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

+ LPA 559/2018 & CAV. No. 915/2018 and CM. Nos. 40847-
40849/2018

UNION OF INDIA

..... Appellant

Through: Mr. Rajesh Gogna, CGSC with Ms.
L. Gangmei & Mr. Upendra, Advs.

versus

R- MC POWER RECOVERY INDIA PVT LTD & ORS

..... Respondent

Through: Mr. P.V. Dinesh, Sr. Adv. with
Mr. Ashok Kumar, Ms. Pratiksha
Sharma, Mr. Ankit Acharya &
Mr. Shivankar, Advs.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE V. KAMESWAR RAO

ORDER

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03.10.2018

CAV. No. 915/2018

Learned counsel for the caveator has put in appearance.

Caveat stands discharged.

CM. No. 40849/2018

Exemption allowed subject to all just exceptions.

Application stands disposed of.

CM. No. 40847/2018 (on behalf of appellant seeking condonation of 138 days delay in filing the appeal)

For the reasons stated in the application, the delay of 138 days in filing the appeal is condoned. Application stands disposed of.

LPA 559/2018

1. The present appeal has been filed by the Union of India challenging the order dated April 06, 2018 passed by the learned Single Judge in W.P.(C) No. 3274/2018 whereby the learned Single Judge has directed the respondents to allow the respondent Nos. 1 and 2 herein to bid for the tender issued for supply of 23 oxygen regulators with a format certificate.
2. Mr. Gogna, learned counsel for the appellant submits that the direction of the learned Single Judge is clearly untenable, at the interim stage, when the eligibility of the respondent No. 1 is doubtful. The direction has the effect of allowing the writ petition.
3. We note that the learned Single Judge had directed the Union of India to file a counter affidavit and renotified the matter on 5th October, 2018, which is only two days away. It is unfortunate that an order dated April 06, 2018 is being challenged by the Union of India just before the next date of hearing. Nothing precluded the appellant herein to file a counter affidavit

and argue the writ petition on October 05, 2018 itself.

4. On a specific query to Mr. Gogna as to why the appellant has come so late, when the date of hearing before the learned Single Judge is just two days away, there was no answer for the same. Be that as it may, the order of the learned Single Judge is an interim order, which is surely a prima facie view. The appellant shall be within its right to urge all the pleas as available to it both on facts and in law to justify its action, by filing a counter affidavit.

5. We do not see any reason to interfere in the appeal. The same is dismissed.

CM. No. 40848/2018 (stay)

Dismissed as infructuous.

CHIEF JUSTICE

V. KAMESWAR RAO, J

OCTOBER 03, 2018/ak