

ITEM NO.2 Court 2 (Video Conferencing) SECTION XIV

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (C) No(s).7312/2020

(Arising out of impugned final judgment and order dated 02-03-2020 in FAO(OS)(COMM) No.329/2019 passed by the High Court of Delhi at New Delhi)

NTPC LTD. Petitioner(s)

VERSUS

VOITH HYDRO JOINT VENTURE Respondent(s)

(FOR ADMISSION and I.R. and IA No.52268/2020-EXEMPTION FROM FILING AFFIDAVIT)

Date : 22-09-2020 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE N.V. RAMANA
HON'BLE MR. JUSTICE SURYA KANT
HON'BLE MR. JUSTICE HRISHIKESH ROY

For Petitioner(s) Mr. Tushar Mehta, SG
Mr. Shailesh Madiyal, AOR
Mr. Sudhanshu Prakash, Adv.
Mr. Kanu Agarwal, Adv.
Mr. Sarthak Bhardwaj, Adv.

For Respondent(s) Mr. Harish N. Salve, Sr.Adv.
Mr. K.V.Vishwanathan, Sr.Adv.
Mr. Rajiv Nayar, Sr.Adv.
Mr. Omar Ahmad, Adv.
Mr. Ishan Gaur, Adv.
Mr. Vikram Shah, Adv.
For M/S. Cyril Amarchand Mangaldas, AOR

UPON hearing the counsel the Court made the following
O R D E R

The Court is convened through Video Conferencing.

1. The application for exemption from filing affidavit is allowed.
2. The present Special Leave Petition has been filed seeking to impugn the judgment dated 02.03.2020 passed by the High Court of

Delhi in FAO (OS) (Comm) No. 329 of 2019, whereby the Petitioner's appeal under Section 37 of the Arbitration and Conciliation Act, 1996 ("Arbitration Act") was dismissed on the ground of delay.

3. Heard Mr. Tushar Mehta, learned Solicitor General appearing on behalf of the petitioner and Mr. Harish N. Salve, learned senior counsel appearing on behalf of the respondent-caveator, at length.

4. The learned Solicitor General submitted on behalf of the Petitioner that the High Court passed the impugned judgment holding that the Petitioner's appeal under Section 37 of the Arbitration Act was barred by limitation by following two judgments of this Court, *i.e.*, *Union of India v. Varindera Constructions Ltd.*, (2020) 2 SCC 111 and *N.V. International v. State of Assam and others*, (2020) 2 SCC 109. The holding of the Court in these two judgments is that no appeal under the said section can be entertained by the Court beyond a maximum period of 120 days. As the Petitioner's appeal was filed after 128 days, the High Court was constrained to dismiss the same as barred by limitation. However, the learned Solicitor General tried to impress upon this Court that the above two pronouncements of this Court need to be reconsidered, keeping in view the fact that no time period had been stipulated for the filing of an appeal under Section 37 of the Arbitration Act, and that no outer limit could therefore be set for the same.

5. On the other hand, Mr. Harish N. Salve, opposed the prayer made by the learned Solicitor General and submitted that notwithstanding the law surrounding the issue of limitation, the Court should not exercise its discretion in the present matter, taking into accounts the facts of the present case. The learned senior counsel submitted that the Petitioner has not provided any valid reason or explanation regarding the delay in filing the appeal under Section 37 of the Arbitration Act. Additionally, the learned senior counsel pointed to the fact that the underlying arbitral award was passed in the year 2016 and was extremely well reasoned and detailed. As such, the learned senior counsel pushed for the dismissal of the petition at this stage itself.

6. Having heard the learned Solicitor General and Mr. Harish N. Salve, we think it appropriate to issue notice on the question of law involved in *Union of India v. Varindera Constructions Ltd.*, (2020) 2 SCC 111 and *N.V. International v. State of Assam and others*, (2020) 2 SCC 109 regarding limitation with respect to filing an appeal under Section 37 of the Arbitration Act.

7. However, after perusing the material placed on record by the Petitioner, particularly the affidavit filed by the Petitioner before the High Court, we are not satisfied with the reasons submitted regarding the delay before the High Court. The affidavit merely indicates that the file was sent from one department to another, and does not provide any valid explanation for the delay. As such, we are not inclined to exercise our discretion under Article 136 of the Constitution in favor of the Petitioner to interfere with the order passed by the High Court or the award passed by the Arbitral Tribunal, except to the extent indicated above.

8. Ordered accordingly.

(SATISH KUMAR YADAV)
DEPUTY REGISTRAR

(RAJ RANI NEGI)
DEPUTY REGISTRAR