BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

.....

M.A. NO. 247 OF 2012

(ARISING OUT OF APPEAL NO. 76 OF 2012)

In the matter of :

1. Nikunj Developers,
   having its office at
   Shop No. 1, 2 and 3, Veena Sarang,
   Opposite Kamala Vihar Sports Club,
   Saibaba Nagar Extn. Road,
   Borivali (west), Mumbai 400 091

2. M/s Veena Developers,
   having its office at
   Shop No. 1, 2 and 3, Veena Sarang,
   Opposite Kamala Vihar Sports Club,
   Saibaba Nagar Extn. Road,
   Borivali (west), Mumbai 400 091

3. Sh Haresh N. Sanghavi
   Office at shop No. 1, 2 and 3,Veena Sarang
   Opposite Kamala Vihar Sports Club,
   Saibaba Nagar Extn. Road,
   Borivali (west), Mumbai 400 091

.....Appellants

Versus

1. State of Maharashtra,
   Environmental Department,
   217, 2nd Floor, Annex Bldg.
   Mantralay, Mumbai 400 032
   Thourgh its Secretary

2. Municipal Commissioner,
   Municipal Corporation of Greater Mumbai,
   Mahapalika Marg,
   Mumbai 400 001

3. Municipal Corporation of Greater Mumbai,
   Mahapalika Marg,
   Mumbai 400 001

.....Respondents

Counsel for Appellants :

Mr. Arun Bhardwaj, Sr. Advocate,
with Mr. Ashutosh Dubey and Mr. Abhishek Chauhan, Advocates.

Counsel for Respondents :

Mr. Mukesh Verma, Advocate, for Respondent No.1.

Mr. Debjyoti Basu and Mr. Bhupesh Kumar Pathak, Advocates, for Respondent Nos.2 and 3.

ORDER

PRESENT :

Hon'ble Mr. Justice Swatanter Kumar (Chairperson)
Hon'ble Mr. Justice P. Jyothimani (Judicial Member)
Hon'ble Dr.D.K. Agrawal (Expert Member)
Hon'ble Dr.G.K. Pandey (Expert Member)
Hon'ble Prof. A.R. Yousuf (Expert Member)
Hon'ble Dr. R.C.Trivedi (Expert Member)

Dated : March 14, 2013

1. The Secretary Environment Department, State of Maharashtra, on 24th April, 2012 vide its order issued final

directions under Section 5 of the Environment Protection Act, 1986 (for short 'the Act') read with Environment Impact Assessment Notification dated 14th September, 2006 (for short 'the notification') directing the Member Secretary, Maharashtra Pollution Control Board to file complaint in the Court of law under Section 19(a) of the Act for the offences committed by M/s. Veena Developers under Section 15 of the Act read with the said notification and to initiate further line of action in Court of law. Aggrieved from the said order M/s. Veena Developers as well as M/s. Nikunj Developers have filed the present appeal (Appeal No. 76 of 2012). This appeal was instituted in the Registry of the Tribunal on 20th September, 2012. The limitation provided under Section 16 of the National Green Tribunal Act, 2010 (for short 'the NGT Act') is 30 days. Admittedly, the appeal was filed much beyond the prescribed period of 30 days. Therefore, the appeal is accompanied by an application for condonation of delay, being M.A. No. 247 of 2012.

2. The applicant has prayed for condonation of the said delay as in its submission it has been contended that there is sufficient cause for condoning the delay in filing the present appeal.

3. According to the appellants they both collectively are involved in the construction and development of building of 5-6 Stilt plus nine floors in Greater Bombay. M/s. Nikunj Developers had got the sanction plan approved for the said construction. The High Court of judicature at Bombay vide its order dated 17th September, 2010 had directed the complaints filed against these buildings to be considered by the authorities within a period of six weeks. In

furtherance to this order of the High Court, the appellant and others were heard by the authorities concerned and after giving personal hearing, the Secretary, Environment Department of the State of Maharashtra passed an order on 22nd April, 2010 that reads as under :

> "On perusal of the documents submitted and the arguments submitted and the arguments raised by both the parties. It is concluded that –
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> 1) Bldg. No.1 & 2 have not been developed by Nikunj Developers and have been constructed before the provisions of the EC came into existence.
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> 2) Bldg. No. 5 & 6 will require EC if their built up area is above 20,000 sq. mtrs. Any prior construction, if the total built up area is over 20,000 sq. mtrs. has to be only after obtaining EC or else will have to take legal action under the provisions of the Environment (Protection) Act, 1986. As of now, the total area is below 20,000 sq. mtrs. if TDR is made available and area increases, EC will be mandatory. This authority will examine all the documents for inspection at any given point of time once work commences to ensure adherence to the law."

4. Thereafter, the authorities passed the order dated 24th April, 2012 which is impugned in the present appeal. According to the appellant no.1, they have not received the copy of the impugned order till date as it was not even addressed to them, as such their appeal is not barred by time at all. However, the appellant no.2, had received the impugned order on 2nd June, 2012 and the present appeal was filed on 20th September, 2012. The delay in filing the appeal is bonafide and is for the reason beyond their control. The

ground stated for condonation of delay in the application is that the real brother of appellant no.3, who is partner of other two appellants, was seriously ill and unfortunately expired on 13th June, 2012. Furthermore, the appellants vide their letter dated 6th August, 2012 had sought review of the order by making an application to the State of Maharashtra. The said application is pending and has not been disposed of till date. The reason for delay in filing the present appeal is stated to be beyond their control and thus, bonafide.

5. The stand taken by the non-applicant is that there is no cause much less a 'sufficient cause' shown by the applicant, for condonation of delay. There is complete inaction and negligence on part of the applicant, right from 2nd of June, 2012, till 20th September, 2012, the date on which the appeal was filed. Even if it is taken to be correct that the brother of applicant no. 3 was ill and he died as a result of his illness on 13th June, 2013, even then there is no reason stated post 13th June, 2012 as to why the appeal was not filed till 20th September, 2012. In the alternative, the submission is that even if it is assumed that there is sufficient cause shown by the applicant for condonation of delay, still this Tribunal shall have no jurisdiction to condone the delay because the appeal has been filed beyond the prescribed period of 90 days, which includes even the extended period of 60 days. Thus, in their submission, the appeal filed by the appellant is liable to be dismissed, being barred by limitation.

6. Now, firstly, we have to examine the interpretation of the expression 'sufficient cause', as it emerges from the various judgments of the courts, particularly the Supreme Court of India. The use of expression 'sufficient cause' in Section 16 of the NGT Act is not a legislative innovation but is a derivative reference from other enactments. Section 5 of the Limitation Act, 1963, also uses the same expression 'sufficient cause'. An applicant praying for condonation of delay in instituting the appeal under Section 16 of the NGT Act is required to show a sufficient cause, if the appeal is filed beyond a period beyond 30 days from the date of communication of the Environmental Clearance order as prescribed.

7. The expression 'sufficient cause' is not to be construed in isolation. The attendant circumstances and various other factors have to be taken into consideration by the Courts/Tribunals while dealing with the question of condonation of delay. Thus, it is important at this stage to deal with the meaning and connotation, that this expression has received in various judicial pronouncements, in some elucidation.

8. The term 'sufficient cause' has to be considered keeping in view the facts and circumstances of each case. The expression 'sufficient cause' implied by the legislature is adequately elastic to enable the Courts to apply the law in a meaningful manner, which subserves the ends of justice - that being the life-purpose for the existence of the institution of Courts. This view was expressed by

Supreme Court in *Collector, Land Acquisition, Anantnag and Anr. v. Katiji and Ors* AIR 1987 SC 1335.

9. The term 'sufficient cause' must receive a liberal meaning and has to be incorporated so as to introduce the concept of reasonableness, as it is understood in its general connotation. Certainly, the Limitation Act is a substantive law and its provisions have to be adhered to in a manner that once, a valuable right accrues in favor of one party, as a result of unexplained sufficient or reasonable cause and directly as a result of negligence, default or inaction of the other party, such a right cannot be taken away lightly and in a routine manner.

10. The Courts have also taken the view that the expression 'sufficient cause' be considered with pragmatism in a justice oriented approach rather than the technical detection of sufficient cause for every day's delay.

11. 'Sufficient Cause' must necessarily be tested on the touchstone of doctrine of reasonableness. It may not be a very appropriate approach to apply principles of limitation with absolute rigidity resulting in irreparable injustice to the parties; a balanced approach may better serve the ends of justice.

12. *In P.K. Ramachandran vs. State of Kerala and Anr.*, J.T. 1997 (8) 189, the Supreme Court took the view that the law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes and the Courts have no power to extend the period of limitation on equitable grounds.

13. However, the Courts have also taken the view that the approach of the Courts must be to do even-handed justice on merits in preference to the approach which scuttles the decision on merits, thus, showing greater inclination to accept a liberal approach.

14. The equitable principles have also been applied to the law of limitation but with great circumspection. The clear language of law will always prevail over the equitable principles as equity cannot defeat the law. At this stage we may notice some of the principles which have been reiterated with approval by the Supreme Court in the case of *Rajghunath Rai Bareja and another vs Punjab National Bank and Ors.* (2007) 2 SCC 230 where the Court held as under:

> "30. Thus, in *Madamanchi Ramappa and Anr. v. Muthaluru Bojjappa* [1964]2SCR673 this Court observed:
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> > "What is administered in Courts is justice according to law, and considerations of fair play and equity however important they may be, must yield to clear and express provisions of the law".
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> 31. In *Council for Indian School Certificate Examination v. Isha Mittal and Anr.* : (2000)7SCC521 this Court observed:
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> > "Considerations of equity cannot prevail and do not permit a High Court to pass an order contrary to the law."
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> 32. Similarly in *P.M. Latha and Anr. v. State of Kerala and Ors.* [2003]2SCR653 this Court observed:
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> > "Equity and law are twin brothers and law should be applied and interpreted equitably, but equity cannot override written or settled law"

33. In *Laxminarayan R. Bhattad and Ors. v. State of Maharashtra and Anr.* [2003]3SCR409 this Court observed:

> It is now well settled that when there is a conflict between law and equity the former shall prevail....

34. Similarly in *Nasiruddin and Ors. v. Sita Ram Agarwal* [2003]1SCR634 this Court observed:

> In a case where the statutory provision is plain and unambiguous, the court shall not interpret the same in a different manner, only because of harsh consequences arising therefrom....

35. Similarly in *E. Palanisamy* v. *Palanisamy (Dead) by Lrs. and Ors.* AIR2003SC153 this Court observed:

> ...Equitable considerations have no place where the statute contained express provisions....

36. In *India House v. Kishan N. Lalwani* [2002]SUPP5SCR522 this Court held that:

> ...The period of limitation statutorily prescribed has to be strictly adhered to and cannot be relaxed or departed from by equitable considerations....
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> (emphasis supplied)

39. In ***Hiralal Ratanlal*** v. ***STO*** [1973] 2 SCR 502 , this Court observed:

> In construing a statutory provision the first and foremost rule of construction is the literary construction. All that the Court has to see at the very outset is what does the provision say. If the provision is unambiguous and if from the provision the legislative intent is clear, the Court need not call into aid the other rules of construction of statutes. The other rules of construction are called into aid only when the legislative intent is not clear.
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> (emphasis supplied)"

15. In a more recent judgment, the Supreme Court, in *Balwant Singh (Dead) Vs. Jagdish Singh and Ors.* (2010) 8 SCC 685, while dealing with the expression 'sufficient cause', elaborately stated the principles of condonation of delay. It also elucidated the approach to be adopted by a Court in such cases and held as under:

> "It must be kept in mind that whenever a law is enacted by the legislature, it is intended to be enforced in its proper perspective. It is an equally settled principle of law that the provisions of a statute, including every word, have to be given full effect, keeping the legislative intent in mind, in order to ensure that the projected object is achieved. In other words, no provisions can be treated to have been enacted purposelessly. Furthermore, it is also a well settled canon of interpretative jurisprudence that the Court should not give such an interpretation to provisions which would render the provision ineffective or odious. Once the legislature has enacted the provisions of Order 22, with particular reference to Rule 9, and the provisions of the Limitation Act are applied to the entertainment of such an application, all these provisions have to be given their true and correct meaning and must be applied wherever called for. If we accept the contention of the Learned Counsel appearing for the applicant that the Court should take a very liberal approach and interpret these provisions (Order 22 Rule 9 of the CPC and Section 5 of the Limitation Act) in such a manner and so liberally, irrespective of the period of delay, it would amount to practically rendering all these provisions redundant and inoperative. Such approach or interpretation would hardly be permissible in law. Liberal construction of the expression 'sufficient cause' is intended to advance substantial justice which itself presupposes no negligence or inaction on the part of the applicant, to whom want of bona fide is imputable. There can be instances where the Court should condone the delay; equally there would be cases where the Court must exercise its discretion against the applicant for want of any of these ingredients or where it does not reflect 'sufficient cause' as understood in law. [Advanced Law Lexicon, P. Ramanatha Aiyar, 2nd Edition, 1997]

> The expression 'sufficient cause' implies the presence of legal and adequate reasons. The word 'sufficient' means adequate enough, as much as may be necessary to answer the purpose intended. It embraces no more than that which provides a plentitude which, when done, suffices to accomplish the purpose intended in the light of existing circumstances and when viewed from the reasonable standard of practical and cautious men. The sufficient cause should be such as it would persuade the Court, in exercise of its judicial discretion, to treat the delay as an excusable one. These provisions give the Courts enough power and discretion to apply a law in a meaningful manner, while assuring that the purpose of enacting such a law does not stand frustrated. We find it unnecessary to discuss the instances which would fall under either of these classes of cases. The party should show that besides acting bonafide, it had taken all possible steps within its power and control and had approached the Court without any unnecessary delay. The test is whether or not a cause is sufficient to see if it could have been avoided by the party by the exercise of due care and attention. [Advanced Law Lexicon, P. Ramanatha Aiyar, 3rd Edition, 2005]"

16. Once the above principles are analytically analysed, it becomes evident that the Courts have not stated any hard and fast rule which shall be universally applicable for determining such controversy. It will always depend upon the facts of given case. If the Tribunal has jurisdiction to condone the delay and there is 'sufficient cause' shown and the same is backed by bonafide and proper conduct of the parties, the Tribunal would be inclined to condone the delay rather than dismissing the same for such reasons.

17. In the present case, even if we go by the case of the applicant, a clear picture that emerges, is that the copy of the order dated 24th April, 2012, was received by the appellant on 2nd June, 2012, while

the appeal has been filed on 20th September, 2012. From the averments made in M.A. No 247 of 2012, it is clear that not just appellant no. 2, but all the appellants had received the order on tht date. Appellant No. 3 is admittedly the partner of the other appellants.

18. The service and knowledge of the partner will be deemed to be service upon the partnership concern. Therefore, an order communicated to a partner would be deemed to be communication to the partnership concern. The fact that the partner received the order and the partnership concern was communicated the order, remains undisputed. Furthermore, the appellants have not stated any reason, whatsoever, in the application under consideration as to what steps were taken by them and what was the reason that the appeal was not filed between the period 2nd June, 2012 to 20th September, 2012. But except for a very short period between 5th June, 2012 to 13th June, 2012 when brother of the partner is stated to have fallen sick and unfortunately died there is no explanation furnished whatsoever for the remaining period. The reason of sickness and death would provide an explanation at best only for a period of seven days and nothing more. What steps were taken immediately prior and after the above seven days has been left to imagination. Even if we take a liberal approach of the facts and circumstances of the case, still we are unable to persuade ourselves to hold that the plea of 'sufficient cause' raised by the applicant has any merit. In the alternative even if, for the sake of arguments, we assume that the applicant has been able to show sufficient cause,

still the delay being in excess of 90 days, on the own showing of the applicant, cannot be condoned. Admittedly, the copy of the order was received on 2nd June, 2012 by the appellant while the appeal was instituted in the Registry of the NGT on 20th September, 2012. According to the non-applicant, the Tribunal will have no jurisdiction to condone the delay in view of the language of Section 16 of the NGT Act, which reads as under:

> "16. Tribunal to have appellate jurisdiction. – Any person aggrieved by,-
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> *********
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> h. an order made, on or after the commencement of the National Green Tribunal Act, 2010, granting environmental clearance in the area in which any industries, operations or processes or class of industries, operations and processes shall not be carried out or shall be carried out subject to certain safeguards under the Environment (Protection) Act, 1986;
>
> *********
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> may, within a period of thirty days from the date on which the order or decision or direction or determination is communicated to him, prefer an appeal to the Tribunal:
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> Provided that the Tribunal may, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed under this section within a further period not exceeding sixty days."

19. From language of the above provision it is clear that the Tribunal loses jurisdiction to condone the delay if the delay is of more than 90 days. Every appeal has to be filed within 30 days from the date of communication of the order. That is, what an applicant

is required to ensure before the appeal is heard on merits. However, the Tribunal has been vested with the jurisdiction to entertain the appeal which is filed after 30 days from the date of communication of an order. This power to condone the delay has a clear inbuilt limitation as it ceases to exist if the appeal is filed in excess of 60 days, beyond the prescribed period of limitation of 30 days from the date of communication of such order. To put it simply, once the period of 90 days lapses from the date of communication of the order, the Tribunal has no jurisdiction to condone the delay. The language of the provision is clear and explicit. It admits of no ambiguity and the legislative intent that Tribunal should not and cannot condone the delay in excess of 90 days in all, is clear from the plain language of the provision.

20. As stated in the cases *Hiralal Ratan Lal* and *India Hou*ses (supra) the period of limitation statutorily prescribed, has to be strictly adhered to and cannot be relaxed and or departed from, on equitable consideration. Further, in construing a statutory provision, the first and the foremost rule of construction is that of literary construction. We do not see any reason to expand the scope of the provision and interpret the proviso to Section 16 in the manner that Tribunal can be vested with the power of condoning the delay beyond 90 days. Such interpretation would be contrary to the specific language of the Section and would defeat the very legislative intent and object behind this provision.

21. This controversy need not detain us any further as it is no more *res integra* and stands answered by the judgment of the

Supreme Court in the case of *Chhattisgarh State Electricity Board Vs. Central Electricity Regulatory Commission and others* (2010) 5 SCC 23 where the court held as under:

> "29. Section 34(3) of the Arbitration and Conciliation Act, 1996, which is substantially similar to Section 125 of the Electricity Act came to be interpreted in *Union of India v. Popular Construction Company* : (2001) 8 SCC 470. The precise question considered in that case was whether the provisions of Section 5 of the Limitation Act are applicable to an application challenging an award under Section 34 of the Arbitration and Conciliation Act, 1996. The two-Judge Bench referred to earlier decisions in Mangu Ram v. Municipal Corporation of Delhi: (1976) 1 SCC 392, Vidyacharan Shukla v. Khubchand Baghel AIR 1964 SC 1099, Hukumdev Narain Yadav v. L.N. Mishra (supra), Patel Naranbhai Marghabhai v. Dhulabhai Galbabhai : (1992) 4 SCC 264 and held:
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> **12.** As far as the language of Section 34 of the 1996 Act is concerned, the crucial words are "but not thereafter" used in the proviso to Sub-section (3). In our opinion, this phrase would amount to an express exclusion within the meaning of Section 29(2) of the Limitation Act, and would therefore bar the application of Section 5 of that Act. Parliament did not need to go further. To hold that the court could entertain an application to set aside the award beyond the extended period under the proviso, would render the phrase "but not thereafter" wholly otiose. No principle of interpretation would justify such a result.
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> **16.** Furthermore, Section 34(1) itself provides that recourse to a court against an arbitral award may be made only by an application for setting aside such award "in accordance with" Sub-section (2) and Sub-section (3). Sub-section (2) relates to grounds for setting aside an award and is not relevant for our purposes. But an application filed beyond the period mentioned in Section 34, Sub-section (3) would not be an application "in accordance with" that Sub-section. Consequently by virtue of Section 34(1),

recourse to the court against an arbitral award cannot be made beyond the period prescribed. The importance of the period fixed under Section 34 is emphasised by the provisions of Section 36 which provide that

"where the time for making an application to set aside the arbitral award under Section 34 has expired ... the award shall be enforced under the Code of Civil Procedure, 1908 in the same manner as if it were a decree of the court".

This is a significant departure from the provisions of the Arbitration Act, 1940. Under the 1940 Act, after the time to set aside the award expired, the court was required to "proceed to pronounce judgment according to the award, and upon the judgment so pronounced a decree shall follow" (Section 17). Now the consequence of the time expiring under Section 34 of the 1996 Act is that the award becomes immediately enforceable without any further act of the court. If there were any residual doubt on the interpretation of the language used in Section 34, the scheme of the 1996 Act would resolve the issue in favour of curtailment of the court's powers by the exclusion of the operation of Section 5 of the Limitation Act.

(emphasis supplied)

30. In *Singh Enterprises v. C.C.E., Jamshedpur and Ors.* (supra), the Court interpreted Section 35 of Central Excise Act, 1944, which is *pari materia* to Section 125 of the Electricity Act and observed:

8. The Commissioner of Central Excise (Appeals) as also the Tribunal being creatures of statute are vested with jurisdiction to condone the delay beyond the permissible period provided under the statute. The period up to which the prayer for condonation can be accepted is statutorily provided. It was submitted that the logic of Section 5 of the Limitation Act, 1963 (in short "the Limitation Act") can be availed for condonation of delay. The first proviso to Section 35 makes the position clear that the appeal has to be preferred within three months from the date of communication to him of the decision or order. However, if the Commissioner is satisfied that the

appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of 60 days, he can allow it to be presented within a further period of 30 days. In other words, this clearly shows that the appeal has to be filed within 60 days but in terms of the proviso further 30 days' time can be granted by the appellate authority to entertain the appeal. The proviso to Sub-section (1) of Section 35 makes the position crystal clear that the appellate authority has no power to allow the appeal to be presented beyond the period of 30 days. The language used makes the position clear that the legislature intended the appellate authority to entertain the appeal by condoning delay only up to 30 days after the expiry of 60 days which is the normal period for preferring appeal. Therefore, there is complete exclusion of Section 5 of the Limitation Act. The Commissioner and the High Court were therefore justified in holding that there was no power to condone the delay after the expiry of 30 days' period.

(emphasis supplied)"

22. The same view was reiterated in *Commissioner of Customs, Central Excise v. Punjab Fibres Ltd.* : (2008) 3 SCC 73.

"31. In *Commissioner of Customs and Central Excise v. Hongo India Private Limited and Anr.* (2009) 5 SCC 791, a three-Judge Bench considered the scheme of the Central Excise Act, 1944 and held that High Court has no power to condone delay beyond the period specified in Section 35H thereof. The argument that Section 5 of the Limitation Act can be invoked for condonation of delay was rejected by the Court and observed:

"30**.** In the earlier part of our order, we have adverted to Chapter VI-A of the Act which provides for appeals and revisions to various authorities. Though Parliament has specifically provided an additional period of 30 days in the case of appeal to the Commissioner, it is silent about the number of days if there is sufficient cause in the case of an appeal to the Appellate Tribunal. Also an additional period of 90 days in the case of revision by the Central Government has been provided. However, in the case of an appeal to

the High Court under Section 35G and reference application to the High Court under Section 35H, Parliament has provided only 180 days and no further period for filing an appeal and making reference to the High Court is mentioned in the Act.

32. As pointed out earlier, the language used in Sections 35, 35B, 35EE, 35G and 35H makes the position clear that an appeal and reference to the High Court should be made within 180 days only from the date of communication of the decision or order. In other words, the language used in other provisions makes the position clear that the legislature intended the appellate authority to entertain the appeal by condoning the delay only up to 30 days after expiry of 60 days which is the preliminary limitation period for preferring an appeal. In the absence of any clause condoning the delay by showing sufficient cause after the prescribed period, there is complete exclusion of Section 5 of the Limitation Act. The High Court was, therefore, justified in holding that there was no power to condone the delay after expiry of the prescribed period of 180 days.

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35. It was contended before us that the words "expressly excluded" would mean that there must be an express reference made in the special or local law to the specific provisions of the Limitation Act of which the operation is to be excluded. In this regard, we have to see the scheme of the special law which here in this case is the Central Excise Act. The nature of the remedy provided therein is such that the legislature intended it to be a complete code by itself which alone should govern the several matters provided by it. If, on an examination of the relevant provisions, it is clear that the provisions of the Limitation Act are necessarily excluded, then the benefits conferred therein cannot be called in aid to supplement the provisions of the Act. In our considered view, that even in a case where the special law does not exclude the provisions of Sections 4 to 24 of the Limitation Act by an express reference, it would nonetheless be open to the court to examine

> whether and to what extent, the nature of those provisions or the nature of the subject-matter and scheme of the special law exclude their operation. In other words, the applicability of the provisions of the Limitation Act, therefore, is to be judged not from the terms of the Limitation Act but by the provisions of the Central Excise Act relating to filing of reference application to the High Court.
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> (emphasis supplied)

> 32. In view of the above discussion, we hold that Section 5 of the Limitation Act cannot be invoked by this Court for entertaining an appeal filed against the decision or order of the Tribunal beyond the period of 120 days specified in Section 125 of the Electricity Act and its proviso. Any interpretation of Section 125 of the Electricity Act which may attract applicability of Section 5 of the Limitation Act read with Section 29(2) thereof will defeat the object of the legislation, namely, to provide special limitation for filing an appeal against the decision or order of the Tribunal and proviso to Section 125 will become nugatory."

23. Section 34 of the Arbitration and Conciliation Act, 1996 uses the expression 'not thereafter' while the provision under our consideration uses the terms 'not exceeding'. Both these expressions use negative language. The intention is to divest the Courts/Tribunals from power to condone the delay beyond the prescribed period of limitation. Once such negative language is used, the application of provisions of Section 5 of the Limitation Act or such analogous provisions would not be applicable.

24. The use of negative words has an inbuilt element of 'mandatory'. The intent of legislation would be to necessarily implement those provisions as stated.

25. Introduction or alteration of words which would convert the mandatory into directory may not be permissible. Affirmative words stand at a weaker footing than negative words for reading the provisions as 'mandatory'. It is possible that in some provision, the use of affirmative words may also be so limiting as to imply a negative. Once negative expression is evident upon specific or necessary implication, such provisions must be construed as mandatory. The legislative command must take precedence over equitable principle. The language of Section 16 of the NGT Act does not admit of any ambiguity, rather it is explicitly clear that the framers of law did not desire to vest the Tribunal with powers, specific or discretionary, of condoning the delay in excess of total period of 90 days. At this stage, we may also refer to Principle of Statutory Interpretation by Justice G.P. Singh, 13th Edition, where it is stated as under:

> "(c) **Use of negative words**
>
> Another mode of showing a clear intention that the provision enacted is mandatory, is by clothing the command in a negative form. As stated by CRAWFORD: "Prohibitive or negative words can rarely, if ever, be directory. And this is so even though the statute provides no penalty for disobedience." As observed by SUBBARAO, J.: "Negative words are clearly prohibitory and are ordinarily used as a legislative device to make a statute imperative". Section 80 and Section 87-B of the Code of Civil Procedure, 1908; section 77 of the Railways Act, 1890; Section 15 of the Bombay Rent Act, 1947; section 213 of the Succession Act, 1925; section 5-A of the Prevention of Corruption Act, 1947; section 7 of the Stamp Act, 1899; section 108 of the Companies Act, 1965; section 20(1) of the Prevention of Food Adulteration Act, 1954; section 55 of the Wild Life Protection Act, 1972 (as amended in 1956); section 10A of Medical Council Act, 1965 (as amended in 1993) and similar other provisions have therefore,

been construed as mandatory. A provision requiring 'not less than three months' notice' is also for the same reason mandatory.

But the principle is not without exception. Section 256 of the Government of India, 1953, was construed by the Federal Court as directory though worded in the negative form. Directions related to solemnization of marriages though using negative words have been construed as directory in cases where the enactments in question did not provide for the consequence that the marriage in breach of those directions shall be invalid. Considerations of general inconvenience, which would have resulted in holding these enactments mandatory, appear to have outweighed the effect of the negative words in reaching the conclusion that they were in their true meaning merely director. An interesting example, where negative words have been held to be directory, is furnished in the construction of section 25-F of the Industrial Dispute Act, 1947, where compliance of clause (c) has been held to be directory; although compliance of clauses (a) and (b) which are connected by the same negative words is understood as mandatory. These cases illustrate that the rule, that negative words are usually mandatory, is like any other rule subordinate to the context, and the object intended to be achieved by the particular requirement."

26. The provision of Section 16 of the NGT Act are somewhat similar to Section 34 of Arbitration and Conciliation Act, 1996. Thus, adopting an analogous reasoning, as was adopted in *Chhattisgarh State Electricity Board* (supra), we would have no hesitation in coming to the conclusion that we have no jurisdiction to condone the delay when the same is in excess of 90 days from the date of communication of the order to any person aggrieved.

27. Thus, the application must fail on this ground alone. We are of the considered view that the Tribunal has no jurisdiction to condone the delay of 19 days in filing the present appeal, the same

being in excess of 90 days computed from the admitted date of communication of order, that is 2nd June, 2012.

28. Ergo we dismiss the application for condonation of delay.

29. Since the application for condonation of delay has been dismissed, the appeal does not survive for consideration.

30. Resultantly, both the application and the appeal are dismissed. However, we leave the parties to bear their own costs, in the facts and circumstances of the case.

Justice Swatanter Kumar
Chairperson

Justice P. Jyothimani
Judicial Member

Dr. D.K. Agrawal
Expert Member

Dr. G.K. Pandey
Expert Member

Prof. A.R. Yousuf
Expert Member

Dr. R.C. Trivedi
Expert Member

New Delhi
March 14, 2013