BEFORE THE NATIONAL GREEN TRIBUNAL

(WESTERN ZONE) BENCH, PUNE

M.A.No. 39 OF 2013

IN

APPLICATION NO.45 OF 2013

CORAM:

Hon'ble Shri Justice V.R. Kingaonkar
(Judicial Member)

Hon'ble Dr. Ajay A.Deshpande
(Expert Member)

B E T W E E N:

1. **Munnilal Girijanand Shukla.**
   Age 45 Years, Occupation; Business,
   Area of the Stable 3000 sq.ft.

2. **Ibrahim Dawoodbhai Jathera.**
   Age: 59 years, Occupation:
   Business Area of the
   Stable 9000sq ft.

3. **Gaurishankar Umapati Pandey.**
   Age: 53 years, Occupation:
   Business Area of the Stable 10,000 sq.ft.

4. **Bhoianath Girijanad Shukla.**
   Age: 62 years, Occupation;
   Business Area of the Stable 3000 sq.ft.

5. **Chabinath Gajanand Shukla.**
   Age: 75 years, Occupation;
   Business Area of the Stable 4000 sq.ft.

6. **Vijaynath Ramshingar Shukla.**
   Age: 75 years, Occupation; Business Area of the
   Stable 10,000 sq.ft.

7. **Karimbhai Noorji Marediya,**
   Age: 60 years, Occupation: Business
   Area of the Stable 4000 sq.ft.

8. **Bakul S/o Manubhai Patel.**
   Age: 45 years, Occupation: Business
   Area of the Stable 11,000 sq.ft.

9. **Haideraii Dawood Aghariya,**
Age: 48 years, Occupation: Business
Area of the Stable 12,000 sq.ft.

10. **Karim Raje Marediya.**
Age: 48 years, Occupation: Business
Area of the Stable 10,000 sq.ft.

All having their respective Stable Premises situated at "Nadiadwala Stables
Junction of Jitendra Road,
Haji Bapubhai Nadiadwala Road,
Malad (E),Mumbai- 400 097.

..... APPLICANTS

A N D

1. **Union of India,**
Through Secretary, Ministry of Environment and Forest, Paryavaran Bhawan, CGO Complex, Lodi Road, New Delhi - 1100 03.

2. **The Director,**
Ministry of Environment and Forest,
Paryavaran Bhawan, CGO Complex, Lodi Road,
New Delhi - 1100 03.

3. **The State of Maharashtra**
Through Secretary, Environment Department,
Government of Maharashtra,
Mantralaya, Mumbai - 400 032.

4. **Slum Rehabilitation Authority**
Through its Chief Executive Officer,
Administrative Building, Anant Kanekar Marg, Bandra (E), Mumbai - 400 051,

5. **Municipal Corporation of Greater Mumbai,**
Through its Municipal Commissioner, MCGM Head Office, Mahapalika Marg, Mumbai CST, Mumbai - 400 001.

6. **Maharashtra Pollution Control Board**,
Kalptaru, Near Cine Max Cinema, Sion,
Mumbai- 400 022.

7. **Deputy Collector**
(Enc/Rem) - Malad Division, Having its office at S.V. Road, Near Cinemax Theater,
Goregaon (W), Mumbai - 400 062.

8. **Additional Collector**
(Enc/Rem) - Western Suburbs, 7th Floor,
Administrative Building, Bandra (E),
Mumbai - 400 051.

9. Rashmi SRA Co-operative Housing Society Ltd.
Through its Chairman / Secretary,
Having address as, Plots Bearing CTS No. 23A, 23A/1 to 245, Village - Pahadi, Goregaon, Malad (E), Mumbai.

10. ABC Amalgamated Building Corporation,
Registered Partnership Firm, Having its office at, Regent Chambers, 10th Floor, Nariman Point, Mumbai - 400 021.

11. Rashmi Infrastructure Developers Ltd.,
A company incorporated under Companies Act, 1956, Having its office at Regend Chambers, 10th Floor, Nariman Point, Mumbai - 400 021.

.....**RESPONDENTS**

Counsel for Applicant
Mr. Tushar Kochale

Counsel for Respondent(s):

Mr. Krishna D. Ratnaparkhi, for Respondent Nos.1 and 2.
Mr. D.M.Gupte/Supriya Dangare for Respondent Nos.3 and 6.
Mr. Shir Shetty for Respondent No.4.
Mr. Samir Khale/Chirag Chavan/Rahul Garg for Respondent No.5.
Mr. S.S.Panchor for Respondent No.10.
Mr. Asim Sarode/Ms.Pallavi Talware for Respondent No.11.

Date: May 16th, 2014

J U D G M E N T

1. This is an Application filed for condonation of delay under Section 5 of the Limitation Act, read with Section 14 (3) and 18 of the National Green Tribunal Act, 2010. The Applicants seek condonation of delay, if any, in filing of the Original Application No.45 of 2013. They

would submit that in fact, there is no delay in filing of the Original Application, because of continuity of 'cause of action' in view of the alleged 'fraud' committed by the Respondent No.11, Rashmi Infrastructure Ltd., which will be referred to hereinafter as "M/s Rashmi Infrastructure" for the sake of brevity. Still, however, in case, if there is any delay found in filing of the main Application, they seek condonation on the ground that the delay is bonafide, justified and explained satisfactorily.

2. The Applicants allege that for the first time, the cause of action arose on 21st October, 2013, when they received information from the Environment Department of the State of Maharashtra, in reply to the RTI Application dated 11.10.2013, that Rashmi Infrastructure Ltd, had sought prior Environmental Clearance (EC), in accordance with an Office Memorandum (OM) dated 12.12.2012, issued by the MoEF. They came to know that the Application for grant of EC, was filed by M/s Rashmi Infrastructure on 25.4.2011. They further allege that the project is covered by EIA Notification dated 27th January, 1994, read with EIA Notification dated 7.7.2004 and not by the subsequent Notification dated 14th September, 2006. According to them, no EC can be granted in favour of M/s Rashmi Infrastructure, under said two Notifications of 1994 and 2004, after substantial construction of work had been done by the developer on

the site. The construction work already carried out at the site, cannot be regularized in any manner under either of the Notification.

3. The Applicants further allege that after construction of amalgamated 'A' 'B' 'C' buildings M/s Rashmi Infrastructure took over the project. The property owner (Respondent No.10) and developer (Respondent Nos.11 i.e. M/s Rashmi infrastructure), filed Writ Petition No.1510 of 2012, in the Hon'ble High Court of Bombay, seeking leave for construction in respect of piece of land occupied by the slum dwellers/tenants including the Applicants. They further allege that the developer have committed fraud by suppressing material facts, regarding violation of the Environmental Laws, particularly about the illegal construction done at the site and, therefore, it is necessary to consider the Original Application filed by them, on merits.

4. The Application for delay condonation is opposed by M/s Rashmi Infrastructure, on various grounds. It is contended the Limitation Act, is not applicable to the proceedings before the NGT, in view of specific provisions of limitation period, envisaged under Section 14 and 16 of the National Green Tribunal Act, 2010. It is averred that the Applicants have not raised any substantial question relating to environment and, therefore, the Original Application itself is not maintainable. According to M/s

Rashmi Infrastructure, the Original Application is hopelessly barred by limitation, inasmuch as the Slum Rehabilitation Authority (SRA), issued permission for construction of the property under the project site on June 5th, 2003. The Original Application (Application No.45/2013), is filed approximately after about twelve (12) years from that day of grant of such permission and as such is patently barred by the Law of Limitation. It is averred that the words used in Section 14 of the NGT Act, are couched in negative form and, therefore, the Tribunal has no power to extend the limitation beyond period of sixty (60) days, after initial period of thirty (30) days, as provided in Section 14 of the NGT Act. Therefore, the delay condonation Application, under Section 5 of the Limitation Act, is not maintainable. It is denied that the cause of action arose on 21st October, 2013, and from that day onwards, the limitation period can be counted. It is submitted by M/s Rashmi Infrastructure, that the Applicants must have noticed the so called/alleged irregularities or illegalities committed by the developer, much earlier before about ten (10) years and at least when the construction activity had commenced at the site, but after lapse of more than ten (10) years, such a ground cannot be availed merely because they filed belated Application dated 11th October, 2013, seeking information under the RTI Act. It is contended that the Applicants are

trying to raise stale issues, which are hopelessly barred by Limitation. Hence, M/s Rashmi Infrastructure, sought dismissal of the Application.

5. We have heard learned Counsel for the contesting parties. We have perused the relevant pleadings and the documents filed by the Applicants.

6. Before adverting to the merits of the Application, it is important to reproduce the Prayers stated in the main Application. They are as follows:

> *A. That this Hon'ble Tribunal be pleased to grant leave to the Applicants under the provisions of Order 1 Rule 8 of Code of Civil Procedure, 1908 permitting the Applicants to sue in representative capacity and on behalf of equally located other tenants situated on the "Suit Property" having common interest in the matter.*
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> *B. That this Hon'ble Tribunal be pleased to declare that the present Redevelopment Project of residential colony is covered by the EIA Notification dated 27.01.1994 read with amended EIA Notification dated 07.07.2004 and not by the EIA Notification dated 14.09.2006 and this Hon'ble Tribunal be further be pleased to hold that under the provisions of the Environment (Protection) Act, 1986 read with the above said EIA Notifications dated 27.01.1994, dated 07.07.2004 and 14.09.2006, "Prior Environmental Clearance" cannot be granted to the Respondent No. 11 after substantial construction work done by him on the site under reference in violation of Environment (Protection) Act, 1986.*
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> *C. That this Hon'ble Tribunal be pleased to declare that the Development permission granted by the SRA for erecting buildings viz. Rehab Building Nos. 1, 2, sale Building No.l, transit building as existing at present on the suit property and the development permission granted for proposed*

Rehab building Nos.l, and 2 and proposed sale buildings No.l are illegal, null, void due to violation of the Environment (Protection) Act, 1986 and this Hon'ble Tribunal be pleased to quash and set aside all the development permissions granted by the SRA on the "Suit Property" in violation of Environment (Protection) Act, 1986.

D. *That this Hon'ble Tribunal be pleased to direct the Government of Maharashtra, MPCB and MCGM to take necessary action as per law against the Respondent Nos. 10, 11, 4, 7 and 8 for willingly and knowingly flouting the provisions of Environment (Protection) Act and for doing the substantial development work in above redevelopment project on project site under reference in blatant violation of law, without obtaining "Prior Environmental Clearance".*

E. *That this Hon'ble Tribunal be pleased to hold that the construction and development work done so far on the suit property under reference .i.e. of Rehab building Nos. 1, 2, Sale Building No. 1 shown in the plan (Exhibit-" ") and transit Building are erected in violation of the Environment (Protection) Act, 1986 and the said buildings are unauthorized construction and unauthorized development work and this Hon'ble Tribunal be further pleased to direct the MCGM, SRA, State Government and dated 12.12.2012 and its prequel dated 16.11.2010 be stayed in all manner. MPCB to remove and demolish the entire construction work done so far on the "Suit Property" without obtaining "Prior Environmental Clearance" and in violation of the Environment (Protection) Act, 1986.*

F. *That this Hon'ble Tribunal be further pleased to hold that the Construction of Rehab building Nos. 1, 2 , Sale Building No. 1 and Transit Camp so far has been done on the "Suit Property" by the Respondent No.11 (Developer) in violation of the Environment (Protection) Act, 1986, it cannot be legalized or regularized in any manner and that Notifications dated. 27.01.1994, 07.07.2004 and 14.09.2006 do not provide for any such legalization or regularization of*

unauthorized development work done in violation of EIA Notifications.

G. *That this Hon'ble Tribunal be pleased to direct the MCGM, SRA, State Government and the MPCB to initiate criminal action against the Respondent Nos.10, 11 (landlord and Developer), concerned officers of the SRA for knowingly and willingly proceeding with the unauthorized development work in violation of the EIA Notification and the provisions of Environment (Protection) Act, 1986 without due diligence as per u/s. 15, 17 of the Environment (Protection) Act, 1986 by registering the FIR with the police authorities.*

H. *That this Hon'ble Tribunal be pleased to hold that OFFICE MEMORANDUM dated 16.11.10 and subsequent Office Memorandum dated 12.12.2012 issued by the Director of Ministry of Environment & Forest, Union of India, is illegal, null, void and this Hon'ble Tribunal be further pleased to quash and set aside the same.(Exhibit-"LL"[>]).*

7. A bare perusal of all the above prayers would indicate that the Applicants are challenging the development permission granted for the project in question. The chief-bone of contention raised by the Applicants is that the project is of residential colony, which is slum re-development project, and that is covered by EIA Notification dated 27th January, 1994, read with amended EIA Notification dated 7.7.2004, not by EIA Notification dated 14th September, 2006. They would submit that OM dated 12.12.2012, issued by the MoEF, is void and, therefore, deserves to be quashed. The pleadings of the Applicants, go to show that the litigation had commenced since about 2002. There were several rounds

of litigations between the parties, between some other parties and the developer and also in the context of shifting of Tabelas (stables) from the place where the site under development is located. It appears that the Applicants were having their stables in the open site and claimed to be slum dwellers. It also appears that the Respondent No.10, (Landlord) and the Respondent No.11, M/s Rashmi Infrastructure, (developer) jointly filed proposal before the Slum Rehabilitation Authority (SRA) for redevelopment of the plot area admeasuring 25311.36 sq. mtrs. The SRA issued LOI on 28.11.2004, intimating to approve the scheme subject to compliance of the terms and conditions. It appears that on 19th April, 2005, the developer and the owner received completion certificate for two (2) rehab buildings of ground + seven (7) upper floors. Further on 31st May, 2005, completion certificate for another rehab building was issued in their favour and subsequently, the construction activity was continued. It appears that one Kareem Noorji Marediya and others filed Writ Petition No.806 of 2006, in the Hon'ble High Court of Bombay, regarding the dispute about the development. A Writ Petition was filed by the City Space and others bearing Writ Petition No.115 of 2002, that was in respect of SRA to be sanctioned without permission of the Court in respect of open space reserved for garden, parking and play-grounds etc. The matter had gone up to the Supreme

Court. In SLP (Civil) No.18405 of 2010, "***Bombay Milk producers' Association vs. JanhitManch and Ors***" the Apex Court directed the High Court to decide the Writ Petition (civil) No.2565 of 2005, expeditiously. Accordingly, it was so decided by the Hon'ble High Court on 18.12.2008. The Hon'ble High Court directed the State Govt. to commence shifting of Tabelas and also the cattle. The SRA scheme was considered and approved by the authority, somewhere in 2012. One Ibrahim Dawoodbhai Jathera and others, including the Applicants filed a Civil Suit in the City Civil Court at Dindoshi, bearing Spl. Suit No.2538 of 2012, seeking declaration that the lands in question were out of purview of the powers of SRA authority and the lands covered by the stables cannot be developed under the SRA. It appears that the suit did not give any favourable results to the Applicants. They had filed another Writ Petition along with other Petitioners (W.P.No.1232 of 2013) in May, 2013, in the Hon'ble High Court of Bombay, challenging various orders, passed by the authorities.

8. It is in the wake of past litigations that the averments in the main Application need to be examined. According to the Applicants, after they filed the RTI Application, they came to know that the M/s Rashmi Infrastructure, had applied for prior EC for the construction work which was already completed. They came to know that the said Application was delisted on

26th April, 2011, because of absentia of the developer. The Applicants further allege that the owner and the developer (Respondent Nos. 10 and 11, respectively) suppressed material facts about LOI dated 28.12.2004, in the proceedings before SEAC. They erroneously mentioned other properties in their Application and the EC is issued in respect of different properties. According to the Applicants, EC was sought by M/s Rashmi Infrastructure by suppressing material facts and, therefore, it amounts to playing of fraud on the concerned Authorities, particularly SEAC and SEIAA. The Notification dated 27.1.1994, read with amendment of Notification dated 7.7.2004, do not provide for *expost facto* Environmental Clearance. The alleged construction activity falls within the purview of those Notifications and therefore is not covered by OM dated 12.12.2012. In fact, OM dated 12.12.2012, is void ab-initio. Therefore, the Applicants have filed the present Application.

9. Perusal of pleadings of the Applicants go to show that they had already filed Writ Petition against the owner and the developer. In the earlier Writ Petition filed by them along with others, the issue regarding legality of OM dated 12.12.2012, was not the subject matter. It is an admitted fact that the Authorities under the Maharashtra Slum Areas Act, 1971, have issued eviction and demolition orders against the Applicants on directions given by the

SRA. The construction activity was going on since long and the earlier Writ Petition, filed by the Applicants was decided by the Hon'ble High Court of Bombay only in respect of their grievances, which pertained to applicability of the SRA scheme. Their contention that the SRA was not applicable to the land in question, was rejected inter-alia by the City Civil Court and the Hon'ble High Court. They and other Tabela (stable) owners were directed to shift the cattle to alternative premises provided by the State Government. It is not that the construction of high rise buildings on the plot in question has come up all of a sudden. The construction activity was going on since long. It appears that the Applicants are also offered premises in the SRA scheme. The communication dated 29th July, 2002, issued by the SRA goes to show that the scheme was commenced and the Respondent Nos.10 and 11, were permitted to construct the plot, comprising of total B, U, A area of 52390.96 sq. meters. The construction work was done in the area of same plot. Mere issuance of OM dated 12th December, 2012, by the MoEF, cannot trigger the cause of action for the Application like present one, particularly, when, the SRA scheme was being implemented since 2003 onwards.

10. We may refer to the Judgment in **Application No.124/2013**, in the matter of "***Keharsingh S/o Sh. SinghramVs. State of Haryana***" dated September 12th,

2013, delivered by the Hon'ble Principal Bench of the NGT. The Hon'ble Principal Bench referred to Judgment in "***Nikunj Developers and anrVs State of Mah. And ors***" **(2013) All (I) NGT (1) (PB-40)**, in which it is held that "statutorily prescribed limitation has to be strictly adhered to and cannot be relaxed merely on equitable grounds." It is further held that "applying the rule of liberal construction, power to condone the delay beyond period of ninety (90) days, as prescribed under Section 16 of the NGT Act, which is worded identically to the procedure to Section 14 (3) of the NGT Act, cannot be exercised by the Tribunal." The Hon'ble Principal Bench observed:

> ***" 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 that date. Appellant No. 3 is admittedly the partner of the other appellants.*
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> *Xxxx xxxxx xxxxx xxxxxxx xxxxxxxxxxx xxxx*
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> ***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.

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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 tothe 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.

***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."*

11. After elaborate deliberations the Hon'ble Principal Bench held that " Limitation has to be counted from the date when there was firm decision by the Government or other authorities concerned was taken and it was so publicly declared. In the present case, the OM dated 12.12.2012, could not have been challenged after period of ninety (90) days, even though it is held that the Application is maintainable against such OM under Section 14(1) of the NGT Act,2010. For, the Application is filed on 27.11.2013, inasmuch as delay condonation Application is filed on that day, which will be deemed date of filing of the Original Application. Secondly, it cannot be said that the construction work done by the owner and the developer (M/s Rashmi Infrastructure) was not within the knowledge of the Applicant. The expressions "cause of action" and "such dispute" will have to be read together. In the background of present case, the expression "such dispute" does not imply the dispute relating to the nature of construction activity. According to the Applicants, the OM dated 12.12.2012, is not applicable to the disputed construction activity, because the EC for construction work already done is not contemplated under EIA Notification dated 27.1.1994 and the amended EIA Notification dated 7.7.2014. As a matter of fact, which of the EIA

Notification will be applicable for the construction activity or grant of EC certificate to the construction that has been already done, cannot be treated as "substantial environmental dispute" to bring the Application within purview of Section 14 (1) of the NGT Act, 2010. The contention of the Applicant M/s Rashmi Infrastructure had suppressed certain material facts, is not clarified and when the construction was visible at the site, then it cannot be presumed that there was "suppression of material fact".

12. In any case, when the earlier litigation had been taken through various rounds, including SLP filed in the Hon'ble Supreme Court, non-application of MoEF OM dated 12.12.2012, or non-disclosure of the said OM by M/s Rashmi Infrastructure, cannot be branded as a fraud played on the Court, or competent Authority. So also, existence of substantial construction done without earlier EC also cannot be treated as fraud, when all the parties including the Applicants were knowing about existence of such construction at the site.

13. We find that the Applicants are litigating before the Hon'ble High Court of Bombay in respect of identical issue and also have filed present Application under Section 14 of the NGT Act. The Applicants have not challenged any particular violation of the EC conditions, which gave rise to Air/Water pollution. Considering the

nature of prayers made in the Application, it can be gathered that the Applicants are challenging legality of the construction which has already been done by M/s Rashmi Infrastructure on the ground that EIA Notification dated 14.9.2006, is not applicable for the purpose of clearance to the work already done without EC. They are also challenging the OM dated 16.11.2010, and OM dated 12.12.2012, issued by the MoEF. The 'cause of action' for challenging the illegal construction started when such construction work was noticed by the Applicants. It appears that they had noted that the construction was going on at the site and therefore earlier Civil Suit and the Writ Petitions were filed. It further appears that by OM dated 16.11.2010, the MoEF directed regularization of the projects which were initiated in breach of the EIA Notification. In any case, the Applicants had knowledge about the construction activity of M/s Rashmi Infrastructure, whether legal or illegal, which was going on since December, 2004. So, after about twelve (12) years they cannot be heard saying that their Application is within limitation on the ground that M/s Rashmi Developer had played fraud on the Hon'ble High Court or the concerned Authority, due to suppression of identity of the properties of the project site or due to relevant EIA Notification, under which project activity was covered. It

is matter of record that the Applicants were directed to vacate their stables by the competent authority.

14. Learned Counsel for the Applicants invited our attention to the observations in case of ***Save Mon Region Federation Vs Union of India and Ors***, **ALL (I) NGT PB (1)(1)**. The Hon'ble Principal Bench of this Tribunal, held that "commencement of limitation is to be reckoned and computed from the date when the impugned order of EC is put on the website so as to make it downloadable without hindrances or from the day it is put on the public notice board or from the date when the Project Proponent uploads the order on the website, publishes it in the newspapers, or the order is displayed by the local bodies along with concerned department of the State Government". He further relied on the case of ***Lohia Machinery Ltd. Vs Union of India*****(AIR SC 1985)**. The Apex Court held that "mere acquaisance in an earlier exercise of Rulemaking power, which was beyond jurisdiction of Rulemaking authority cannot make such exercise of Rulemaking power or similar exercise of Rulemaking power at subsequent date valid". It is observed that "if a Rule made by Rulemaking authority is outside the scope of its power, it is void and it is not at all relevant and that though its validity has not been questioned for a long period of time, if a Rule is void, it remains void, whether it has been questioned in or not". The learned Counsel

further referred to the Judgment in case of ***M/s Vedant a Aluminum Ltd Vs Union of India and Ors*** in **WP (Civil) No.19605 of 2010**, delivered by Division Bench of Hon'ble High Court of Orissa. We have gone through text of the said Judgment. In our opinion, these Judgments are of no help to the Applicants. In our opinion, the Applicants are making attempt to re-agitate the same issues before this Tribunal. This Tribunal cannot invoke writ jurisdiction to quash the OM referred in the prayer-Clauses, because quashing of the said OM cannot be treated as substantial environmental dispute, which requires determination by the Tribunal. In any case, the first 'cause of action' did not trigger for such kind of dispute within period of ninety (90) days before filing of the main Application. The alleged illegal construction which is said to have been done without prior EC, and for which the Application is filed by *expost-facto* EC, as per the OM dated 12.12.2012, was started in 2003. Needless to say the starting point of 'such dispute' is referable to the year 2003 and in any case from the date of OM dated 12.12.20012, which is the subject matter of challenge. The Application filed under Section 14(1), is therefore, clearly barred by limitation and will have to be dismissed.

15. For the reasons stated above, we hold that the Application for condonation of delay is without any merits. We further hold that the main Application

(Application No.45 of 2013), is filed beyond the limitation, and otherwise also it is not maintainable, in view of tenor of the prayer-clauses, stated in the Application. Hence, both the Applications are dismissed. No costs.

.....,JM
(Justice V. R. Kingaonkar)

....., EM
(Dr. Ajay.A. Deshpande)