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

+ **CS(OS) 324/2016 and I.A. 7740/2016, 11004-11005/2016**

SOMA ENTERPRISE LTD

..... Plaintiff

Through: Mr. Manoj Ohri, Senior Advocate with
Mr. Arunabh Chowdhury, Mr. Vaibhav Tomar,
Mr. Ashish Jha, Mr. Anupam Siddharth and
Mr. Amit Bhandari, Advocates alongwith
Mr. D.V. Raju, Sr. Vice President in person.

versus

DELHI METRO RAIL CORPORATION LTD & ORS..... Defendants

Through: Mr. Shiv Khorana, Advocate with
Mr. Sanjay Kumar, SSO, Legal, DMRC in person.

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

ORDER

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19.09.2016

1. On 21.07.2016, in view of the statement made by learned counsel for the defendant No.1/DMRC that the DMRC does not propose to encash the subject bank guarantee but with a rider that it shall not preclude it from doing so in the future if the necessity so arises, at the request of the counsel for the plaintiff, the matter was adjourned to enable him to obtain instructions.

2. Today, Mr. Ohri, learned Senior Advocate appearing for the plaintiff states on instructions that in view of the statement made on behalf of the defendant No.1/DMRC and recorded on 21.07.2016, the plaintiff does not wish to press the present suit any further. He confirms the fact that there is

an arbitration clause governing the parties, which has not yet been invoked by the plaintiff for the reason that presently, the defendant No.1 is not proposing to encash the bank guarantee in question. He however points out that due to a *bonafide* error, it had been stated on 14.07.2016 that conciliation proceedings were pending between the parties. He clarifies that the conciliation proceedings are not in respect of the subject bank guarantee but some other dispute, which is a subject matter of the contract governing the parties. Learned counsel requests that as the suit is at the nascent stage and only summons were issued on 01.07.2016, the court fee paid on the plaint be refunded .

3. Having regard to the fact that after summons were issued in the suit on 01.07.2016, only two effective hearings have taken place, when learned counsel for the defendant No.1/DMRC had sought time to obtain instructions from his clients with regard to the status of the bank guarantee, which was conveyed to the court on 21.07.2016, it is deemed appropriate to dispose of the present suit and direct the Registry to issue a certificate for refund of 50% of the court fee in favour of the plaintiff.

4. Needless to state that if any fresh cause of action arises in favour of the plaintiff, it shall be entitled to seek its remedies in accordance with law.

5. The suit is disposed of alongwith the pending applications.

HIMA KOHLI, J

SEPTEMBER 19, 2016

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