N.V. INTERNATIONAL AND THE CONFOUNDING CASE OF LIMITATION FOR ARBITRATION APPEALS IN INDIA

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Abstract

*The Arbitration and Conciliation Act, 1996 ["**Arbitration Act**"] was enacted with a view, inter alia, to develop a fair and efficient system of arbitration in India, with minimal judicial intervention. Yet, ironically, in balancing the interests of fairness against the need for efficiency, judicial intervention sometimes becomes inevitable. The Supreme Court, recently faced with a similar situation, was called upon to decide on the contours of the limitation period applicable to arbitration appeals under the Arbitration Act. Highlighting efficiency and speedy resolution as the foundation of India's arbitration regime, the Court laid down a law favouring seemingly restrictive and technical considerations at the expense of certain settled legal principles. In light of the same, this note is an attempt to analyse and evaluate the rationale behind the decision and the implications thereof on parties, proceedings and the law itself.*

I. Introduction

The recent decision of the Indian Supreme Court in *M/s N.V. International* v. *State of Assam*[1] ["**NV International**"] has caused more than a ripple effect for present and potential appellants in pursuit of their remedies under Section 37 of the Arbitration Act.[2] The judgment, a mere six paragraphs, has, undoubtedly, immediate implications for arbitration appeals in India. However, more critically, the Court seems to have gone down a dangerously vague path of statutory interpretation, whereby the language of the statute and the intent of the legislature have been given a go-by for reasons not seemingly justifiable as per settled law and established legal principles.

Upholding the dismissal of an appeal under Section 37 on the ground of delay, the Supreme Court has read in and established sudden and rather restrictive contours on the applicability of the law of limitation to arbitration appeals. Following an earlier decision rendered in *Union of India* v. *Varindera Construction* ["**Varindera Construction**"],[3] the Court laid down that the period of 90 days hitherto made applicable to Section 37 appeals through the Limitation Act, 1963 ["**Limitation Act**"] could only be extended by a maximum period of 30 days. Shorn of any detail or discussion, the primary reason given for such an absolute approach was that an appeal, being a continuation of the original proceeding (i.e. the application under Section 34 for setting aside an award), is liable to be subjected to the same procedural rigour as the latter. Of course, the Arbitration Act's intended object of speedy resolution of arbitral disputes is also a stated justification behind the decision rendered by the bench headed by Nariman J.[4]

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1 M/s N.V. Int'l v. State of Assam & Ors., (2020) 2 SCC 109 (India) [*hereinafter* "NV International"].

2 Arbitration and Conciliation Act, No. 26 of 1996, § 37 (India) [*hereinafter* "Arbitration Act"] (providing for the orders from which an appeal may lie to a court).

3 Union of India v. M/s Varindera Constr. Ltd., (2018) 7 SCC 794 (India) [*hereinafter* "Varindera Construction"].

4 NV International, (2020) 2 SCC 109, ¶ 4 (India).

II. A chequered judicial record

It must be pointed out that the muddle of conflicting judicial precedent around this issue of limitation under the Arbitration Act is probably as old as the statute itself. In the opinion of the author, the same seemingly has had much to do with the fact that the provision for appeals provided under Section 37 prescribes no statutory time limit for the same to be filed. Contrasted with the strict timeframe prescribed for the original proceedings under Section 34,[5] and coupled with the Arbitration Act's stated intent of providing a speedy and efficient dispute resolution mechanism, the lack of a similar rigour of time in respect of appeals under Section 37 is an issue that even the Supreme Court has continued to grapple with.

In one of the earliest decisions on the very same question, the Bombay High Court in *ONGC* v. *Jagson International* ["**Jagson**"] had held that since Section 37 of the Arbitration Act provided for no period of limitation within which to file an appeal, the same was clearly a deliberate legislative omission, and thus no such time limit could be judicially read into it.[6] The Court considered the crucial fact that since such limits had been expressly provided for in other provisions under the same part of the same Act, including in Sections 11, 13, 16, and 34, the legislative intent behind excepting appeals filed under Section 37 from such rigour was clearly made out.[7] Such an approach found its basis in the judgment rendered by a three-judge bench of the Supreme Court in *Uttam Namdeo Mahale* v. *Vithal Deo*,[8] wherein in the absence of a prescribed period of limitation under a provision of a special law, the law of limitation was held to be inapplicable. A similar decision was delivered by another three-judge bench in *L.S. Synthetics* v. *Fairgrowth Financial Services*.[9]

Subsequently, however, at least in the context of arbitration, this position of law appears to have changed with the Supreme Court's judgment in *Consolidated Engineering Enterprises* v. *Principal Secretary, Irrigation Department* ["**Consolidated Engineering**"].[10] By liberally interpreting Section 43 of the Arbitration Act, it was held by Raveendran J., in his concurring judgment, that the Limitation Act would apply to all proceedings under the Arbitration Act, except where it was specifically excluded. It was noticed that the Arbitration Act did not expressly exclude the applicability of the limitation statute, but merely contained some departures from it.[11] Accordingly, the Limitation Act was held to apply to appeals under Section 37, and the ruling in *Jagson* hence stood impliedly overruled. As a consequence thereof, and in line with Section 29(2)

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5 Arbitration Act, No. 26 of 1996, § 34 (India) (Section 34(3) provides that an application thereunder for setting aside an arbitral award may not be made after three months of the date of receipt of the award by a party. The proviso to the sub-section provides that on showing sufficient cause, the said time can further be extended by the court for a period of 30 days, but not thereafter).

6 Oil & Natural Gas Comm'n v. Jagson Int'l Ltd., AIR 2005 Bom 335 (India) [*hereinafter* "Jagson"].

7 *Id.* ¶ 14; Arbitration Act, No. 26 of 1996, §§ 11, 13, 16 (India) (Section 11 deals with the appointment of arbitrators. Specific time limits are given in case parties wish to approach the courts for appointment. Section 13 provides for a provision to challenge an arbitrator. A time limit of 15 days from the date of constitution or of knowledge is provided for thereunder. Similarly, a jurisdictional challenge under Section 16 can only be made before or at the time of submission of the statement of defence).

8 Uttam Namdeo Mahale v. Vithal Deo & Ors., AIR 1997 SC 2695, ¶ 4 (India).

9 L.S. Synthetics Ltd. v. Fairgrowth Fin. Servs. Ltd., AIR 2005 SC 1209 (India).

10 M/s Consol. Eng'g Enters. v. Principal Sec'y, Irrigation Dep't & Ors., (2008) 7 SCC 169 (India) [*hereinafter* "Consolidated Engineering"].

11 *Id.* ¶ 42.

of the Limitation Act,[12] it can be inferred that even Section 5 of the Limitation Act[13] came to be applied by courts to condone delays in filing appeals under Section 37. The same made complete legal and logical sense: once the Limitation Act was held to be applicable to all proceedings under the Arbitration Act, it could only have been so *in toto*, subject only to clear exclusions i.e. where the provisions itself provided a specified period of limitation.[14] However, with the ruling in *NV International*, this seemingly sound position of law – that had come to be accepted by courts all over the country for more than a decade[15] – has suddenly been altered.

III. Section 5: the source of the power

What is pertinent to note at the outset is that unlike the case of Section 34, the Supreme Court in *N.V. International* has not excluded the applicability of the provisions of the Limitation Act to appeals filed under Section 37 of the Arbitration Act. Rather, an outer limit of 30 days has been read into the courts' discretionary power to condone delays under Section 5 of the Limitation Act.[16] In this context, it is important to look at the precise wording of Section 5, which is reproduced as follows:

> "***5. Extension of prescribed period in certain cases—****Any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908 (5 of 1908), may be admitted after the prescribed period if the appellant or the applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such period*."[17]

It may be noted that the provision does not provide for any outer limit beyond which the courts are absolutely barred to admit matters – all that is required is the existence of a 'sufficient cause'. In fact, it has time and again been recognised and upheld by the Supreme Court itself that, in condoning delays under Section 5, what is important is not the length of the delay, but the acceptability of the explanation for sufficient cause.[18] The same has been, and continues to be, a well-settled principle applied by courts in exercising their discretion under the provision, and for good reason. Litigants may be prevented from approaching courts within the prescribed time for a multitude of reasons, not all of which may necessarily be attributable to them. Even otherwise, ordinarily, no litigant stands to benefit by a delay in approaching a court. Therefore, in order to advance the interest of substantial justice, the need to liberally construe the term 'sufficient cause' has been espoused and adopted.[19] Furthermore, it has been repeatedly held that the rules of limitation are not meant to destroy the rights of parties and that "*when substantial justice and*

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12 *See* Limitation Act, No. 36 of 1963, § 29(2) (India) ("Where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed by the Schedule, the provisions of Section 3 shall apply as if such period were the period prescribed by the Schedule and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law, the provisions contained in Sections 4 to 24 (inclusive) shall apply only in so far as, and to the extent to which, they are not expressly excluded by such special or local law.").

13 *Id.* § 5 (allowing courts to extend the period of limitation, if sufficient cause is shown for the delay).

14 The use of the term "but not thereafter" in Section 34 of the Arbitration Act was held to be an unambiguous bar to the application of Section 5 of the Limitation Act and the courts' power to condone delays thereunder. *See* Union of India v. Popular Constr. Co., (2001) 8 SCC 470, ¶ 12 (India).

15 M/s Patel Unity Joint Venture v. N. E. Elec. Power Corp. Ltd., (2018) 4 NEJ 505, ¶ 3 (India); Oil & Natural Gas Corp. v. M/s Dinamic Corp., (2013) 1 MH. L.J. 94, ¶ 6 (India) [*hereinafter* "Dinamic Corporation"].

16 NV International, (2020) 2 SCC 109, ¶ 5 (India).

17 Limitation Act, No. 36 of 1963, § 5 (India).

18 State of Nagaland v. Lipok AO & Ors., (2005) 3 SCC 752, ¶¶ 8, 9 (India).

19 Collector, Land Acquisition, Anantnag v. Mst. Katiji, AIR 1987 SC 1353, ¶ 3 (India).

technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay".[20]

It is clear that, in circumscribing the discretionary power of courts under Section 5 to an outer limit of 30 days in respect of arbitration appeals, the decision in *NV International* runs contrary to the explicit wording of the statutory provision as well as well-established judicial precedent and policy guiding the law of limitation in India. Intriguingly, the stated rationale for judicially engrafting such a specific bar of limitation is to effectuate the apparent legislative intent of speedy dispute resolution under the Arbitration Act. Yet, the fact that the legislature itself did not think it necessary to bring in such a limit, despite otherwise having brought in two substantial amendments to the scheme of the Arbitration Act, seems to have gone unnoticed. In fact, the decision in *Varindera Construction*, the ratio of which has guided the Court in *NV International*, had been rendered much before the latest amendment made to the Arbitration Act in 2019.[21] In the author's opinion, the fact that the Parliament chose not to take that judicial pronouncement into account while amending the Arbitration Act ought to have weighed in with the Court before judicially reading in such a limit.

IV. The interpretative standard applied

The Apex Court, time and again, has categorically held that the Arbitration Act is a complete, self-contained code, intended to establish an exhaustive framework for arbitration.[22] The import of the same has also succinctly been brought out in the concluding paragraphs of the judgment in *Fuerst Day Lawson* v. *Jindal Exports Ltd.*,[23] wherein it is stated:

> "*Once it is held that the Arbitration Act is a self-contained code and exhaustive, then it must also be held, using the lucid expression of Tulzapurkar, J., that it carries with it 'a negative import that only such acts as are mentioned in the Act are permissible to be done and acts or things not mentioned therein are not permissible to be done'*."

Hence, it is abundantly clear that interpolation of the kind done in *NV International* stands in apparent conflict with the interpretative standard otherwise made applicable to the Arbitration Act. Even otherwise, the same is in stark contrast to well-established canons of statutory interpretation under common law, as accepted by the courts as well.

Maxwell's treatise, On the Interpretation of Statutes, states that a law, otherwise complete and unambiguous, should not be construed on the basis of the legislature's assumed intent.[24] It is stated that the same would amount, not to construing the law, but to altering it. Accordingly, a legislation as comprehensive as the Arbitration Act or a provision as clear as Section 5 of the Limitation Act is thus required to be understood as complete in all respects. The scope of

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20 *Id.* ¶ 3.

21 The Arbitration and Conciliation (Amendment) Act, 2019, No. 33 of 2019 (India) received the assent of the President on August 9, 2019. *Inter alia*, a new time limit to complete pleadings has been introduced by inserting sub-section (4) to Section 23 of the Arbitration Act. Even the language of Section 37 itself was amended, and a non-obstante clause has since been inserted therein. However, no time frame was introduced within which to file the appeal.

22 P. S. Sathappan v. Andhra Bank Ltd., (2004) 11 SCC 672, ¶ 10 (India); Kandla Exp. Corp. v. OCI Corp., (2018) 14 SCC 715, ¶ 20 (India).

23 Fuerst Day Lawson Ltd. v. Jindal Exp. Ltd., AIR 2011 SC 2649, ¶ 89 (India).

24 PETER BENSON MAXWELL, ON THE INTERPRETATION OF STATUTES 6 (2d ed. 1883).

judicial innovation must, therefore, be severely restricted. Moreover, it is also a recognised principle of interpretation that if the words of a provision are clear and unambiguous, the same have to be given effect to, and that there can be no assumption of a defect or an omission.[25] In other words, in the absence of a clear finding to the contrary, the legislature is presumed to have intended to mean what it has plainly expressed (or not expressed).[26] In this light, it is hard to contemplate how the Court reached the decision that it did, in judicially circumscribing the discretionary power under Section 5 of the Limitation Act with respect to Section 37 appeals.

Interestingly, Salmond, while explaining the maxim *expressio unis est exclusio alterius* (i.e. expression of one is the exclusion of another), makes use of an example that seems appropriate to quote here:

> "*Suppose that a statue makes two provisions, A and B, both of which would normally be taken to have a certain implication. Now suppose, further, that the statute expresses this implication for A, but fails to express it for B. According to this maxim, the implication which would normally hold for B is impliedly negatived by the failure to express it, having regard to the fact that it is expressed for A.*"[27]

The legislature has provided for specific time limits in respect of various proceedings under the Arbitration Act, including for the original objection petition under Section 34, but has not imposed any such restriction on appeals under Section 37. Consequently, such an omission should have been treated to be deliberate, and the Court ought to have left any change to the wisdom of Parliament alone.[28] Remarkably, if viewed through this lens, Deshmukh J.'s dicta in *Jagson* appears to have laid down the most sound position of law (though the same has been subjected to criticism on account of not having considered Section 29 of the Limitation Act).[29] Yet, in the opinion of the author, notwithstanding the applicability of the Limitation Act, reading such a limit into Section 5 of the Limitation Act, as has been done in *NV International*, is, by the same standard, a case of judicial overreach.[30]

In fact, while scrapping similar judicially enacted bars of limitation, albeit in the context of a criminal trial, a bench of seven judges of the Supreme Court in *P. Ramachandra Rao* v. *State of Karnataka* has held, in no ambiguous terms, that the same would be tantamount to judicial legislation.[31] It was, thus, held to be impermissible under the constitutional framework. What is noteworthy is that the Constitution Bench, on that ground, disapproved of judicially enacted timeframes read in by courts to protect an accused's right of speedy trial in criminal offences. Now, unless the Court in *NV International* has placed the Parliament's apparent intention of speedy arbitration in India on a standard even higher than an accused's fundamental right to a

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25 Afcons Infrastructure Ltd. v. Cherian Varkey Constr. Co. (P) Ltd., (2010) 8 SCC 24, ¶ 13 (India).

26 *Id.* ¶ 3.

27 SIR JOHN W. SALMOND & P.J. FITZGERALD, SALMOND ON JURISPRUDENCE 134 (12th ed. 1966).

28 Especially since no such change was introduced despite two far reaching amendments to the Arbitration Act in 2016 and 2019.

29 Dinamic Corporation, (2013) 1 Mah.L.J. 94, ¶ 8 (India).

30 There was no anomaly that was sought to be rectified by reading in a 30-day limit into Section 5. In fact, the apparent anomaly of Section 37 not having any limitation period stood corrected by the decision in *Consolidated Engineering*, and as such, the Limitation Act came to be applied harmoniously with the provisions of the Arbitration Act.

31 P. Ramachandra Rao v. State of Karnataka, AIR 2002 SC 1856, ¶ 33 (India).

speedy trial involving questions of life and liberty, there seems to be little justification for deviating from the clear line of precedent set by much larger benches.

V. The basis in law

Every decision of a court of law has invariably to be based on reason i.e. it has to have a basis in law. The same is, in a sense, a means to the end sought to be achieved through a judicial order. Likewise, both in *Varindera Construction* as well as in *NV International*, the aim of giving effect to the legislative intention behind the Arbitration Act (i.e. the end sought to be achieved) has primarily been achieved by placing reliance on a decision of the Federal Court[32] in *Lachmeshwar Prasad Shukul* v. *Keshwar Lal Chaudhuri* ["**Lachmeshwar**"][33] (i.e. the means), in the following words:

> "*Given the fact that an appellate proceeding is a continuation of the original proceeding, as has been held in Lachmeshwar Prasad Shukul and Others vs. Keshwar Lal Chaudhuri and Others, AIR 1941 Federal Court 5, and repeatedly followed by our judgments, we feel that any delay beyond 120 days in the filing of an appeal under Section 37 from an application being either dismissed or allowed under Section 34 of the Arbitration and Conciliation Act, 1996 should not be allowed[…]*"[34]

While the Court in *Lachmeshwar* did state that an appeal was, in a sense, a re-hearing of the original proceeding,[35] it is pertinent to note that the decision was given in a completely different context. The decision was rendered in respect of the substantive law of the dispute and not a procedural law like limitation. The question before the Federal Court was whether legislative changes brought about pending an appeal could be taken into account by an appellate court. Affirming the same, it was held that, on admission of the appeal, the matter became sub judice again as a final adjudication on the rights of the parties was yet to take place.[36] Consequently, it was stated that an appellate court in such a case was bound to apply the law as it existed on the date it administered the judgment. Therefore, the bench headed by Sir Maurice Gwyer C.J. upheld the appellants' entitlement to the benefit under Section 7 of the new Bihar Money Lenders Act, 1939, notwithstanding the fact that the same was not even in the law-books when the lower court had decided the matter. It is in this context then, that the ratio of *Lachmeshwar* is required to be seen – it dealt with the applicability of substantive law in the context of legislative changes brought about to the same during the pendency of appeals.

Nothing in the *Lachmeshwar* judgment can be said to mandate appellate procedure to conform to the procedural laws applicable to an original proceeding. In fact, such an interpretation taken to its logical conclusion effectively renders the Second Division[37] of the Schedule to the Limitation Act, nugatory. The mere fact that even the statute of limitation draws a clear distinction between original proceedings and appeals (and provides for different periods of limitation for both) is enough to suggest that the reliance placed on the *ratio decidendi* of *Lachmeshwar* is entirely out of

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32 The Federal Court was the pre-independence precursor to the Supreme Court of India. It was established in 1937 under the provisions of the Government of India Act, 1935.

33 Lachmeshwar Prasad Shukul v. Keshwar Lal Chaudhuri, AIR 1941 FC 5 (India) [*hereinafter* "Lachmeshwar"].

34 Varindera Construction, (2020) 2 SCC 111, ¶ 4 (India).

35 Lachmeshwar, AIR 1941 FC 5, 103 (India).

36 *Id.*

37 The Second Division in the Schedule provides for specific limitation periods for filing appeals against orders passed in original proceedings, including those for which periods of limitation are separately prescribed under the First Division in the same Schedule. *See* Limitation Act, No. 36 of 1963 (India).

context. In fact, looked at from another angle, the judgments in *NV International* and *Varindera Construction* are also seemingly self-contradictory in light of their own reasoning – if the law applicable to original proceedings were also to be applied to appeals arising therefrom, the 120-day limit could not have been imposed at all. This is because the law applicable to the proceedings at the time would be the *Consolidated Engineering* regime, whereby Section 5 of the Limitation Act would have been available to potential appellants without any outer limit. Alternatively, the Court's reliance on *Lachmeshwar* is equally misplaced owing to the fact that the Limitation Act, including Section 5, is not applicable to proceedings under Section 34 of the Arbitration Act. Therefore, by the Court's own rationale, it could not have used the same to prescribe a grace period of 30 days for the appeal under Section 37.

In this sense, perhaps a better way would have been for the Supreme Court to do away with the applicability of the Limitation Act to Section 37 completely, and instead apply the same standard by citing Section 34 itself as the basis for the same.

VI. Some important technicalities

In any case, by virtue of Article 141 of the Indian Constitution,[38] *NV International* is now the law of the land. Yet, it appears that its application by appellate courts (under Section 37 of the Arbitration Act) might still not be as seamless as desired. In laying down the law, the Supreme Court seems to have overlooked a couple of discrepancies, which although seemingly trivial at first, might have a significant bearing on the rights of parties under the Arbitration Act.

First, in purportedly applying the same standard as Section 34 to appeals under Section 37 of the Arbitration Act, the actual period provided for under the former seems to have been missed. The time limit for filing an application under Section 34 of the Arbitration Act is "*three months*" which is further extendable by 30 days. Therefore, the said limit can potentially range from 119-122 days, depending on the months in question.[39] Fixing an outer limitation period of 120 days does not seem to be in consonance with the Court's own reasoning based on the dicta culled out from *Lachmeshwar*. Interestingly though, it appears that the initial limit of 90 days was taken from the Limitation Act, while applying the rigour of the outer limit of 30 days from Section 34 of the Arbitration Act. This is even more incongruous, not only with fundamental legal principles, but with the basis of the decision itself.

Second, the import of the introduction of the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015 ["**Commercial Courts Act**"] has not been considered by the decisions in *NV International* or *Varindera Construction*. Although, presumably, both cases seem to deal with matters arising prior to its commencement, nonetheless, in the opinion of the author, a distinction ought to have been drawn by the apex court while laying down such an absolute and unqualified position of law. The distinction is important because of the procedure laid down in the Commercial Courts Act with respect to Section 37 of the Arbitration Act. This is in addition to the fact that with the "*specified value*"

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38 *See* INDIA CONST. art. 141 (wherein it is specifically provided that the law declared by the Supreme Court is binding on all other courts in the country. The provision is, in a sense, a constitutional codification of the doctrine of stare decisis).

39 Faced with the exact same question in the year 2010, the Supreme Court had categorically held that three months could not always be counted as 90 days and the same would depend on the months involved. *See* State of Himachal Pradesh v. M/s Himachal Techno Eng'rs, (2010) 12 SCC 210, ¶¶ 14-18 (India).

under the Commercial Courts Act having been reduced to a mere three lakh rupees,[40] most arbitration proceedings are now inevitably required to be governed by it. While Section 10 of the Commercial Courts Act vests commercial courts with jurisdiction in relation to arbitration matters arising out of the Arbitration Act, Section 13 explicitly provides for appeals under Section 37 of the Arbitration Act to be governed as per the conditions provided thereunder, one of which is a limitation period of 60 days. While the judgment in *NV International* may possibly be distinguished on account of the inapplicability of the Commercial Courts Act thereto, there is no certainty about how High Courts across the country will interpret the same, especially in light of the broad and authoritative language that the decision is couched in. Furthermore, even in matters to which the Commercial Courts Act would apply, the limitation period provided for under Section 34 of the Arbitration Act remains the same. Consequently, it may not be as easy for courts to deviate from the Supreme Court's dicta in cases where the Commercial Courts Act is applicable.

VII. Conclusion

At the core of the judicial process lies the ability to weigh a plethora of considerations pitted against each other to arrive at a 'just conclusion'. While such considerations may be many, the inescapable basis of a judicial decision is always the underlying law and the context of its application. Accordingly, insofar as arbitrations seated in India are concerned, any decision has to be ultimately based on the provisions of the Arbitration Act.

While it is true that courts should aim to give effect to the legislative intent and policy behind an enactment, the same should always be subject to the clear wording of the statute, as well as be in line with principles of uniformity, consistency and the value of precedent. As Salmond has noticed, "*too much regard for policy and too little for legal consistency may result in a confusing and illogical complex of contrary decisions*".[41] Moreover, it is also counter-intuitive that in arriving at a just conclusion under law, technical and procedural rigours be allowed to limit the rights of a party to get a decision on the merits of the dispute itself.

While the pronouncements in *NV International* and *Varindera Construction* might help in reducing the time taken in Section 37 proceedings, the same will inevitably be at the cost of litigants oblivious to the prospect of a sudden change in law to their detriment. Many of them might not even have control over the time being taken to file a Section 37 appeal. Accordingly, it would appear that the long-settled position of law as laid down in *Consolidated Engineering* perfectly balanced the legitimate interests of parties against policy considerations. The same should ideally have been the case at least till the time the Parliament made an explicit change to the Act. Nevertheless, if now the decision in *NV International* is indeed to stand, it is the opinion of the author that the same must be held to apply only prospectively, in the ultimate interests of justice and fairness.

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40 *See* Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, No. 4 of 2016, § 2(i) (India) (the pecuniary jurisdiction of courts under the Commercial Courts Act was reduced from Rupees One Crore to only Rupees Three Lakhs, by way of an amendment made to the Arbitration Act in 2018).

41 SALMOND & FITZGERALD, *supra* note 27, at 188.