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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **ARB.P. 232/2016**

**SRI MA TRUST SRI RAMAKRISHNA SRI MA
PRAKASHAN TRUST**

..... Petitioner

Through: Mr Sanjeev K. Bhardwaj, Advocate.

versus

UNION OF INDIA

..... Respondent

Through: Mr Sanjib K. Mohanty, Senior
Standing counsel for UOI.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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03.03.2017

IA No.2791/2017

Allowed, subject to all just exceptions.

IA No.2789/2017 & Review application No.86/2017

The respondent has filed a review petition seeking recall of the order dated 29.08.2016 and an application seeking condonation of delay of 149 days in filing the Review Petition.

The only explanation provided for delay is that a legal opinion was sought from the office of the government counsel and after obtaining the necessary approval of the competent authority, the present Review Petition was prepared and filed. It is seen that the applicant has not even provided the relevant dates to indicate the time taken in different processes. The Supreme Court in the case of **Post Master General and Ors v. Living Media India Ltd. and Anr.**: (2012) 3 SCC 563 held as under:-

“29. In our view, it is the right time to inform all the government bodies, their agencies and instrumentalities that unless they have reasonable and acceptable explanation for the delay and there was bonafide effort, there is no need to accept the usual explanation that the file was kept pending for several months/years due to considerable degree of procedural red-tape in the process. The government departments are under a special obligation to ensure that they perform their duties with diligence and commitment. Condonation of delay is an exception and should not be used as an anticipated benefit for government departments. The law shelters everyone under the same light and should not be swirled for the benefit of a few.”

This Court is not inclined to accept the casual explanation provided by the applicant and, therefore, the application is dismissed.

Notwithstanding the above, this court has also examined the review petition on merits. The only ground taken in the review petition, seeking review of the order dated 29.08.2016 appointing an arbitrator, is that the disputes are not arbitrable. The question whether the disputes are arbitrable or not, is to be considered by the Arbitral Tribunal and the review petitioner is not precluded in any manner in raising the said dispute. The examination under Section 11 of the Arbitration and Conciliation Act, 1996 is now confined to the existence of an arbitration agreement, which is not disputed.

It is also relevant to note that this objection was not taken by the Review Petitioner at any point of time. Despite sufficient opportunity, the respondent did not file reply. Nonetheless, the learned counsel for the respondent made submissions to oppose the petition on 19.07.2016, which were recorded in the order and were duly considered while disposing of the

petition on 29.08.2016.

Accordingly, the review petition and the application for condonation of delay in filing the review petition is dismissed with costs of ₹10,000/-.

MARCH 03, 2017
MK

VIBHU BAKHRU, J