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

+ **W.P.(C) 11446/2017**

SRG INTERNATIONAL PVT LTD Petitioner
Through: **Mr Binay Kumar, Advocate.**

versus

**DELHI URBAN SHELTER IMPROVEMENT
BOARD & ANR.** Respondents
Through: **Ms Mini Pushkarna, Standing
Counsel with Ms Anushruti and Ms
Vasundhara Nayyar, Advocates for
DUSIB.**

**CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU**

ORDER
% **20.12.2017**

CM No. 46676/2017

1. Exemption is allowed, subject to all just exceptions.
2. The application stands disposed of.

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3. The petitioner has filed the present petition, *inter alia*, impugning the letters dated 06.07.2017 and 10.10.2017 issued by the respondents purportedly to initiate action under clauses 2 and 15 of the bid documents and seeking to forfeit the performance security provided by the petitioner.
4. The controversy in the present petition arises out of the petitioner's bid furnished pursuant to an invitation to the tender issued by the respondents. The petitioner states that by a letter dated 01.03.2017, the petitioner's bid was accepted and the petitioner was called upon to furnish

the performance bank guarantee in the sum of ₹10,45,650/-. The petitioner furnished the same by way of a fixed deposit receipt dated 16.03.2017.

5. Thereafter, respondent no.2 issued a letter dated 17.03.2017 calling upon the petitioner to commence works and to execute the formal agreement within a period of 15 days. It is the petitioner's case that despite the petitioner's efforts, respondents have not executed a formal agreement. Further, the samples furnished by the petitioner have also not been approved and in these circumstances, the petitioner could not be expected to commence the works. Notwithstanding the above, the respondents are now seeking to forfeit the performance security.

6. It is seen that the tender documents included an arbitration clause. Since it is not disputed that the petitioner's bid was accepted, this Court is of the view that the said arbitration clause would be applicable. The learned counsel for the respondents also concurs with the same.

7. In view of the above, it would not be apposite for this Court to entertain the present petition and it would be open for the petitioner to avail of such remedies as the petitioner may be advised.

8. Notwithstanding the above, the learned counsel for the petitioner requests that the present petition may be considered as a representation by the respondents before any precipitate steps are being taken which may lead to further litigation that may be avoided.

9. Ms Mini Pushkarna, learned counsel appearing for the respondents states that the respondents would have no objection to consider the present

petition as a representation and take an informed decision thereof.

10. In view of the above, the present petition is disposed of by directing the respondents to consider the petitioner's petition as a representation and pass an appropriate order within a period of six weeks from today. The petitioner is also at liberty to furnish additional submissions to the respondents within a period of one week from today.

11. Needless to mention if the petitioner is aggrieved by the said decision, it would be open for the petitioner to avail of appropriate proceedings as available in law.

DECEMBER 20, 2017
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VIBHU BAKHRU, J