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

+ W.P.(C) 7556/2016 & CM Nos.31127/2016 & 1789/2017

M/S SS FOOD INDUSTRIES Petitioner

Through Mr. Sanjay Bhatt, Mr. Sachar,
Mr. Abhishek Sharma and
Mr. Aproop Singhal, Advs.

versus

INTEGRATED HEADQUARTERS OF MOD (ARMY)

..... Respondent
Through Mr. Ajay Digpaul, CGSC for UOI

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

ORDER

% **15.01.2018**

When this writ petition came up for hearing for the first time before this Court on 29.8.2016 the Court, broadly, captured what was in the issue between the parties. Thus, for the sake of convenience, the relevant part is extracted therein:-

“Learned counsel for the petitioner submits that as per the RFP, the contract was to be awarded only after the firm (unregistered) is subjected to technical and hygiene inspection by the Board of Officers constituted by the Directorate General of Supplies & Transport.

It is contended that without subjecting the petitioner – firm to technical and hygiene inspection, the respondent proceeded to issue a letter of intent and required the petitioner to furnish the performance guarantee. Learned counsel for the respondent submits, on instructions, that the petitioner had issued self-certification of hygiene and the respondent, in view of the urgency, accepted the self-certification and issued the

letter of intent.

Learned counsel for the petitioner submits that the petitioner did not furnish the performance guarantee as the petitioner was apprehensive that the petitioner would be put to prejudice in case the respondents on inspection rejected the bid of the petitioner. He, however, submits that in case the respondents are agreeing to proceed further on the basis of self-certification, the petitioner is willing to perform the Contract and furnish the performance guarantee.

Learned counsel for the respondent submits that the earnest money is deposited by way of submission of Fixed Deposit Receipts. The respondents have already forwarded the Fixed Deposit Receipts to the Bank for encashment.

Learned counsel for the respondent further submits that the petitioner has already invoked arbitration, however, he prays for time to take instructions on the offer made by the petitioner.

At request, renotify on 27th September, 2016.

Till the next date of hearing, the Fixed Deposit Receipts, if not already encashed, be not encashed, however, the Fixed Deposit Receipts shall be retained by the respondents in their custody.”

As would be evident from the extract of the order dated 29th August, 2016 counsel for the respondents was to take instructions as to whether respondents would accept self certification of technical hygiene and inspection conducted by the petitioner in order to enable issuance of a letter of intent.

It appears that the petitioner did not furnish a performance guarantee as was required under the tender conditions because there was lack of clarity according to the petitioner as to whether or not self certification of hygiene would be accepted by the respondents.

Mr. Digpaul, advocate who appears on behalf of the respondent/UOI on

being asked was not able to shed much light on this aspect of the matter. The order dated 29th August, 2016 would also indicate that the petitioner has already triggered the arbitration agreement.

In this behalf Mr. Bhatt, who appears for the petitioner has drawn my attention to letter dated 4th August, 2016 issued by the petitioner. Mr. Digpaul, however, informs me that no arbitrator has been appointed as yet. Mr. Bhatt affirms this position. It is also Mr. Bhatt's contention that the petitioner would have no difficulty if the respondents were to appoint an arbitrator.

In these circumstances, the writ petition is disposed of with the directions to the respondents to appoint an arbitrator within four weeks from today. The interim protection granted vide order dated 29th August, 2016 will continue to operate, till such date the arbitrator enters upon reference. The arbitrator will have the authority thereafter to vacate or modify the order dated 29th August, 2016 after giving due opportunity to both the parties.

Dasti.

RAJIV SHAKDHER, J

JANUARY 15, 2018

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