUNCED ON : 25th August, 2026

Judgment (Per : A.S. Gadkari, J.):-

1) Present Appeal is filed under Section 37(1)(b) of the Arbitration and Conciliation Act, 1996 (Arb. Act), against the Judgment and Order dated 3rd August, 2026 passed by the learned Single Judge, whereby the Petition filed under Section 9 of the Arb. Act seeking interim protection pending the arbitral proceedings, came to be rejected.

2) The Appellant is principally aggrieved about the findings recorded in the impugned Order on the disputed contractual issues, while dismissing the Section 9 Petition.

3) The Appellant is engaged in the business of operation, management and maintenance of passenger amenities and hospitality facilities at railway stations. Being a successful bidder, he was awarded the contract for upgradation, maintenance and manning of the AC Upper Class Waiting Room at Chhatrapati Shivaji Maharaj Terminus (CSMT), Mumbai together with allied passenger facilities including beverage stalls and tourist kiosks, for a contractual period of five years. The Appellant invested approximately Rs.40,00,000/- in the said project, as the tender itself contemplated that in future, Railway Board Policy would, in future, be governed by the Delhi Division Model, which contemplated long-term

operation.

4) During the entire tenure of five years, the Respondents neither received nor raised any complaints regarding the performance of Appellant’s contractual obligations. The amount of Rs.40,00,000/- invested by the Appellant has since become a part of the railway property.

5) Mr. Naphade, learned counsel appearing on behalf of the Appellant, submitted that, the tender was invited in accordance with the commercial circulars issued by the Railway Board, which contemplated prevalence of additional new policies which would enhance the contractual period, subject to conditions. He submitted that the Appellant has, till date, adhered to all the terms and conditions of the Agreement, and that this has, in fact, been appreciated by the Railway Board. To the best of Appellant’s knowledge, no complaints have been received against the Appellant during the entire tenure.

5.1) He submitted that in accordance with the Delhi model, the Appellant made representations for renewal of the contract for an additional period of five years. However, the Respondents have not decided the same and have in the meantime, floated a fresh tender inviting other bidders, thereby causing grave prejudice to the Appellant. He submitted that, the two short-term extensions granted are insufficient to recover the benefits of the investments made and do not align with the Delhi Division Model or Railway Board's policy or the intention of the tender. He submitted that, the temporary extensions granted were at enhanced licence fees, and therefore conferred no real benefit. According to him, the Railway Board Guidelines dated 28th August, 2020 have not been implemented in its true letter and spirit, inasmuch as the Delhi Division Model contemplated extension of the contract for an additional period of five years for all major stations of zonal railway, subject to the satisfactory performance of the contractor, though admittedly this remained a matter for the sole discretion of the Railways. According to Mr. Naphade, there was absolutely no reason to deny the Appellant an extension in terms of the Delhi Division Model.

5.2) Mr. Naphade strenuously urged that, the prayers in the Appeal be granted, on various grounds listed under headings extracted hereinbelow for ready reference:

a) Impugned Order contrary to the scope of Section 9;
b) Failure to appreciate that the Appellant never claimed automatic renewal;
c) Failure to consider Clause 10 of the Tender Document;
d) Failure to appreciate the effect of the Railway Board Policy dated 28.08.2020;
e) Failure to appreciate the significance of the communication dated 16.03.2022;
f) Erroneous reliance upon the communication dated 03.06.2026;
g) Failure to appreciate the Respondents' contradictory conduct;
h) Arbitrary and selective application of Railway Board Policies;
i) Failure to appreciate the relevance of the LTT Contract;

j) Failure to consider discriminatory treatment;

k) Failure to consider legitimate expectation;

l) Failure to apply the doctrine of promissory estoppel;

m) Failure to consider the Public Private Partnership Framework;

n) Misinterpretation of the Railway Board Policy of 2022;

o) Failure to appreciate continuous recognition of the Contract;

p) Failure to appreciate irreparable injury;

q) Balance of convenience incorrectly applied;

r) Failure to preserve the subject matter of Arbitration;

s) Findings recorded beyond prima facie satisfaction;

t) Impugned Order contrary to settled principles governing Government Contracts.

Reiterating these grounds in detail he submitted that, the Appeal deserves to be allowed and the impugned Order be set aside.

6) Mr. Naphade then referred to the Circular No.11 of 2022 issued by the Government of India, Ministry of Railways, Railway Board, dated 13th June, 2022, and in particular to Clause 8 thereof, dealing with duration of contract. Referring to Clause 8.1(v), he submitted that the Appellant's contract was covered thereunder and the duration contemplated under clause 8.1(v)(b) was ten years. He accordingly submitted that the Appellant's contract deserved to be extended for an additional period of five years.

7) *Per Contra* Mr. Pandian, learned Advocate for the Respondent supported the impugned Judgment and submitted that, the Appellant was bound by the terms of the contract and could not demand an extension. In

any event, any extension would lie at the sole discretion of the Respondents, as per the terms of the contract. He accordingly submitted that, the Appeal deserves to be dismissed.

8) We have heard Mr. Naphade, learned counsel for the Appellant and Mr. Pandian for the Respondent, and perused the entire record.

9) The arguments of the Appellant are principally founded on the Circular No.11 of 2022 dated 13th June, 2022 (Circular No.11 of 2022). The clause 8 of the Circular No.11 of 2022 is extracted hereinbelow for ready reference :-

> "8. Duration of contract:
>
> 8.1 The duration for Commercial Earning/NFR contracts shall as following:
>
> i) Contracts for leasing of parcel space – 2 years
>
> ii) Other Commercial Earning & NFR contracts – 3 years
>
> **iii) Plastic Bottle Crushing Machines, Cloak Room Management, and AC Waiting Hall Management – 5 years**
>
> iv) High Investment contracts (e.g., parking lots with access control and CCTV, high investment advertising contracts, etc, as decided by Division/Railway) – 5 years
>
> **v) Pay-&-use Toilets**
>
> a. Normal, for operation and maintenance only – 3 years
>
> **b. Under ROMT – 10 years.**
>
> c. Under BOT – 15 years.
>
> vi) Contracts involving seasonal/ short-duration (e.g., festival special trains, holiday special trains, etc) – for the duration of operation of the concerned train
>
> vii) For asset categories not mentioned above – as decided by the concerned P/CHOD"

10) A bare perusal of Clause 8 of the Circular No.11 of 2022 indicates that the Appellant has misread and misinterpreted the clause. The contention that clause 8.1(v) applies to the Appellant's contract is entirely misconceived. In our view, it is Clause 8.1(iii) and not Clause 8.1(v), that applies to the Appellant, inasmuch as it deals with Plastic Bottle Crushing Machines, Cloak Room Management and AC Waiting Hall Management, for which the contractual period is only five years. The reliance placed on 8.1(v) is misconceived. On a bare reading, it can be seen to pertain to Pay and Use Toilets, which is neither included in, nor linked or connected with, the Appellant's contract, admittedly one for AC Waiting Hall Management. Accordingly, in our view, there is no merit in this contention of the Appellant.

11) The scope of the contract, annexed at page No.138, confirms that it qualifies the contract for a period of five years only. It would also be useful to refer to Clause 9 of Circular No.11 of 2022, which reads as under:-

> "9. Extension of contract:
> 9.1 Normally, extension of contracts awarded through e-Auction shall not be permitted. However, in case of expiry of a contract before the finalization of new contract for any asset (due to administrative delays), or in cases where different contracts (with different dates for closure) for leasing of parcel space have been awarded in a single train, temporary extension(s) can be granted with the approval of DRM/ concerned P/CHOD without finance concurrence. The total duration of such extension(s) shall not exceed 3 months, and efforts should be made to ensure

> that the next contract is finalized before the expiry of such extension(s). Rent/license fee and other applicable charges of the assets shall be paid by the contractor for the extended period on pro-rata basis."

12) A plain reading of the above shows that, although an extension was ordinarily impermissible, two short extensions were admittedly granted to the Appellant upon consideration of his representations, though at increased charges.

13) Having perused the impugned Judgment, we find that the learned Single Judge has correctly considered the facts of the case and the contentions of the Advocates, and having analyzed the entire matter, has given detailed reasons therefor. We therefore do not find any infirmity in the said Judgment. We also find that, while deciding the issue under Section 9 of the Arbitration Act, the learned Single Judge has in no manner travelled beyond the ambit of Section 9. The findings recorded are based solely on the facts and arguments advanced. It cannot therefore be said that, the learned Single Judge has committed any error in considering and appreciating the Section 9 Petition.

14) In view of the above, the Appellant is not entitled to an extension for an additional period of five years under the contract. The legitimate expectation of the Appellant is understandable, but he cannot claim an extension as a matter of right. The Appellant was throughout aware that, the duration of the contract was fixed at a term of five years, he now cannot

claim to have been deprived of the benefits envisaged by him at the time of investing a sum of Rs.40,00,000/- in the project. In our view, therefore, the learned Single Judge has rightly rejected the Section 9 Petition.

15) In *M.P. Road Development Corporation Ltd vs. Jabalpur Corridor (P) Ltd.,* reported in *2026 SCC OnLine SC 1001* the Hon'ble Supreme Court has held as under:

> "40. From the consistent pronouncements of this Court, it is evident that the jurisdiction under Sections 34 and 37 of the 1996 Act is narrowly circumscribed and cannot be equated with ordinary appellate jurisdiction. The appellate Court under Section 37 does not sit as a court of appeal on the merits of the arbitral award; its role is confined to examining whether the Court under Section 34 has acted within the limits prescribed by law. Interference is permissible only where the Section 34 Court has exceeded its jurisdiction or failed to exercise it within the confines of Section 34, and not merely because another view of the facts or interpretation of the contract may appear preferable. Courts ordinarily must give requisite deference to finality of arbitral awards unless it is palpably clear that the award is perverse and unreasonable. The arbitral tribunal remains the final authority on appreciation of evidence, and concurrent findings under Sections 34 and 37 are entitled to great deference. The statutory scheme thus reinforces the principle of minimal judicial intervention, ensuring that arbitral awards are not disturbed save in circumstances expressly contemplated by the Act."

16) In our view, no error, either in law or on facts, has been committed by the learned Single Judge in passing the impugned Judgment and Order dated 3rd August, 2026.

17) Considering the scope of Section 37 and our limited jurisdiction under that Section, we find that, Appeal is entirely devoid of any merit, and the same is accordingly dismissed, with no order as to costs.

(KAMAL KHATA, J.) **(A.S. GADKARI, J.)**