IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDERS RESERVED ON : 03.09.2026

ORDERS PRONOUNCED ON: 16.09.2026

CORAM

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

Writ Petition No.2888 of 2025
and Writ Miscellaneous Petition No.3194 of 2025

Renaatus Projects Private Limited
Rep By Its Authorized Signatory Mr. Chermaraj,
No.139/2, Second Floor, Kodambakkam High
Road, Nugamakkam, Chennai- 600 034.

..Petitioner(s)

Vs

Government of India
Ministry of Housing And Urban Affairs
Central Public Works Department
Office of the Executive Engineer and
Senior Manager (Civil) II CPWD,
Visvesvaraya Utility Building, NITPY Campus,
Thiruvettakudy, Karaikal-609 609.

..Respondent(s)

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, calling for the records of the respondent in impugned order dated 22.1.2025 bearing No. 23 (12) / KPD- II/ 2025/ 30 (H) and quash the same and pass such further or other orders.

For Petitioner(s): Mr.P.J.Rishikesh

For Respondent(s): Mr.AR.L.Sundaresan
Addl. Solicitor General of India
Assisted by Mr. K.Ramanamoorthy, SPC

ORDER

A. The Writ Petition:

This Writ Petition is filed for the issuance of a Writ of Certiorari, calling for the records of the respondent relating to the impugned order dated 22.01.2025 bearing No. 23 (12)/ KPD- II/ 2025/ 30 (H), and for quashing the same. By the impugned order, the petitioner was directed to deposit a sum of Rs.2,36,42,405/-, equal to the Earnest Money Deposit (EMD), within seven days from the date of the order. In the event of non-deposit, it is stated that action will be taken to liquidate the bank guarantee and the deposit submitted by the petitioner towards EMD.

B. Brief Facts:

2. A tender dated 16.03.2024 was floated for the purposes of construction of 476 Nos. regular bedded and 81 Nos. non-complementary bedded JIPMER Karaikal Hospital (G+5), Puducherry, HT panel-cum-Control Room and connecting corridor from existing Academic Building to Hospital Building at 2nd floor level. The estimated cost of the tender was Rs. 246,42,40,519/-, and bidders were to deposit an EMD of Rs. 2,55,44,422/-. Along with the tender documents, bidders must download and submit an affidavit in Form ‘F’. The same reads as follows:-

> “FORM-'F'
>
> AFFIDAVIT
>
> We undertake and confirm that our firm has not been blacklisted by any state/Central Departments/PSUs/Autonomous hodles during the last 7 years

of its operations. Further that, if such information comes to the notice of the department then we shall be debarred for bidding in CPWD in future forever. Also, if such an information comes to the notice of department on any day before date of start of work, the Engineer-in-charge shall be free to cancel the agreement and to forfeit the entire amount of Earnest Money Deposit."

2.1. The petitioner participated in the bid by submitting his bid along with an affidavit in Form 'F'. Pursuant to the tender, the pre-bid conference was held on 26.03.2024. Thereafter, the technical bids were opened on 01.05.2024, and it was found that out of the total 10 bids received, two did not meet the eligibility criteria. On 27.06.2024, the financial bids were opened, and the petitioner was found to be the L1, having quoted Rs.199,62,31,244.44, which was 18.99% below the estimated value.

2.2. While so, the validity of the tender was due to expire on 15.07.2024 and was initially extended up to 31.08.2024 and thereafter up to 21.09.2024. When the petitioner originally submitted Form 'F', declaring that its company had not been blacklisted by any State or Central Department during the preceding seven years of its operations, it is seen that the Superintending Engineer, Highways, CMDP Circle, Saidapet, Chennai, had issued a show-cause notice to the petitioner.

2.3. The gist of the allegations is that on 20.08.2018, a tender was floated for the construction of a grade separator connecting Medavakkam –

Sholinganallur Road Junction and Medavakkam – Mambakkam Road Junction, etc., and the petitioner was the successful bidder in respect of the same. Accordingly, the contract was awarded to the petitioner on 12.12.2018.

2.4. In respect of the pre-qualification criteria, the petitioner submitted an experience certificate stating participation in the construction of a rollover bridge at KM23/6 of Dome Hipetta Village and Gurmpetta Road of the Railways, said to have been issued by the Executive Engineer, Public Works Department, Union Territory of Puducherry, Yanam. In this regard, the authority received a complaint, and upon verification, the concerned authority at Yanam informed it that no such work had been executed in the Yanam region. Thus, it was found that the petitioner claimed to satisfy the qualification criteria on the basis of a forged certificate, despite submitting an affidavit affirming that all statements in the requisite attachments were true and correct. Accordingly, the petitioner was required to show cause as to why appropriate action should not be initiated against the petitioner in that matter. On 27.09.2022, the petitioner was temporarily removed from the registered list. The petitioner preferred an appeal challenging the same; however, the same was rejected by an order dated 02.06.2023.

2.5. Thereafter, on 27.11.2023, the State Highways Department, Government of Tamilnadu, issued G.O.No.156, removing the petitioner from the registration list for a period of one year. Challenging the same, the petitioner filed W.P.No.10518 of 2024, which was pending. As on date, when the above tender was called for and the petitioner submitted the affidavit on 01.05.2024, pending finalisation of the tender. Stating that, by way of abundant caution, on 19.07.2024, the petitioner addressed a detailed letter to the respondent disclosing the order passed by the State Highways Department of the Government of Tamil Nadu and the pendency of W.P.No.10518 of 2024 before this Court. The petitioner also sent a further communication on 16.08.2024, reiterating the above position and clarifying that there was no mala fide intention in the initial non-disclosure of the information.

2.6. Under these circumstances, when the validity of the tender was required to be extended, the petitioner also extended its validity. Meanwhile, on 19.06.2023, a complaint was received from one *V.S.Prabhu*, which revealed that the petitioner had been blacklisted by the Chief Engineer, Highways Department, Government of Tamilnadu. In these circumstances, the Superintending Engineer and the Project Director obtained a report from the State Highways Department, which found that, for a period of one year, i.e., from 27.11.2023 to 26.11.2024, the petitioner was removed from the list of registered contractors and its business dealings were banned. Therefore, in view of the false undertaking given, a legal opinion was sought on 10.07.2024. During discussions with the Deputy Legal Advisor, the petitioner/Company handed over a letter stating that it did not consider the temporary removal akin to blacklisting and therefore did not disclose the same in the affidavit.

2.7. Under the said circumstances, by a communication dated 31.07.2024 and thereafter on 05.08.2024, advice was sought on the immediate course of action to be taken by the Department in this matter. A legal opinion was tendered, stating that a ban on business dealings has to be treated as blacklisting/debarment, in a letter dated 22.08.2024. However, vide another letter dated 22.08.2024, they were directed to proceed further as per SOP in the matter of the L1 bidder by awarding the tender. That letter was received through an email on 30.08.2024. Strangely, on 14.08.2024, the Chief Engineer (CSQ) gave an opinion vide letter dated 29.08.2024 that, in the first place, the requirement of the affidavit through Form 'F' is found only in the instant tender, and the same had been added by the NIT, and it required the advice from the competent authority, who had given approval for the inclusion of the condition in the NIT.

2.8. Meanwhile, on 03.09.2024, certain other discrepancies in the description of the work were noticed by the Superintending Engineer and the Project Director, Karaikal, and a clarification was sought from the petitioner in this regard. In the above background, the tender committee deliberated on the issue and decided not to approve the tender quoted by the petitioner and to obtain a legal opinion on the form ‘F’ submitted by the petitioner for necessary further action. The entire deliberation, as recorded in the proceedings dated 06.09.2024, is extracted hereunder for ready reference:-

> “Deliberation of the Board:
>
> As per the directorate opinion that there is no provision in CPWD Works Manual 2022 and SOP (updated version) for seeking of an affidavit regarding 'blacklisted firm' in Pre-qualification Document by the bidder. Also stated that appears to be added in the NIT by the NIT approving authority after taking necessary approval from competent authority as per Manual provision.
>
> But in this case, no such approval has been obtained by the NIT approving authority front any higher officer ADG/SDG.
>
> As per para 4.10 (3)(viii) (preparation of NIT) of CPWD works manual 2022 states that "Guidelines on preparation of NIT for tenders to he invited on Single Bid System and on Two/Three Bid System are given in SOP 4/8 and SOP 4/9 which can be referred."
>
> SOP 4/8 refers to single bid system and SOP 4/9 refers to Two three bid system. As per SOP 4/9 (1) (iv) it is clear that "For Tender Notice in Forni CPWD 6, Information & Instructions to bidders, Annexure -21 & 23 is referred for guidance. For Guidelines on fixing eligibility criteria for two/three bid system, Annexure -24 is referred". Therefore any modification, changes, additions in NIT as per guidance in Annexure 21 & 23 is possible by NIT approving authority whereas no such freedom in operating Annexure 24, in which no change/ addition is allowed without approval of ADG/SDG.
>
> In this NII. Fonn-F which is to be trented as part of Annexure-24, is not available in Annexure 24 of CPWD works manual has been added as additional documents as eligibility criteria by NIT approving authority without getting approval from ADG/SDG which leads to violation of manual provision. Moreover, many shortcomings observed by this office have been intimated to SE&PD, Karaikal also to be modified corrected in the NIT and accepting this tender without these correction will lead to litigation unnecessary which will hampered the execution of JIPMER campus works and also leads to higher cost.
>
> In view of the above reasons, it is decided that tender quoted by Mis. Renaatus Projects Private Limited is not approved for acceptance.
>
> SE & PD. Karaikai may take legal opinion on the form 'F' submitted by the agency and take further necessary action.
>
> The Chairman ended the meeting with thanks.”

2.9. Thereafter, by an order dated 18.09.2024, the tender was cancelled, and a fresh tender was floated by the respondent. On 21.10.2024, this Court disposed of Writ Petition No. 10518 of 2024, clarifying that the blacklisting/banning period was one year and would end on 26.11.2024. It further ordered that the petitioner would be restricted to the area in relation to the contract in question and that this restriction would not prevent the petitioner from participating in the tender elsewhere in Tamil Nadu. It was further held that the 27.11.2023 order could not be used to initiate action concerning the other tenders executed or being executed by the petitioner.

2.10. Thereafter, on 06.01.2025, a show cause notice was issued to the petitioner directing him to show cause why the EMD could not be forfeited for non-disclosure of the State Highways Department's orders in form 'F'. The petitioner submitted his explanation on 18.01.2025, stating that the information had been disclosed voluntarily and, in view of the circumstances surrounding form 'F' and the Judgment of this Court in the Writ Petition filed by him, the EMD could not be forfeited. However, rejecting these submissions, the impugned order dated 22.01.2025 was passed, and the petitioner is before this Court.

C. Counter by the Respondent:

3. The Writ Petition is duly resisted by the respondent by filing a counter affidavit, along with several enclosures. It was stated that, for violation of the undertaking given in the form 'F' affidavit, the EMD is being forfeited. During arguments, when this Court insisted on the reasons for dropping the tender, after adjourning the case two to three times, the tender committee minutes dated 06.09.2024 were finally produced before this Court. Only after going through the minutes can this Court could cull out the above facts in detail and the series of events.

D. Submissions of the Learned Counsel :

4. *Mr.P.J.Rishikesh,* the learned counsel appearing on behalf of the petitioner, would submit that when the petitioner submitted the EMD, the tender was not called off, nor was it cancelled as a result of any non-performance or fault on the part of the petitioner. They found that the specifications themselves were incorrectly given, and therefore it was cancelled for administrative reasons. Therefore, there is no question of forfeiture of EMD for the default or non-performance of the petitioner. There is also no express clause for forfeiture contained in the tender notification.

4.1. He would further submit that the respondent seeks to forfeit the EMD amount solely on the basis of the Form 'F' affidavit submitted by the petitioner.

A careful reading of the affidavit and the Form 'F' furnished by the respondent themselves makes it clear that the petitioner was required to confirm that the firm had not been blacklisted by any State or Central Department during the preceding seven years of its operations. The affidavit was filed on 01.05.2024, and the petitioner genuinely believed that the order passed by the State of Tamil Nadu on 27.11.2023 was only a temporary removal from the list for a period of one year and did not amount to blacklisting. Therefore, the petitioner did not file a false affidavit.

4.2. Secondly, even before issuing any show cause notice, the petitioner voluntarily brought the matter to the respondent's notice. Therefore, there is no question of forfeiting the EMD. Thirdly, even as per the affidavit, if any false undertaking is given prior to the contract, the only option available is debarment from bidding in CPWD. Only if the contract has been given and it is cancelled, the EMD can be forfeited. In this case, the tender was dropped by the respondent themselves for administrative reasons, and therefore, as per form 'F', there cannot be forfeiture of the EMD.

4.3. The cancellation of the agreement and forfeiture of the EMD are twin conditions. The word used in form 'F' is "and"; the respondents are trying to read it as "or". The learned counsel would submit that when the plain meaning is clear, 'and' cannot be read as 'or', and in this regard the learned counsel would rely upon the Judgment of the Hon'ble Supreme Court of India in ***Gopal Krishnan and Others Vs. Daulat Ram and Others***[1], more specifically referring to paragraph No. 21. Alternatively, it is contended that, in any event, the forfeiture is not for any default in performance but is a penalty in the instant case. When it is penal in nature, as per the Judgment of the Hon'ble Supreme Court of India in ***Kailash Nath Associates Vs. Delhi Development Authority and Another***[2], the entire amount cannot be automatically forfeited; the respondent must show actual loss, and forfeiture, if any, can occur only to that extent.

4.4. In the present case, on the same day the tender was cancelled, a fresh tender was issued for a lower sum. Therefore, the dropping of the action resulted only in saving money for the petitioner, and there is no loss. The learned counsel would rely upon the Judgment of this Court in ***Cantonment Board Vs. M/s. Babuji Civil Constructions*** (Arbitration OP.(Com. Div.) No.693 of 2022), by referring to paragraph No.21, to contend that premature termination of a contract will not automatically entitle the petitioner to forfeit the entire security deposit.

[1](2025) 2 SCC 804
[2](2015) 4 SCC 136

4.5. The learned counsel would also rely upon the Judgment of this Court in ***M/s. P.S.T. Engineering Construction Vs. HSCC (India) Limited***[3] in this regard. Further, the Judgment of the Hon'ble Supreme Court of India in ***Villayati Ram Mittal Private Limited Vs. Union of India and Another***[4] is relied upon, more specifically referring to paragraph Nos.11 and 12, to contend that in the absence of any default by the petitioner regarding the performance of the contract, and when the tender was dropped for administrative reasons, the EMD has to be refunded.

4.6. *Per contra, Mr.AR.L. Sundaresan*, the Learned Additional Solicitor General of India, would submit that when Form-F forms part of the Tender Documents and the writ petitioner duly submits the same, the said condition would automatically operate in the event of falsity. Form-F itself contains the default clause resulting in forfeiture. The Learned Counsel for the petitioner's reading that cancellation of the contract and forfeiture of EMD are twin conditions is incorrect. A proper reading of the affidavit in Form-F would lead only to the condition that action can be taken for all three penalties, that is, blacklisting; termination of the contract; and forfeiture of EMD. Whether the forfeiture appears prior to the award of the contract or after the issue of the contract to the petitioner, whether the petitioner is L1 or not, is material. What

[3](2025:MHC:981)
[4] (2010) 10 SCC 532

is material is only the falsity of the averment.

4.7. In this case, when the petitioner submitted a forged certificate, penal action was taken, and hence the delisting for a period of one year certainly amounts to blacklisting. The petitioner can have no doubt about the same. Had the petitioner disclosed the same, his bid would have been rejected at the Technical stage. Only because the petitioner was L1 and thereafter the suppression was unearthed, the tender had to be dropped. Merely because there was some additional reason will not erase the liability of the petitioner for the wrong done. The respondents are not reading the 'and' as 'or'.

E. The Questions :

5. I have considered the rival submissions made on either side and perused the material records of the case. The following questions arise for determination.

(i) Was it incumbent upon the petitioner to mention the removal of the petitioner from the registration list vide G.O. No. 156 dated 27.11.2023 for a period of one year in form 'F'? If so, can the non-mentioning be considered a genuine mistake of interpretation?

(ii) Whether voluntary disclosure of the information by the petitioner before the issue of the show cause notice would undo the suppression?

(iii) If the petitioner had suppressed the information, can the EMD amount be forfeited?

F. Question No.(i) :

6. The entire Form 'F' of the affidavit is extracted *supra*. Thus, it is clear that there should be no blacklisting of the petitioner for a period of seven years. When the petitioner submitted a forged certificate, falsely claimed eligibility, and participated in the tender, the petitioner was removed from the list by way of penalty for a period of one year. Thus, any reasonable person would have no doubt that this is nothing but blacklisting. Blacklisting is nothing but debarment from participating in other tenders. It can be permanent or for a specific period. Therefore, the petitioner cannot raise artificial and untenable contentions that it was for a period of one year. It is penal in nature and is always imposed as a penalty for some delinquency committed by the contractor. Therefore, in the present case, the petitioner could not have been in any doubt that G.O.Ms.No.156, dated 27.11.2023, did not amount to blacklisting. The petitioner ought to have disclosed the same in Form 'F' and ought not to have furnished a contrary undertaking. Therefore, the affidavit filed by the petitioner amounts to nothing but a wilful and calculated suppression of material facts.

G. Question No.(ii) :

7. Firstly, the contention that the petitioner disclosed the information voluntarily is incorrect. The affidavit was filed on 01.05.2024. A complaint was

received on 19.06.2023, and a report in respect thereof was received from the Highways Department of Tamil Nadu. A letter seeking legal advice was sent on 10.07.2024, and soon thereafter the petitioner states that, out of abundant caution, it decided to disclose the information and submitted a communication. On 14.08.2024, the office of the SDG authenticated the request made by the Executive Engineer, CPWD, for the Directorate's opinion, and on 16.08.2024, the petitioner submitted the second explanation.

7.1. Thus, a perusal of the minutes of the meeting leaves no doubt that the petitioner was privy to the information that an enquiry was being made into the falsity of the affidavit submitted by it, and thereafter only it submitted the explanation. I reject the contention that it was made voluntarily.

7.2. Even assuming that it was voluntarily made, the question is the filing of the false affidavit along with the tender document. If the affidavit had disclosed the truth, the petitioner’s bid would have been rejected at the technical stage itself; therefore, disclosing the information after opening the technical bid and considering the petitioner for the price bid during the course of enquiry and deliberation would make no difference. Once the suppression was made, which led the respondent to accept the technical bid and hold the petitioner as qualified, even if the subsequent divulging of the information was voluntary, it will make no difference, and the breach of the undertaking had already taken effect. Accordingly, question No.2 is answered.

H. Question No. (iii):

8. A perusal of the entire minutes of the tender committee shows that had the petitioner submitted the correct information, his technical bid would have been rejected, and the respondent would have proceeded to finalise the tender as such. Only because the petitioner submitted false information and, during the validity period, on 19.06.2024, a complaint was received from one V.S. Prabhu, the entire enquiry was started, resulting in an extension of the validity period. The recording of events from paragraph No.18 to paragraph No.31 of the minutes shows how the entire episode was approached. Instead of holding that the petitioner is already blacklisted for obtaining a contract by submitting a forged certificate, so much effort is put into seeking repeated legal opinions. And instead of answering the query made, it is further twisted that the inclusion of such a condition in the contract, asking for an affidavit in form ‘F’, was done unauthorisedly.

8.1. Such a high-value contract cannot be with a forfeiture clause and without such an affidavit as to the correctness of the information being filed. Even if the annexure ‘F’ is wrongly included once the bidder has given false information, then it is not a complex case for rendering an opinion. Thankfully, the authorities did not take disciplinary action against the tender floating authority. Suffice it to say that the entire file movements back and forth are not in tune with public interest and are shocking.

8.2. Be that as it may, from a careful reading of the minutes and the transaction as a whole, the reason for the postponement of the award of the tender, which ultimately resulted in the dropping of the tender, arose from the false averment made by the petitioner. Ultimately, the tender committee has recorded the final reasons, which were extracted supra, and it cannot be said that the tender committee had directly recorded that the tender is being dropped only on the fault of the petitioner. In that view of the matter, the forfeiture of the EMD can only be said to be on account of the undertaking given in the form 'F' alone, that is, for the breach of the undertaking and not on failure of performance.

8.3. The next point argued is that, even for a breach, the EMD can be forfeited under the form 'F' only if it is after the contract. This argument cannot be accepted and is rejected for the following reasons,

(a) The'F' affidavit, which is made part of the tender documents, is self-contained and sets out the actions that would ensue in the event of false information. Three actions are envisaged. First, the CPWD can consider debarring the petitioner from future bidding. Secondly, the agreement can be cancelled, and thirdly, the entire amount of EMD can be forfeited.

8.4. The argument of *Mr.P.J.Rishkesh,* the learned counsel for the petitioner, is that the forfeiture of the EMD amount can be made if only there is contract and upon cancellation thereof. The respondents are reading the word 'and' in the said Clause as 'or'. To consider the same, the Clause makes it clear that two circumstances can arise at any time before the start of the work, i.e., the agreement can be cancelled and the entire EMD can be forfeited. As contended by the learned counsel for the petitioner, if 'and' is to be read as 'or', the part of the sentence would be read as 'the Engineer-in-charge shall be free to cancel the agreement ***or*** to forfeit the entire amount of EMD'. Thus, it is not the case. It is not the case of the respondents they are entitled to either one of the same. It is only the writ petitioner who who wants to read the Clause as follows:

> 'the Engineer in-charge shall be free to cancel the agreement and forfeit the entire amount of EMD, **if the agreement is already entered into.**'.

8.5. Thus, it is the petitioner who wants to read something extra into the Clause. The affidavit in form 'F' is clear and conveys a categorical meaning. The general disciplinary action of debarment can be done, and the particular actions of cancelling the agreement and also forfeiture of the entire amount of EMD can be done for the particular tender, and it can be done any day before the start of the work, which would include the period prior to the award of the contract also.

8.6. Finally, coming to the argument that it is penal in nature and that, unless actual damages are proved, the entire amount cannot be forfeited, this Court had occasion to consider the said question and the relevant decisions in respect thereof in ***PST Engineering case*** (cited *supra*). It is essential to extract paragraph Nos. 10.3 to 10.16, which read as under:-

> "10.3. The next contention is that forfeiture cannot occur even before the contract is finalized, with reliance on the judgments from Yogesh Mehta's case (cited supra) (Paragraph No.32) and Pratap Chandra Parida's case (cited supra) (Paragraph No.7). However, this cannot be accepted. Regarding the contention based on Pratap Chandra Parida's case, it involved a petitioner who applied for withdrawal of the tender, with the amount sought to be forfeited on the grounds of not producing the original documents. In the case of Yogesh Mehta, there was ongoing litigation when the bid was made before the Special Court, and even after vacating the interim order, the Special Court did not take immediate action to finalize the bid. Subsequently, an order was belatedly sought for the forfeiture of the EMD. In this context, by referencing Maula Bux's case and Saurav Prakash Vs. DLF Universal Limited1 , the Hon'ble Supreme Court of India held that forfeiture of EMD is permissible only if there is a concluded contract.
>
> 10.4. On the contrary, in the present case, it is evident from the tender that it allows for forfeiture under various circumstances. If any information is found to be incorrect or false and the bid is rejected, the EMD may be forfeited. Additionally, the EMD may be forfeited if any of the four conditions in Clause 4, as stated above, are met. Furthermore, the EMD may also be forfeited if the party attempts to withdraw its offer during the validity period, according to Clause 8. Therefore, in this instance, where there are conditions to the contrary, it cannot be legally argued that no EMD can be forfeited unless there is a concluded contract.
>
> 10.5. As a matter of fact, the Hon'ble Supreme Court of India, in the case of the National Highways Authority of India (cited supra), categorically held that if a party, by its own conduct, precludes the coming into existence of a contract, it cannot be permitted to take advantage of its own wrongdoing, and forfeiture must not be denied. Paragraph No.9 is extracted hereunder for ready reference:-

"9. In our view, the High Court fell in error in so holding. By invoking the bank guarantee and/or enforcing the bid security, there is no statutory right, exercise of which was being fettered. There is no term in the contract which is contrary to the provisions of the Indian Contract Act. The Indian Contract Act merely provides that a person can withdraw his offer before its acceptance. But withdrawal of an offer, before it is accepted, is a completely different aspect from forfeiture of earnest/security money which has been given for a particular purpose. A person may have a right to withdraw his offer but if he has made his offer on a condition that some earnest money will be forfeited for not entering into contract or if some act is not performed, then even though he may have a right to withdraw his offer, he has no right to claim that the earnest/security be returned to him. Forfeiture of such earnest/security, in no way, affects any statutory right under the Indian Contract Act. Such earnest/security is given and taken to ensure that a contract comes into existence. It would be an anomalous situation that a person who, by his own conduct, precludes the coming into existence of the contract is then given advantage or benefit of his own wrong by not allowing forfeiture. It must be remembered that, particularly in government contracts, such a term is always included in order to ensure that only a genuine party makes a bid. If such a term was not there even a person who does not have the capacity or a person who has no intention of entering into the contract will make a bid. The whole purpose of such a clause i.e. to see that only genuine bids are received would be lost if forfeiture was not permitted."

(Emphasis supplied)

Thus the above contention is liable to be rejected.

10.6. The next submission is made based on Section 74 of the Indian Contract Act. In this regard, Sections 73, 74, and 75 of the Indian Contract Act are extracted hereunder for reference:

"73. Compensation for loss or damage caused by breach of contract.When a contract has been broken, the party who suffers by such breach is entitled to receive, from the party who has broken the contract, compensation for any loss or damage caused to him thereby, which naturally arose in the usual course of things from such breach, or which the parties knew, when they made the contract, to be likely to result from the breach of it.

Such compensation is not to be given for any remote and indirect loss or damage sustained by reason of the breach.

Compensation for failure to discharge obligation resembling those created by contract.-When an obligation resembling those created by contract has been incurred and has not been discharged, any person injured by the failure to discharge it is entitled to receive the same compensation from the party in default, as if such person had contracted to discharge it and had broken his contract.

Explanation.-In estimating the loss or damage arising from a breach of contract, the means which existed of remedying the inconvenience caused by the non-performance of the contract must be taken into account.

74. Compensation for breach of contract where penalty stipulated for.
[When a contract has been broken, if a sum is named in the contract as the amount to be paid in case of such breach, or if the contract contains any other stipulation by way of penalty, the party complaining of the breach is entitled, whether or not actual damage or loss is proved to have been caused thereby, to receive from the party who has broken the contract reasonable compensation not exceeding the amount so named or, as the case may be, the penalty stipulated for.

Explanation.—A stipulation for increased interest from the date of default may be a stipulation by way of penalty.]

Exception.-When any person enters into any bail-bond, recognizance or other instrument of the same nature, or, under the provisions of any law, or under the orders of the [Central Government] or of any [State Government], gives any bond for the performance of any public duty or act in which the public are interested, he shall be liable, upon breach of the condition of any such instrument, to pay the whole sum mentioned therein.

Explanation.-A person who enters into a contract with Government does not necessarily thereby undertake any public duty, or promise to do an act in which the public are interested.

75.Party rightfully rescinding contract, entitled to compensation. A person who rightfully rescinds a contract is entitled to compensation for any damage which he has sustained through the non-fulfilment of the contract."

10.7. In Kunwar Chiranjit Singh v. Har Swarup1, the Privy Council held as follows:

"Earnest money is part of the purchase price when the transaction goes forward: it is forfeited when the transaction falls through, by reason of the fault or failure of the vendee."

10.8. The issue was considered by the Hon'ble Supreme Court of India in Fateh Chand vs. Balakishan Dass2. It is useful to extract the relevant portions of the Constitution Bench judgment, which reads as follows:

"11. There is however, no warrant for the assumption made by some of the High Courts in India, that Section 74 applies only to cases where the, aggrieved party is seeking to receive some amount on breach of contract and not to cases where upon breach of contract an amount received under the contract is sought to be forfeited. In our judgment the expression "the contract contains any other stipulation by way of penalty" comprehensively applies to every covenant involving a penalty whether it is for payment on breach of contract of money or delivery of property in future, or for forfeiture of right to money or other property already delivered. Duty not to enforce the penalty clause but only to award reasonable compensation is statutorily imposed upon courts by Section 74. In all cases, therefore, where there is a stipulation in the nature of penalty for forfeiture of an amount deposited pursuant to the terms of contract which expressly provides for forfeiture, the court has jurisdiction to award such sum only as it considers reasonable, but not exceeding the amount specified in the contract as liable to forfeiture.

....

....

15. Section 74 declares the law as to liability upon breach of contract where compensation is by agreement of the parties pre-determined, or where there is a stipulation by way of penalty. But the application of the enactment is not restricted to cases where the aggrieved party claims relief as a plaintiff. The section does not confer a special benefit upon any party; it merely declares the law that notwithstanding any term in the contract predetermining damages or providing for forfeiture of any property by way of penalty, the court will award to the party aggrieved only reasonable compensation not exceeding the amount named or penalty stipulated. The jurisdiction of the court is not determined by the accidental circumstance of the party in default being a plaintiff or a defendant in a suit. Use of the expression "to receive from the party who has broken the contract" does not predicate that the jurisdiction of the court to adjust amounts which have been paid by the party in default cannot be exercised in dealing with the claim of the party complaining of breach of contract. The court has to adjudge in every case reasonable compensation to which the plaintiff is entitled from the defendant on breach of the contract. Such compensation has to be ascertained having regard to the conditions existing on the date of the breach."

(Emphasis supplied)

10.9. Subsequently, in Maula Bux's case (cited supra), it has been clearly stated that when the amount exceeding the EMD that was deposited was intended to be forfeited, the Hon'ble Supreme Court of India ruled as follows, and the relevant paragraphs are extracted below:

"4. That in the present case the deposit was made not of a sum of money by the purchaser to be applied towards part payment of the price when the contract was completed and till then as evidencing an intention on the part of the purchaser to buy property or goods. Here the plaintiff had deposited the amounts claimed as security for guaranteeing due performance of the contracts. Such deposits cannot be regarded as earnest money.

5. Forfeiture of reasonable amount paid as earnest money does not amount to imposing a penalty. But if forfeiture is of the nature of penalty, Section 74 applies. Where under the terms of the contract the party in breach has undertaken to pay a sum of money or to forfeit a sum of money which he has already paid to the party complaining of a breach of contract, the undertaking is of the nature of a penalty."

(Emphasis supplied)

10.10. Furthermore, the matter was considered by the Hon'ble Supreme Court of India in Shree Hanuman Cotton Mills and Others Vs. Tata Aircraft Limited3, and it is beneficial to extract paragraph No.21 of the judgment:

"21. From a review of the decisions cited above, the following principles emerge regarding "earnest":

(1) It must be given at the moment at which the contract is concluded.

(2) It represents a guarantee that the contract will be fulfilled or, in other words, 'earnest' is given to bind the contract.

(3) It is part of the purchase price when that transaction is carried out.

(4) It is forfeited when the transaction falls through by reason of the default or failure of the purchaser.

(5) Unless there is anything to the contrary in the terms of the contract, on default committed by the buyer, the seller is entitled to forfeit the earnest."

10.11. The said judgment addressed the issue regarding the forfeiture of EMD as follows:

"31. The learned Attorney-General has pointed out that the decisions referred to in the above quotation do not lay down that the test of reasonableness applies to an earnest deposit and its forfeiture. He has also pointed out that this Court, in the above decision, did not agree with the view of the High Court that the deposit, the recovery of which was sued for by the plaintiff therein, was earnest money. The learned Attorney-General also referred us to various decisions, wherein, according to him, though the amounts deposited by way of earnest were fairly large in proportion to the total price fixed under the contract, nevertheless the forfeiture of those amounts were not interfered with by the Courts. But, as we have already mentioned, we do not propose to go into those aspects in the case on hand. As mentioned earlier, the appellants never raised any contention that the forfeiture of the amount amounted to a penalty or that the amount forfeited is so large that the forfeiture is bad in law. Nor have they raised any contention that the amount of deposit is so unreasonable and therefore forfeiture of the entire amount is not justified. The decision in Maula Bux case had no occasion to consider the question of reasonableness or otherwise of the earnest deposit being forfeited. Because, from the said judgment it is clear that this Court did not agree with the view of the High Court that the deposits made, and which were under consideration, were paid as earnest money. It is under, those circumstances that this Court proceeded to consider the applicability of Section 74 of the Contract Act."

(Emphasis supplied)

10.12. Furthermore, in Sathish Batra v. Sudhir Rawal1, it is stated as follows, and it is useful to extract paragraph No.15:

"15. The law is, therefore, clear that to justify the forfeiture of advance money being part of "earnest money" the terms of the contract should be clear and explicit. Earnest money is paid or given at the time when the contract is entered into and, as a pledge for its due performance by the depositor to be forfeited in case of non-performance by the depositor. There can be converse situation also that if the seller fails to perform the contract the purchaser can also get double the amount, if it is so stipulated. It is also the law that part-payment of purchase price cannot be forfeited unless it is a guarantee for the due performance of the contract. In other words, if the payment is made only towards part-payment of consideration and not intended as earnest money then the forfeiture clause will not apply."

(Emphasis supplied)

10.13. The Hon'ble Supreme Court of India has thoroughly examined the entire issue in the case of Kailash Nath Associates (cited supra), and it is essential to extract paragraph No.37, which reads as follows:

"37. And finally in ONGC Ltd. v. Saw Pipes Ltd.25 , it was held : (SCC pp. 740-43, paras 64 & 67-68)

"64. It is apparent from the aforesaid reasoning recorded by the Arbitral Tribunal that it failed to consider Sections 73 and 74 of the Contract Act and the ratio laid down in Fateh Chand case19, SCR at p. 526 wherein it is specifically held that jurisdiction of the court toaward compensation in case of breach of contract is unqualified except as to the maximum stipulated; and compensation has to be reasonable. Under Section 73, when a contract has been broken, the party who suffers by such breach is entitled to receive compensation for any loss caused to him which the parties knew when they made the contract to be likely to result from the breach of it. This section is to be read with Section 74, which deals with penalty stipulated in the contract, inter alia (relevant for the present case) provides that when a contract has been broken, if a sum is named in the contract as the amount to be paid in case of such breach, the party complaining of breach is entitled, whether or not actual loss is proved to have been caused, thereby to receive from the party who has broken the contract reasonable compensation not exceeding the amount so named. Section 74 emphasises that in case of breach of contract, the party complaining of the breach is entitled to receive reasonable compensation whether or not actual loss is proved to have been caused by such breach. Therefore, the emphasis is on reasonable compensation. If the compensation named in the contract is by way of penalty, consideration would be different and the party is only entitled to reasonable compensation for the loss suffered. But if the compensation named in the contract for such breach is genuine pre-estimate of loss which the parties knew when they made the contract to be likely to result from the breach of it, there is no question of proving such loss or such party is not required to lead evidence to prove actual loss suffered by him.......

* * *

67. ....In our view, in such a contract, it would be difficult to prove exact loss or damage which the parties suffer because of the breach thereof. In such a situation, if the parties have pre-estimated such loss after clear understanding, it would be totally unjustified to arrive at the conclusion that the party who has committed breach of the contract is not liable to pay compensation. It would be against the specific provisions of Sections 73 and 74 of the Contract Act. There was nothing on record that compensation contemplated by the parties was in any way unreasonable. It has been specifically mentioned that it was an agreed genuine pre-estimate of damages duly agreed by the parties. It was also mentioned that the liquidated damages are not by way of penalty. It was also provided in the contract that such damages are to be recovered by the purchaser from the bills for payment of the cost of material submitted by the contractor. No evidence is led by the claimant to establish that

the stipulated condition was by way of penalty or the compensation contemplated was, in any way, unreasonable. There was no reason for the Tribunal not to rely upon the clear and unambiguous terms of agreement stipulating pre-estimate damages because of delay in supply of goods. Further, while extending the time for delivery of the goods, the respondent was informed that it would be required to pay stipulated damages.

68. From the aforesaid discussions, it can be held that:

(1) Terms of the contract are required to be taken into consideration before arriving at the conclusion whether the party claiming damages is entitled to the same.

(2) If the terms are clear and unambiguous stipulating the liquidated damages in case of the breach of the contract unless it is held that such estimate of damages/compensation is unreasonable or is by way of penalty, party who has committed the breach is required to pay such compensation and that is what is provided in Section 73 of the Contract Act.

(3) Section 74 is to be read along with Section 73 and, therefore, in every case of breach of contract, the person aggrieved by the breach is not required to prove actual loss or damage suffered by him before he can claim a decree. The court is competent to award reasonable compensation in case of breach even if no actual damage is proved to have been suffered in consequence of the breach of a contract.

(4) In some contracts, it would be impossible for the court to assess the compensation arising from breach and if the compensation contemplated is not by way of penalty or unreasonable, the court can award the same if is genuine pre-estimate by the parties as the measure of reasonable compensation."

10.14. Finally, the question of awarding compensation under Section 74 was summarized in paragraph No.43, which states the following:

"43.On a conspectus of the above authorities, the law on compensation for breach of contract under Section 74 can be stated to be as follows:

43.1. Where a sum is named in a contract as a liquidated amount payable by way of damages, the party complaining of a breach can receive as reasonable compensation such liquidated amount only if it is a genuine pre-estimate of damages fixed by both parties and found to be such by the court. In other cases, where a sum is named in a contract as a liquidated amount payable by way of damages, only reasonable compensation can be awarded not exceeding the amount so stated. Similarly, in cases where the amount fixed is in the nature of penalty, only reasonable compensation can be awarded not exceeding the penalty so stated. In both cases, the liquidated amount or penalty is the upper limit beyond which the court cannot grant reasonable compensation.

43.2. Reasonable compensation will be fixed on well-known principles that are applicable to the law of contract, which are to be found inter alia in Section 73 of the Contract Act.

43.3. Since Section 74 awards reasonable compensation for damage or loss caused by a breach of contract, damage or loss caused is a sine qua non for the applicability of the section.

43.4. The section applies whether a person is a plaintiff or a defendant in a suit.

43.5. The sum spoken of may already be paid or be payable in future.

43.6. The expression "whether or not actual damage or loss is proved to have been caused thereby" means that where it is possible to prove actual damage or loss, such proof is not dispensed with. It is only in cases where damage or loss is difficult or impossible to prove that the liquidated amount named in the contract, if a genuine pre-estimate of damage or loss, proved to have been caused thereby" means that where it is possible to prove actual damage or loss, such proof is not dispensed with. It is only in cases where damage or loss is difficult or impossible to prove that the liquidated amount named in the contract, if a genuine pre-estimate of damage or loss, can be awarded

43.7. Section 74 will apply to cases of forfeiture of earnest money under a contract. Where, however, forfeiture takes place under the terms and conditions of a public auction before agreement is reached, Section 74 would have no application.”

(Emphasis supplied)

10.15. Subsequently, the Hon'ble Supreme Court of India once again considered the issue in Authorised Officer, Central Bank of India Vs. Shanmugavelu2. It is essential to extract the relevant passages found in paragraph Nos. 53, 54, 81, 82, 83, and 90, which read as follows:-

“53. Damages can be awarded only for the loss directly suffered on account of the breach and not for any remote or indirect loss sustained by reason of the breach of contract. The general rule is that where two parties enter into a contract and one of them commits breach, the other party will be entitled to receive as damages in respect of such breach of contract, such sum as may fairly and reasonably be considered arising naturally, that is according to the the performance of other contract(s) by the party complaining of the breach, on the performance of the contract in dispute by the party in breach, had been communicated to the party in breach, and thus known to both parties at the time of entering into the contract, then the damages for the breach of the contract in dispute, may include the compensation for the loss suffered in regard to such other dependent contracts. But, on the other hand, if the special circumstances were not made known to the party breaking the contract, the party breaking the contract, at the most, could only be supposed to have had in its contemplation the amount of injury which would arise generally and directly and not any remote or unknown loss or damage.

54. What would be a "penalty" under Section 74 of the 1872 Act was explained by this Court in K.P. Subbarama Sastri v. K.S. Raghavan as under : (SCC pp. 427-28, para 5)

"5. ... '6. The question whether a particular stipulation in a contractual agreement is in the nature of a penalty has to be determined by the court against the background of various relevant factors, such as the character of the transaction and its special nature, if any, the relative situation of the parties, the rights and obligations accruing from such a transaction under the general law and the intention of the parties in incorporating in the contract the particular stipulation which is contended to be penal in nature. If on such a comprehensive consideration, the court finds that the real purpose for which the stipulation was incorporated in the contract was that by reason of its burdensome or oppressive character it may operate in terrorem over the promiser so as to drive him to fulfil the contract, then the provision will be held to be one by way of penalty."

55. The SARFAESI Rules, more particularly Rule 9 was first examined by this Court in Rakesh Birani v. Prem Narain Sehgal, wherein the entire auction process under Rule 9 was explained. The relevant observations read as under : (SCC p. 546, paras 8-9)

"8. In order to comprehend the rival submissions, it is necessary to ponder as to intendment of Rule 9 of the 2002 Rules which deals with the time of sale, issues of sale certificate and delivery of possession, etc. Public notice of sale is to be published in the newspaper and only after thirty days thereafter, the sale of immovable property can take place. Under Rule 9(2) of the 2002 Rules, the sale is required to be confirmed in favour of the purchaser who has offered the highest sale price to the authorised officer and shall be subject to confirmation by the secured creditor. The proviso makes it clear that sale under the said Rule would be confirmed if the amount offered and the whole price is not less than the reserved price as specified in Rule 9(5). It is apparent that Rule 9(1) does not deal with the confirmation by the authorised officer. It only provides confirmation by the secured creditor.

9. Rule 9(3) makes it clear that on every sale of immovable property, the purchaser on the same day or not later than next working day, has to make a deposit of twenty-five per cent of the amount of the sale price, which is inclusive of earnest money deposited if any. Rule 9(4) makes it clear that balance amount of the purchase price payable shall be paid by the

purchaser to the authorised officer on or before the fifteenth day of "confirmation of sale of the immovable property" or such extended period as may be agreed upon in writing between the purchaser and the secured creditor. Thus, Rule 9(2) makes it clear that after confirmation by the secured creditor the amount has to be deposited. Rule 9(3) also makes it clear that period of fifteen days has to be computed from the date of confirmation."

....

....

81. Even otherwise, what is discernible from the abovereferred decisions of Fateh Chand, Maula Bux and Satish Batra is that there lies a difference between forfeiture of any amount and forfeiture of earnest money with the former being a penal clause and the latter a general forfeiture clause. A clause providing for forfeiture of an amount could fundamentally be in the nature of a penalty clause or a forfeiture clause in the strict sense or even both, and the same has to be determined in the facts of every case keeping in mind the nature of contract and the nature of consequence envisaged by it.

82. Ordinarily, a forfeiture clause in the strict sense will not be a penal clause, if its consequence is intended not as a sanction for breach of obligation but rather as security for performance of the obligation. This is why Fateh Chand Maula Bux and Satish Batra held that forfeiture of earnest money deposit is not a penal clause, as the deposit of earnest money is intended to signify assent of the purchaser to the contract, and its forfeiture is envisaged as a deterrent to ensure performance of the obligation.

83. We are conscious of the fact that in Maula Bux this Court observed that the deposit of a sum by the purchaser as security for guaranteeing due performance was held as a penalty. However, a close reading would reveal that the reason why this Court held the said deposit as a penal clause was because the said amount was paid over and above the earnest money deposit already paid by the purchaser in the said case and more importantly the said sum was not liable to be adjusted against the total consideration. Hence, this Court held the same to be a penalty rather than earnest money. The relevant observation read as under : (SCC p. 558, para 4)

"4. ... In the present case the deposit was made not of a sum of money by the purchaser to be applied towards part-payment of the price when the contract was completed and till then as evidencing an intention on the part of the purchaser to buy property or goods. Here the plaintiff had deposited the amounts claimed as security for guaranteeing due performance of the contracts. Such deposits cannot be regarded as earnest money."

....

....

90. Therefore, it is clear that the forfeiture can be justified if the terms of the contract are clear and explicit. If it is found that the earnest money was paid in accordance with the terms of the tender for the due performance of the contract by the promisee, the same can be forfeited in case of non-performance by him or her."
(Emphasis supplied)

10.16. Thus, upon considering the overview of the above rulings of the Hon'ble Supreme Court of India, it can be seen that:

(a) the forfeiture of the EMD applies and relates only to the performance of the contract;

(b) In cases of public auction where the terms are clear and explicit, it may be resorted to;

(c) Section 74 of the Indian Contract Act, 1872 does not apply to such cases where the contract is not concluded, more so in public auction/tenders and shall apply if only the damages claimed is penal in nature whereby the reasonable quantum has to be determined;

(d) Whether the forfeiture is penal in nature must be determined by considering the nature of the contract and the consequences envisaged by it, based on the facts and circumstances of each case;

(e) The clauses regarding disclosure are designed to identify only genuine parties with the capacity to place a bid and these disclosure clauses also serve to ensure performance(National Highways Authority of India cited supra) and in such cases, the terms of the contract being clear and explicit, the forfeiture must be deemed justified.(paragraph No.90 of the Central Bank of India's case cited above)."

8.7. Thus, in this case, by following the dictum laid down in ***National Highways Authority of India case***(cited *supra*), the disclosure and the undertaking are only to ensure that genuine parties with the capacity to place a bid are considered, and in such a case, the forfeiture of the EMD should be deemed justified. Therefore, on that ground, since the blacklisting on account of the forgery committed by the petitioner would otherwise render him ineligible to place a bid, the forfeiture is justified.

8.8. Even if the forfeiture is treated as a penalty for non-disclosure, as per the Judgment in ***Kailash Nath case*** (cited *supra*) and Section 74 of the Indian Contract Act, reasonable compensation for the actual damage is permissible. In this case, the tender document specified the capacity of the parties participating in the tender. The parties must have an average beneficial turnover of Rs.7363 Lakhs in construction works during the last three years, ending up to 31.03.2023; and should have a banker's certificate or network certificate to the tune of Rs.2454 Lakhs. Experience is required in three similar works costing not less than Rs.9818 Lakhs, or two similar works costing not less than Rs.14727 Lakhs, or one similar work costing not less than Rs.19636 Lakhs. The value of the present contract itself is as high as Rs.245,44,42,221/-. Thus, a bare minimum of 1 % was required as EMD. Normally, EMD is requested at 10 to 15%, and only in such very high-value contracts are lower amounts insisted upon. In this case, a very, very meagre sum of 1 % of the value is insisted upon. Thus, the said sum can never be termed as on the higher side and is absolutely negligible, considering the parties' turnover.

8.9. Considering the time delay from March 2024 to September 2024, especially three months from June 2024 to September 2024, fully attributable only to the petitioner, it cannot be said that there is no loss at all for the respondent. In the second tender, the amount is quoted low because some items were excluded from the tender. Therefore, the actual loss that occurred to the respondent would certainly be more than the EMD amount, and therefore, that does not in any manner demonstrate that the respondent did not suffer any loss at all. Considering the overall facts and circumstances of the case, the forfeiture of the EMD is justifiable in all force.

I. The Result :

9. In the result, this Writ Petition is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

16.09.2026

Neutral Citation: Yes/No

JER

To
The Executive Engineer and
Senior Manager (Civil) II CPWD,
Government of India,
Ministry of Housing And Urban Affairs,
Central Public Works Department
Visvesvaraya Utility Building, NITPY Campus, Thiruvettakudy,
Karaikal-609 609.

D.BHARATHA CHAKRAVARTHY, J.

JER

W.P.No.2888 of 2025

16.09.2026