

**NV INTERNATIONAL V STATE OF ASSAM 2019 SCC
ONLINE SC 1584**

Supreme Court of India; 2-judge bench, **R. F. Nariman** and S Ravindra Bhat JJ; decided on 6 December 2019

Limitation to file an appeal under Section 37 from a Section 34 proceedings is a maximum of 120 days

(A) LIMITATION UNDER SECTION 34 AND ITS EFFECT ON LIMITATION UNDER SECTION 37 AS DECIDED BY THE SUPREME COURT IN *VARINDERA CONSTRUCTION*

Section 37 of the ACA provides for an appeal against several orders, one of which is an order made in a set aside application under Section 34. The limitation to file a Section 34 application is three months *plus* a further grace period of thirty days, but not thereafter.³

In *Union of India v. M/s Varindera Construction Ltd.*, SLP No. 23155/2013 (decided on 17 September by a bench of RF Nariman and Indu Malhotra JJ), the Supreme Court said “*any delay beyond 120 days*” in filing an appeal under Section 37 from allowing or rejecting an application under Section 34 ACA should not be allowed.

How did the court arrive at this period of 120 days?

The court below (Delhi High Court) had said that 120 days, including even the grace period of 30 days,⁴ is the maximum period in which a Section 34

³ Section 34 (3)- An application for setting aside may not be made after three months have elapsed from the date on which the party making that application had received the arbitral award or, if a request had been made under Section 33, from the date on which that request had been disposed of by the arbitral tribunal: provided that if the court is satisfied that the applicant was prevented by sufficient cause from making the application within the said period of three months it may entertain the application within a further period of thirty days, but not thereafter. (*emphasis added*)

⁴ The period under Section 34 ACA is three months plus 30 days. The court erroneously equated three months with 90 days.

application can be filed. So, an appeal from Section 34 proceeding should also “carry the same drill.”⁵

The Supreme Court in *Varindera* affirmed the Delhi High Court’s finding. First, it said an appeal is a continuation of the original proceedings.⁶ Then it added that allowing delay beyond 120 “will defeat the overall statutory purpose of arbitration proceedings being decided with utmost despatch.”

(B) THE *NV INTERNATIONAL* DECISION—LIMITATION REMAINS THE SAME (120 DAYS), REASONING ATTUNED A BIT

In this case, an award was challenged under Section 34 of the ACA but rejected. From that rejection, an appeal was made under Section 37 of the ACA. Taking the limitation as 90 days under Article 116 of the Limitation Act, 1963, an application to condone the delay of 189 days had also been filed under Section 5 of the Limitation Act, 1963.⁷ The High Court did not condone the delay.

NV International’s argument in the Supreme Court was that the application for condonation of delay should have been decided on its merits regardless of the length of the delay.

The court dismissed the appeal. It first said that “the matter was no longer *res integra*”, and reproduced the order made in *Varindera Construction* (cited *supra*).

⁵ This is the expression the Supreme Court used while describing the order the High Court had passed, that is, in FAO (O.S) 178 of 2013 decided on 10 April 2013 (Sanjay Kishan Kaul and Indermeet Kaur JJ). A copy of this order could not be accessed on the Delhi High Court’s website (search via daily orders & case history) nor obtained from any other resource. It is not apparent from the description of the Supreme Court if what the High Court said was that the limitation under Section 37 (against a Section 34 order) is the same as Section 34, or that limitation though is governed by Article 116 of the Limitation Act, 1963, any delay beyond what was prescribed for a Section 34 application should not be condoned.

⁶ Relying on *Lachmeshwar Prasad Shukul and Others v. Keshwar Lal Chaudhuri and Others*, AIR 1941 Federal Court 5.

⁷ Under Section 5 of the Limitation Act, 1963 the court has power to extend the period of limitation on being satisfied that there was sufficient cause for delay.

Then it explained that what the court had done in *Varindera Construction* was to add to the period of 90 days, provided by statute for filing of appeals under Section 37 of the ACA, a grace period of 30 days under Section 5 of the Limitation Act, 1963.

Therefore, the net conclusion that follows from *NV International* (on the face of it and as it stands) is that if an appeal under Section 37, ACA is filed from a Section 34 proceeding, there should not be a delay beyond 120 days.⁸

⁸ The basis of the calculation is problematic. If it was Section 34, the court confused three months with ninety days. So, a party may argue that it should not be 120 days but three months plus 30 days. There are other unclear matters. Can the reasoning process in *Varindera Construction* be conciled with *B.V. International*? What will be the limitation for appeals under Section 37 from proceedings other than Section 34 proceeding? Will the same grace period of 30 days apply? If not, will there be different standards for limitation in a Section 37 appeal depending on the underlying proceeding?