

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

Present :-

The Hon'ble Justice PARTHA SARATHI SEN

W.P.O. 2474 OF 2022

CORROGANON INDIA PRIVATE LIMITED
-Vs-
THE STATE OF WEST BENGAL & ORS.

For the Petitioners:	Mr. Jishnu Chowdhury, Sr. Adv. Ms. Pratiti Das, Adv. Ms. Ujjaini Chatterjee, Adv.
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For the Union of India:	Mr. Abhratosh Majumdar, Sr. Adv. Mr. Chayan Gupta, Adv. Mr. Sandip Dasgupta, Adv. Mr. Aviroop Mitra, Adv.
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Hearing concluded on:	01.10.2026
Judgment on:	05.10.2026

PARTHA SARATHI SEN, J. : –

1. The subject matter of the instant writ petition is the memo dated 02.12.2021 as issued by the respondent no. 3 authority whereby and whereunder the writ petitioner Company was intimated regarding forfeiture of the Earnest Money Deposit ('EMD' in short) amounting to Rs. 73,97,650/- in terms of the provision in the Instructions to Bidders of the Notice Inviting E-Tender ('NIET' in short) dated 18.08.2016.

2. For effective adjudication of the instant writ petition some relevant facts leading to filing of the instant writ petition are required to be dealt with in a nutshell and those are as under:

- (i) On 18.08.2016 the respondent no. 2 authority has published a NIET for construction of two numbers of right turn flyovers across Kona Expressway at ingress and egress points of Santragachhi bus terminus with approach roads. Along with the said NIET, an Instruction to Bidders was also published, a copy of which has been annexed at page nos. 49 to 63 of the instant writ petition.
- (ii) The writ petitioner company participated in the said bid and found to be a successful bidder and thus the respondent no. 5 authority vide memo dated 18.11.2016 issued a letter of acceptance-cum-work order which was duly received by the writ petitioner company.
- (iii) On 05.12.2016 the writ petitioner company issued a letter to the respondent no. 2 authority to allow the writ petitioner company to step down from the tender for the reasons stated therein.
- (iv) On 07.12.2016 the respondent no. 5 authority in reference to the aforementioned letter dated 05.12.2016 issued another letter to the writ petitioner company noting therein that the writ petitioner company neither deposited performance security nor executed the agreement and on the contrary it has prayed for stepping down from the tender and thus, the contract awarded to the said writ petitioner

company stood terminated with immediate effect following the provisions of the Instruction to Bidders.

- (v) Thereafter on and from 15.12.2016 to 19.07.2021 the writ petitioner company issued series of letters to the different authorities of the Hooghly River Bridge Commissioners ("Commissioners" in short) who are the the respondent nos. 2 to 7 herein requesting them to refund the EMD amount which was turned down by the impugned memo dated 02.12.2021 by the respondent no. 3 authority.

3. At the time of hearing Mr. Jishnu Chowdhury, learned Senior Advocate appearing on behalf of the writ petitioner at the very outset took me to the copy of the Instruction to Bidders. Drawing attention to Clause 16.6 of the said Instruction to Bidders, it is argued by Mr. Chowdhury that the respondent authorities most illegally invoked the provisions of Clause 15.6 which deals with the forfeiture of EMD. It is argued by Mr. Chowdhury that by issuing the letter of acceptance dated 18.11.2016 by the respondent no. 5 authority, a concluded contract between the writ petitioner and the respondent Commissioners was entered into and, therefore, the inter se relation between the parties to the said contract are to be governed under the provisions of Section 74 of the Contract Act. It is argued by Mr. Chowdhury that for the sake of argument even if it is accepted that the said concluded contract has been broken at the instance of the writ petitioner, the respondent Commissioners is not entitled to retain the said EMD in absence of any stipulation that in case of

breach of the contract, the party aggrieved to the contract is entitled to damage by way of penalty.

4. Placing his reliance upon a judgment passed by a Division Bench of this High Court in the case of ***Dolphin Suppliers Pvt. Ltd. vs. Union of India & Anr.*** reported in ***(2025) 1 SCC (Cal) 1*** it is argued by Mr. Chowdhury that relying upon the various judgments of the Hon'ble Supreme Court in the cases of ***Security Engg. (P) Ltd. vs. Electro Medical & Allied Industries Ltd.*** reported in ***2024 SCC OnLine Cal 111***, ***MBL Infrastructure Ltd. vs. Rites Ltd.*** reported in ***2020 SCC OnLine Cal 478***, ***Shree Coal Enterprises of India (P) Ltd. vs. Coal India Ltd.*** reported in ***2018 SCC OnLine Cal 1652*** and ***Kailash Nath Associates vs. DDA*** reported in ***(2015) 4 SCC 136*** the said Hon'ble Division Bench of this Court came to a logical conclusion that the party claiming to be aggrieved by the breach of contract in absence of any specific pleading regarding the quantum of loss and damages suffered by reason of cancellation of the contract is not entitled to forfeit the amount as deposited by the party to the contract who had broken the same.

5. It is further argued by Mr. Chowdhury that the respondent Commissioners in their correspondences as well as in their affidavit-in-opposition had not averred anything regarding the quantum of damages suffered by them on account of alleged breach of contract and, therefore, retention of the EMD amount as made by the writ petitioner is grossly illegal. It is thus submitted by Mr. Chowdhury that the impugned memo dated 02.12.2021 as issued by the respondent Commissioners may be quashed and the respondent

Commissioners and/or their instrumentalities may be directed to refund the EMD amount of Rs. 73,97,650/- to the writ petitioner along with accrued interest thereon.

6. On being asked by this Court as to whether the writ petitioner approached this High Court with a time barred claim or not, Mr. Chowdhury contended that since the cause of action arose on account of issuance of the impugned memo dated 02.12.2021 the writ petitioner's claim is not barred by limitation since under Article 113 of the Schedule of the Limitation Act, the writ petitioner is entitled to sue within 3 years from 02.12.2021 that is from the date of issuance of the impugned letter and on the contrary the instant writ petition was filed on 25.08.2022.
7. Per contra, Mr. Majumdar, learned Senior Advocate appearing on behalf of the respondent Commissioners and its instrumentalities also took me to the relevant NIET dated 23.09.2016 as well as to the different clauses of the Instruction to Bidders. He also draws attention of this Court to the letter of acceptance dated 18.11.2016 as issued by the respondent Commissioners wherein it has been indicated that the said letter dated 18.11.2016 is to be treated as work order as well as a notice to commence work.
8. It is argued by Mr. Majumdar that on conjoint perusal of the said letter of acceptance dated 10.11.2016 vis-à-vis Clauses 15.6 and 31 of the Instruction to Bidders it would reveal that it was specifically mentioned in the Instruction to Bidders that in the event the successful bidder fails to sign the agreement within 7 days of the receipt of the letter of acceptance, EMD would be forfeited.

It is argued by Mr. Majumdar that since the writ petitioner company had failed to execute the agreement within the stipulated days the respondent Commissioners and its instrumentalities have rightly invoked Clause 15.6 of the Instruction to Bidders and rightly forfeited the EMD. To substantiate his contention Mr. Majumdar places his reliance in the judgments passed by the Hon'ble Supreme Court in the case of ***National Highways Authority of India vs. Ganga Enterprises & Anr.*** reported in ***(2003) 7 SCC 410***, ***National Thermal Power Corporation Ltd. vs. Ashok Kumar Singh & Ors.*** reported in ***(2015) 4 SCC 252*** and ***State of Haryana & Ors. vs. Malik Traders*** reported in ***(2011) 13 SCC 200***.

9. It is submitted by Mr. Majumdar that it has been consistently held by the Hon'ble Supreme Court that in the event a person made his offer on a condition that some earnest money will be forfeited for not entering into any 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. It is further argued by Mr. Majumdar that the Hon'ble Supreme Court further held that forfeiture of such earnest/security, in no way affects any statutory right under the Contract Act, since such earnest/security is given and taken to ensure that a contract comes into existence. It is thus argued by Mr. Majumdar that Section 74 of the Contract Act has no manner of application in the *instant lis* and thus, the respondent Commissioners have rightly forfeited the EMD amount.

10. In his next fold of submission Mr. Majumdar also took me to the letter dated 05.12.2016 whereby and whereunder the writ petitioner company stepped down from the tender as well as to the letter dated 07.10.2016 as issued by the respondent Commissioners whereby the said Commissioners have terminated the contract as awarded to the writ petitioner with immediate effect following the provisions of the Instruction to Bidders clearly indicating that the writ petitioners have failed to deposit the performance security and execute the agreement in terms of the Clause 15.6 of the instructions to bidder. It is argued by Mr. Majumdar that in the event the letter of termination dated 07.12.2016 is viewed in the perspective of the various clauses of the Instruction to Bidders, it would reveal that while issuing the letter of termination, the respondent Commissioners have invoked Clause 15.06 of the Instruction to Bidders and thus, forfeited the EMD amount.

11. It is thus argued by Mr. Majumdar that cause of action for the initiation of a proceeding being a writ before appropriate Civil Court having territorial and pecuniary jurisdiction ought to have been filed within 3 years from 07.12.2016 for recovery of the said forfeited amount. It is submitted further that though there is no period of limitation for filing a writ however, there is sufficient materials before this Court to come to a logical conclusion that the writ petitioner has filed the instant writ petition in order to get rid of a time barred claim before a jurisdictional Civil Court.

12. Mr. Majumdar further contended that the reported decisions in the case of ***Dolphin Suppliers (Supra)*** as well as in the cases of ***Security Engg.***

(Supra), MBL Infrastructure (Supra), Shree Coal Enterprises (Supra) and **Kailash Nath Associates (Supra)** as passed by the Hon'ble Supreme Court are distinguishable from the facts and circumstances as involved in the instant writ petition.

13. This Court has meticulously perused the entire materials as placed before this Court. This Court has given its anxious consideration over the submissions of the learned Advocates for the contending parties.

14. For effective adjudication of the instant writ petition some relevant clauses of the Instruction to Bidders are required to be looked into and those are as under:

“15.6 The Bid Security/ Earnest Money may be forfeited

(a) if the bidder withdraws his bid during the period of bid validity;

(b) in the case a successful bidder fails within the specified time limit to

(i) sign the Agreement

(ii) furnish the required performance security

31. Signing of Agreement

The following documents shall be deemed to form and be read and construed as part of this Agreement, viz.:

(a) Agreement

(b) Letter of Acceptance

(c) The offer submitted by the Contractor in the prescribed Form of Bid

(d) Addenda/ Corrigenda to Tender Documents, if any

(e) Notice Inviting e-Tender (NIeT)

(f) Instructions to Bidders

(g) General Conditions of Contract

(h) Technical Specifications

(i) Bill of Quantities and Preamble to B.O.Q. with Provisional Sums

(j) Tender Drawings

(k) Technical Submission by the contractor

(l) List of Technical Personnel (Section B, Form - IV)

(m) List of Equipment (Section B, Form - V)

(n) Undertaking for Technical and Equipment Capability (Section B, Form - VI)

(o) Self Declaration (as per format shown in Section B)

(p) Other documents as agreed upon Within seven days of receipt of the Letter of Acceptance, the successful bidder shall present himself at the office of the Employer to sign the Form of Agreement (to be typed on Non Judicial Stamp Paper of value Rs.100/- by the bidder). The successful bidder shall have to sign on every page of all the hard copies of tender document comprising of the above-mentioned documents, which will be downloaded and printed by HRBC, by authorized signatory of the bidder in the office of Director (Pl. & Dn.). HRBC.

32. Performance Security/Guarantee

Within seven days of receipt of the notification of award from the Employer the successful bidder shall furnish to the Employer a performance security in the form of Bank Guarantee in favour of 'Hooghly River Bridge Commissioners' from Nationalised or Scheduled Banks of India to be acceptable to the Employer of an amount of 7.5% of the Contract Price in accordance with the Conditions of Contract. The form of Performance Bank Guarantee provided in 'Section B Form-IX of the bidding documents may be used or some other form acceptable to the Employer which will have provision of extending the Bank Guarantee with extension of time approved by the Employer.

33. Annulment of the Award

Failure of the successful bidder to comply with the requirements of Clauses 31 or 32 shall constitute sufficient grounds for the annulment of the award and forfeiture of the bid security.

34. Issue of Notice to Commence

After receipt of Performance Security from the contractor as stipulated in Clause 32 of Instructions to Bidders and Clause 6 of General Conditions of Contract or even after award of the contract through issue of Letter of Acceptance, the Engineer will notify the contractor to commence work as soon as reasonably possible with due expedition and without delay. If the contractor fails to commence works physically at the site within 7 (seven) days from the date of issue of Notice to Commence Work, that will constitute a breach of contract and in that case the Employer will have right to annul the contract with forfeiture of Performance Security and if the same is not deposited forfeiture of Bid Security.”

15. Keeping in mind the aforementioned clauses of the Instruction to Bidders, if I look to the letter dated 18.11.2016 as issued by the respondent Commissioners, it appears that the same is not only an acceptance of the offer of the writ petitioner company but also the same is a formal work order with a notice to commence work upon compliance of the stipulations regarding performance security and signing of form of agreement. Admittedly, by issuing a letter dated 05.12.2016 the writ petitioner expressed its intention to step down from the tender and soon thereafter that is on 07.12.2016 the respondent Commissioners have issued the letter of termination with immediate effect following the provisions of the Instruction to Bidders.

16. For effective adjudication of the instant writ petition this Court further considers that the relevant portion of the letter dated 07.12.2016 is required to be looked into and the same is also quoted hereinbelow:

“You have yet neither deposited Performance Security nor executed the Agreement.

You have prayed to step down from this tender on humanitarian ground.

Under the circumstances, the contract awarded to you is hereby terminated with immediate effect following the provisions in the instructions to bidders.”

17. On careful perusal of the aforementioned quoted portion of the letter of termination dated 07.12.2016 as issued by the respondent Commissioners, it appears to this Court that the respondent Commissioners in such letter of termination made specific reference in respect of the Instruction to Bidders and categorically indicated immediate termination of the contract following the provisions of the said Instruction to Bidders which permits the respondent Commissioners to forfeit the EMD in case the awardee of the tender fails to fulfill his obligation regarding signing of agreement and submission of performance security/ guarantee.

18. At this juncture, the moot question arises for consideration before this Court is as to whether the respondent Commissioners are at all entitled to forfeit the EMD amount as submitted by the writ petitioner company at the time of submission of the bid following the provisions of the Instruction to Bidders and further as to whether Section 74 of the Contract Act shall have a prevailing effect over the Instruction to Bidders.

19. In order to answer the aforementioned legal question/ questions as involved in the instant writ petition this Court at the very outset proposes to look to the law of the land in this regard. In the reported decision of **National Highways Authority of India (Supra)** the Hon'ble Supreme Court while dealing with an identical situation expressed the following view:

“2. Briefly stated, the facts are as follows:

The appellant issued a tender notice calling for tenders for collection of toll on a portion of the highway running through Rajasthan. The last date of submission of bid was 31-7-1997. It was also provided that toll plazas would be got completed by the authority and handed over to the selected enterprise. There were two types of securities to be furnished, one being a bid security in an amount of Rs 50 lakhs (Rupees fifty lakhs only); the other was a performance security by way of a bank guarantee of Rs 2 crores (Rupees two crores only). Clauses 7.1 to 8 deal with bid security. They read as under:

“7. Bid security

7.1. The bidder shall furnish, as a part of his bid, a bid security in an amount of Rs 50 lakhs (Rupees fifty lakhs only), or an equivalent amount in a freely convertible currency. The bid security shall, at the bidder's option, be in the form of a bank draft, or guarantee from a bank located in India. The bank guarantee shall be in the form of bank guarantee for bid security included herein, valid for 150 days after the last date for submission of the bid.

.....

7.5. The bid security may be forfeited:

(a) if the bidder withdraws his bid during the period of bid validity; or

(b) in case the successful bidder fails within the specified period to

(i) furnish the required performance security; and

(ii) sign the agreement

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]

20. While adopting the view taken by the Hon'ble Supreme Court in the case of **National Highways Authority of India (Supra)**, the Hon'ble Supreme Court in a subsequent decision namely; **Malik Traders (Supra)** expressed the following view:

“2.As required by the terms and conditions of the bid, all the bidders, including the respondent, deposited the bid security of Rs 20 lakhs in the form of bank guarantee or FDR in favour of the Executive Engineer.

3. In Para 10 of the offer/bid, the respondent also agreed that the full value of bid security would be forfeited without prejudice to any other right or remedy available to the Executive Engineer or his successor in office or his representative, should the respondent withdraw or modify its bid/offer after the last date and time for the receipt of bids, during the period of bid validity (90 days) or extended validity period.

5. Thereafter, a letter of acceptance dated 26-11-2008 was issued to the respondent, M/s Malik Traders who was the second highest bidder. As per Condition 6 of the said letter of acceptance, the respondent was required to deposit the security amount and the first instalment within 21 days from the receipt of the letter of acceptance. However, the respondent failed to deposit the security amount and the first instalment as required by the letter of acceptance. Hence, vide Memo No. 5029 dated 17-12-2008 issued by the Executive Engineer, Provincial Division No. III, PWD, B&R Branch, Karnal, the letter of acceptance was cancelled and withdrawn and the bid security of Rs 20 lakhs was forfeited.

6. It has to be mentioned that before receipt of the letter of acceptance, the respondent had sent a letter dated 15-11-2008 informing the Executive Engineer that the respondent was not interested in the work and, therefore, the amount of bid security deposited on 19-9-2008 may be refunded.....

11. In Para 10 of the offer/bid, the respondent had also agreed that the full value of the bid security would be forfeited without prejudice to any other right or remedy available to the Executive Engineer or his successor in office or his representative, should the respondent withdraw or modify its offer/bid during the period of bid validity (90 days) or extended validity period. Since the

respondent withdrew its offer during the period of bid validity in violation of the abovementioned agreement in Para 8 of the offer/bid, the full value of bid security was liable to be forfeited in terms of the agreement contained in Para 10 of the offer/bid. Thus, even though under Section 5 of the Act a proposal may be revoked at any time before the communication of its acceptance is complete as against the proposer, the respondent was bound by the agreement contained in its offer/bid to keep the bid open for acceptance up to 90 days after the last date of receipt of bid and if the respondent withdrew its bid before the expiry of the said period of 90 days the respondent was liable to suffer the consequence (i.e. forfeiture of the full value of bid security) as agreed to by the respondent in Para 10 of the offer/bid. Under the cover of the provisions contained in Section 5 of the Act, the respondent cannot escape from the obligations and liabilities under the agreements contained in its offer/bid.

12. The right to withdraw an offer before its acceptance cannot nullify the agreement to suffer any penalty for the withdrawal of the offer against the terms of agreement. A person may have a right to withdraw his offer, but if he has made his offer on a condition that the bid security amount can be forfeited in case he withdraws the offer during the period of bid validity, he has no right to claim that the bid security should not be forfeited and it should be returned to him. Forfeiture of such bid security amount does not, in any way, affect any statutory right under Section 5 of the Act. The bid security was given by the respondent and taken by the appellants to ensure that the offer is not withdrawn during the bid validity period of 90 days and a contract comes into existence. Such conditions are included to ensure that only genuine parties make the bids. In the absence of such conditions, persons who do not have the capacity or have no intention of entering into the contract will make bids. The very purpose of such a condition in the offer/bid will be defeated, if forfeiture is not permitted when the offer is withdrawn in violation of the agreement.

15. *Allowing the appeal, this Court held as follows: (National Highways Authority of India case [(2003) 7 SCC 410] , SCC p. 416, para 9)*

“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 Contract Act, 1872. The 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 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.”

We respectfully agree with the above view of this Court.”

[Emphasis Supplied]

21. Similar view was taken by the Hon’ble Supreme Court in the case of

National Thermal Power Corporation Ltd.(Supra).

22. In the event the aforementioned three reported decisions of the Hon'ble Supreme Court are looked into conjointly, it appears to this Court that the Hon'ble Supreme Court had granted a stamp of approval regarding forfeiture of earnest/security money as has been given at the time of submission of bid in the event the successful bidder withdraws his offer subsequently and in doing so the Hon'ble Supreme Court further held that withdraw of such earnest/security, in no way affects any statutory right under the contract. In view of such, this Court holds that the provision of Section 74 of the Contract Act has got no manner of application in the facts and circumstances as involved in the instant writ petition.

23. This Court has meticulously gone through the reported decision of ***Dolphin Suppliers (Supra)*** as passed by a Division Bench of this Court wherein much reliance was placed upon the judgment passed by the Hon'ble Supreme Court in the case of ***Security Engg. (P) Ltd. (Supra)***, ***MBL Infrastructure Ltd.(Supra)***, ***Shree Coal Enterprises of India (P) Ltd. (Supra)*** and ***Kailash Nath Associates***. It appears to this Court that the judgment of ***Dolphin Suppliers (Supra)*** is distinguishable from the facts and circumstances of the instant case since the subject matter as involved in the said appeal was setting aside of cancellation of sale of a landed property pursuant to an e-auction initiated by SEBI upon acceptance of the remaining consideration.

24. It further appears to this Court that the perspective of the reported decision of ***Security Engg.(Supra)*** is also different since on account of COVID

pandemic the successful bidder could not act in terms and conditions of the work order as he could not complete and/or foresee the adverse effect of such pandemic. It further appears to this Court that the facts and circumstances as involved in **MBL Infrastructure Ltd. (Supra)** are equally distinguishable from the facts and circumstances as involved in the instant writ petition inasmuch as the legal question as involved in the said case was on account of a material concealment and/or material non-disclosure, the forfeiture clause would become applicable or not. The reported decision of **Shree Coal Enterprises of India (P) Ltd.(Supra)** equally has no manner of application since the subject matter of dispute was with regard to the non-refund of the EMD against alleged non-lifting of two racks of coal purchased by the writ petitioner company. The reported decision of **Kailash Nath Associates (Supra)** is also not applicable in view of the fact that in the said judgment the Hon'ble Supreme Court laid down the law relating to law on compensation for breach of contract under Section 74 of the Contract Act.

25. It thus appears to this Court that the writ petitioner company has miserably failed to make out a case that the facts and circumstances of the instant writ petition comes under the purview of Section 74 of the Contract Act wherein the party complaining of a breach is entitled to receive reasonable compensation only if it is a genuine pre-estimate of damages fixed by both parties and found to be such by the Court. Rather it appears to this Court that the stand taken by the respondent Commissioners by way of defense is in accordance with law laid down in the case of **National Highways Authority**

(Supra), National Thermal Power Corporation Ltd.(Supra) and Malik Traders (Supra) wherein it has been consistently held by the Hon'ble Supreme Court that in the event a bidder participates in a bid knowing fully well that in case he becomes successful in such bid and subsequently, fails within the stipulated period to furnish the required performance security and sign the agreement in that event the said successful bidder may have a right to withdraw his offer however, he has no right to claim that the earnest money/ security to be returned to him.

26. In view of the discussion made hereinabove this Court thus finds no merit in the instant writ petition.
27. Accordingly, the instant writ petition is dismissed.
28. With the dismissal of the instant writ petition, the interim order, if there be any, stands hereby vacated.
29. All pending interlocutory applications, if there be any, are also dismissed.
30. There shall be no order as to cost.
31. Urgent photostat certified copy of this judgement, if applied for, be given to the parties on completion of usual formalities.

(PARTHA SARATHI SEN, J.)