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

% Judgment Reserved on*: 15.04.2026*
Judgment delivered on*: 01.07.2026*
Judgment uploaded on*: 02.07.2026*

\+ **LPA 38/2021**

CJ DARCL LOGISTICS LTD. .....Appellant

versus

OIL AND NATURAL GAS CORPORATION LTD.
.....Respondent

\+ **LPA 39/2021**

TRANSRAIL LOGISTICS LTD. .....Appellant

versus

OIL AND NATURAL GAS CORPORATION LTD.
.....Respondent

Advocates who appeared in this case

For the Appellant : Mr. Anil Goel and Mr. Aditya Goel, Advs.

For the Respondents : Mr. Chetan Sharma, ASG and Mr Varun Mishra, Adv.

CORAM:
HON'BLE MR. JUSTICE V. KAMESWAR RAO
HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

JUDGMENT

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MANMEET PRITAM SINGH ARORA, J.

1. The present appeals have been filed under Clause 10 of the Letters Patent, read with the Delhi High Court Act, 1966 ['Act of 1966'], against the final order dated 07.01.2021 ['impugned order'].

2. The Appellant in LPA No. 38/2021, i.e., CJ Darcl Logistics Limited, is engaged in the business of logistics and transportation of goods across India by road and rail. The Appellant in LPA No. 39/2021, i.e., Transrail Logistics Limited, is a subsidiary company of CJ Darcl [hereinafter collectively referred to as 'the Appellants'].

3. The Respondent is a Public Sector Enterprise of the Government of India, under the control of the Ministry of Petroleum and Natural Gas and deals with oil, gas and energy.

4. The Respondent published a Notice Inviting Tender dated 15.09.2017 ['NIT'], inviting techno-commercial E-Bids with respect to Tender No. ZN6MC17001, namely 'Rate Contract for Hiring of Services of All India Material Transportation through Trucks and Trailers' ['said tender']. The said tender was divided into 8 groups: 4 for the Trailer segment and 4 for the Truck Segment. The Appellant in LPA No. 38/2021 participated in all 8 groups, whereas the Appellant in LPA No. 39/2021 participated in the MSME[1] category only in the group of 4 groups for Trailer.

5. The price bids were opened by the Respondent on 05.03.2018; however, the price bids of the Appellants were not opened and considered by the Respondent. *Vide* letter dated 16.03.2018, received from the Silchar office of the Respondent in relation to another tender, the Appellants were informed that their price bids were not opened in view of the banning

[1] Micro, Small, and Medium Enterprises

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proceedings initiated against the Appellants in respect of the said tender.

6. *Vide* another communication dated 26.03.2018, the Appellants were informed that their bids in the said tender had been rejected for violation of the Integrity Pact. The bank guarantees submitted by the Appellant in LPA No. 38/2021 as security deposit/Earnest Money Deposit ['EMD'] were also invoked and forfeited by the Respondent, and the same was informed to the said Appellant on 27.03.2018. The Respondent thereafter issued a Show Cause Notice dated 09.04.2018 ['SCN'] to the Appellants alleging violation of Section 2 of the Integrity Pact.

7. Against the SCN, the Appellants submitted their respective replies on 23.04.2018. Thereafter, the Respondent passed two separate yet identical banning orders, both dated 06.06.2018 ['impugned banning orders'], addressed individually to each of the Appellants, thereby banning them from engaging in business dealings with the Respondent for a period of six months, and thereafter their representation against the same was also rejected vide order dated 19.06.2018 ['impugned representation rejection order'].

8. The Appellants, aggrieved by the said orders, filed the underlying writ petitions seeking the setting aside of the impugned banning orders and the impugned representation rejection order. *Vide* the impugned order dated 07.01.2021, the learned Single Judge upheld the order rejecting the Appellants' representation as well as the impugned banning orders dated 06.06.2018. At the same time, the learned Single Judge directed the refund of the EMD amount of Rs. 2,95,26,590/- forfeited by the Respondent. The impugned order, however, did not grant any interest on the said refunded amount.

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9. In these facts, the Appellants have instituted the present appeals assailing the impugned order to the extent it upholds the impugned banning orders.

10. The Respondent has filed cross-objections under Order XLI Rule 22 of the Code of Civil Procedure, 1908 ['CPC'], by filing CM No. 26138/2021 in LPA No. 38/2021. The Respondent assails the impugned order to the limited extent that it directs the Respondent to refund the EMD amount of Rs. 2,95,26,590/-.

11. At the outset, this Court notes that *vide* order dated 22.02.2024, CM No. 26138/2021 was inadvertently disposed of. However, in order to consider the Respondent's cross-objections, we find it apposite to revive the said application and decide the same.

12. During the pendency of these proceedings, the Respondent deposited the EMD amount of Rs. 2,95,26,590/- in W.P. (C) 6827/2018 in the year 2021. The said amount has been released to the Appellant in the year 2022 in pursuance of the order dated 08.07.2022 as against furnishing of a bank guarantee.

13. This Court has heard the learned counsel for the parties and perused the record.

14. Mr. Anil Goel, learned counsel for the Appellants, submitted at the hearing that due to the passage of time, the impugned banning orders, which were operative for a period of six months, have worked out and the period of banning has already been undergone by the Appellants. He submitted that without going into the merits of the impugned banning orders, the present appeals may be disposed of by permitting the Appellants to participate in the future contracts of the Respondent or any other third party, including

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Government establishments or PSUs[2], without any reference to the impugned banning orders.

14.1. He further submitted on behalf of the Appellant in LPA No. 38/2021 that the said Appellant is pressing for relief of grant of interest at the rate of 9% per annum on the EMD amount of Rs. 2,95,26,590/- w.e.f. 27.03.2018, i.e., the date of forfeiture of the said amount till the date of the actual payment. He relies upon several judicial precedents referred to in the written submissions dated 02.08.2023 for relief of interest.

I. Claim for interest and the EMD refund

15. In our considered opinion, the Appellant's prayer for grant of interest on the EMD amount is reasonable and was a consequential relief to which the Appellant was entitled after the learned Single Judge held that the forfeiture of the EMD was illegal. The judgment of the Supreme Court in **Alok Shanker Pandey v. Union of India & Others**[3] relied upon by the Appellant is apposite, wherein paragraph 9 reads as under: -

> "9. **It may be mentioned that there is misconception about interest. Interest is not a penalty or punishment at all, but it is the normal accretion on capital.** For example, if A had to pay B a certain amount, say 10 years ago, but he offers that amount to him today, then he has pocketed the interest on the principal amount. Had A paid that amount to B 10 years ago, B would have invested that amount somewhere and earned interest thereon, but instead of that A has kept that amount with himself and earned interest on it for this period. Hence, equity demands that A should not only pay back the principal amount but also the interest thereon to B."
>
> [Emphasis supplied]

16. The impugned order does not note the prayer for interest claimed in the W.P. (C) 6827/2018 and therefore does not expressly deal with the said prayer in the writ petition. There is therefore, an implied rejection of the said

[2] Public Sector Undertakings
[3] (2007) 3 SCC 545

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prayer, albeit without any reasons.

17. We are therefore of the considered opinion that the Appellant will be entitled to 8% simple interest per annum on the EMD amount of Rs. 2,95,26,590/-. The interest will be payable w.e.f. 27.03.2018 until the said amount stood deposited by the Respondent with the Registry of this Court in 2021. The Respondent will remit the amount to the Appellant directly within a period of two [2] weeks, along with a calculation sheet specifying the date of deposit of the EMD amount with the Registry in the year 2021.

18. We are, however, not inclined to direct the Respondent to pay any interest for the period after the principal amount of Rs. 2,95,26,590/- stood deposited with the Registry of this Court in the year 2021.

19. The Appellant was paid over the principal amount of Rs. 2,95,26,590/- by the Registry of this Court in the year 2022; however, the interest accrued thereon after the deposit, by the Respondent, in the year 2021 was not released to the Appellant and is lying deposited with the Registry in an FDR. The Registry is directed to release the entire amount lying in the said FDR to the Appellant within a period of two [2] weeks. The Registry is also directed to return the bank guarantee dated 12.05.2026 to the Appellant.

20. With the aforesaid directions, the prayer (a) in the LPA No. 38/2021 seeking interest on the EMD amount of Rs. 2,95,26,590/- stands allowed in the aforesaid terms.

II. Clarification sought *qua* impugned banning orders

21. We shall next consider the challenge in both the LPAs[4] to the respective impugned banning orders dated 06.06.2018.

[4] Letters Patent Appeals

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22. As noted above, Mr. Anil Goel, Advocate has submitted that the Appellants are no longer challenging the impugned order of the learned Single Judge to the extent it upholds the impugned banning orders, as the Appellants have already undergone the banning period of six months and instead only seek a clarification that it is permissible for the Appellants to henceforth participate in future contracts, without any reference to the impugned banning orders. The submission is also specifically pleaded at paragraph '13' of the written submissions dated 02.08.2023 filed in LPA No. 38/2021.

23. In view of the submissions of Appellants with respect to the impugned banning orders dated 06.06.2018, we illustratively refer to the operative portion of the impugned banning order pertaining to the Appellant in LPA No. 38/2021, which reads as under: -

> "11. Accordingly, ONGC has decided to ban all business dealings with you i.e. M/s CJ Darcl Logistics Limited, Tilak Bazar-19, Hisar- 125001, Haryana (Vendor Code: 828996) along with its allied concern(s), partner(s) or associate(s) or directors or proprietors involved in any capacity for a period of 6 months from the date of issue of banning order.
>
> During the aforementioned period of banning of 6 months, neither any tender enquiry shall be issued by ONGC against any type of tender nor offers of M/s CJ Darcl Logistics Limited, Tilak Bazar-19, Hisar- 125001, Haryana (Vendor Code: 828996) or its allied concern(s), partners) or associates or directors or proprietors involved in any capacity etc. shall be considered by ONGC in any of the on-going tender(s)."

The operative part of the banning order in LPA No. 39/2021 is identical.

24. The operative part of the impugned banning orders makes it expressly clear that the ban on participation was limited to a period of 6 months and only vis-à-vis the Respondent [i.e., ONGC]. In the facts of these appeals,

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since an interim order operated in favour of the Appellants during the pendency of the writ petitions, the banning period of 6 months commenced only on 07.01.2021, i.e., after the pronouncement of the impugned judgment by the learned Single Judge and this period expired on 06.07.2021.

25. It is a matter of record that after 06.07.2021, the Appellants have not faced any impediment in participation in any tender process issued by the Respondent or any third party due to the said impugned banning orders.

26. In these facts, the directions prayed for by the Appellants to the effect that this Court must clarify that the Appellants can participate in future tenders floated by any third party, including Government establishments or PSUs, *without* any reference to the impugned banning orders, are not only beyond the scope of the said banning orders but, in effect, seeks a relief in their favour against third parties [i.e., Government establishments, PSUs, etc.] who are not before this Court. Each tendering authority is entitled to stipulate its own eligibility and disclosure conditions, and it is for such authority to assess the relevance, if any, of any prior banning order in accordance with its governing tender conditions. Consequently, if the tender conditions of any such third party require disclosure of past banning orders, the Appellants would be contractually required to make such disclosure. In these circumstances, no omnibus declaration, as prayed for by the Appellants, can be granted.

The Appellants have not placed before this Court any event post 06.07.2021, where a third party has denied them an opportunity to participate in the tender process due to the impugned banning orders and therefore, we find that the omnibus declaration sought is without any cause of action.

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27. It is trite law that since the impugned banning orders have already taken effect and the Appellants have undergone the ban, these banning orders would ordinarily not form the basis of denial of opportunity to participate in tenders issued by Government authority. If the Appellants are excluded from participation in tenders by any third party solely by placing reliance on the impugned banning orders, the Appellants would have to avail their legal remedies against such exclusion and the reasonableness of such action would be determined in those proceedings.

28. Even on the merits of the challenge to the impugned banning orders dated 06.06.2018, we find that the findings recorded by the learned Single Judge are well reasoned and do not merit any interference. The conclusion in paragraph '18' of the impugned order is sufficient to uphold the impugned banning orders. The relevant paragraph 18 reads as under: -

> "18. In the present case, the respondent has come to a conclusion that because the bids that were submitted by the petitioners were submitted by Mr. Pradeep Bansal; one under his own signatures for Transrail and the second through his Power of Attorney holder- Mr. Narendra Sharma, for CJ Darcl, the bids were designed and coordinated by the same person thereby violating the provisions of Integrity Pact. The respondent has not invoked the provision as is contained in the amended Integrity Pact for proceeding against the petitioners only because of their relationship as holding and subsidiary company. No fault can be found with the above finding of the respondent."
>
> [Emphasis supplied]

Therefore, we hold that the impugned banning orders passed by the Respondents have been rightly upheld by the learned Single Judge.

29. The prayer of the Appellants seeking a declaration *qua* the impugned banning orders is disposed of with the aforesaid directions.

III. Maintainability of the Cross-objections of the Respondent challenging the direction for refund of the EMD and merits of the said objection

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30. Lastly, we have to consider the cross-objections filed by the Respondent as CM No. 26138/2021 in LPA No. 38/2021 under Order XLI Rule 22 CPC impugning the order dated 07.01.2021 to the extent that it directs the Respondent to refund the EMD amount of Rs. 2,95,26,590/-.

31. The Appellants have raised an objection to the maintainability of the cross-objections. It is contended that the provision of Order XLI Rule 22 CPC has no application in the present appeal filed under Clause 10 of the Letters Patent. Learned counsel for the Appellants have relied upon the judgment of the full bench of the High Court of Madhya Pradesh in **Jabalpur Development Authority v. Y.S. Sachan and others**[5] to contend that a cross-objection filed under Order XLI Rule 22 CPC cannot be construed to apply to a proceeding under LPA. He relies upon paragraph nos. 9, 10, and 11, which read as under: -

> "9. On a perusal of the aforesaid decision it is noticeable that their Lordships referred to the decision rendered in the case of Ramanbhai Ashabhai Patel v. Dabhi Ajitkumar Fulsinji, AIR 1965 SC 669, the Constitution Bench judgment wherein it has been held that a party can always support the judgment in his favour even on grounds that was negatived in the impugned judgment.
>
> 10. If the aforesaid judgment is considered in juxtaposition of the law laid down in the case of Puran Singh (supra) there can be no doubt that a respondent can defend the judgment pasted in a Letters Patent Appeal where the order of the single Judge is under assail. The moot question that arises for consideration is whether in such an appeal a cross objection can be filed. A party who is aggrieved by an order of the learned single Judge can prefer an independent appeal. The cross objection has a different connotation. The concept of cross appeal has a different contour and colour. A cross objection or a cross appeal is filed after receipt of the notice within the time provided under Order 41, Rule 22 of the Code of Civil Procedure. But, there is no concept of filing of cross objection in a Letters Patent Appeal in the Rules. Rules have been framed for filing of letters patent appeals. An LPA has to be filed within

[5] 2004 SCC OnLine MP 54

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thirty days. In this context we may profitably refer to the relevant Rule. It reads as under:

> "XIII (1) Any appeal under clause 10 of the Letters Patent shall be filed within 30 days from the date of judgment and order of the single Judge.
>
> Provided, however, that, any delay in filing the appeal may be condoned for good and sufficient reason.
>
> (2) In computing the period of limitation for an appeal under clause 10 of the Letters Patent, the time taken for obtaining leave to appeal, when such leave is necessary and the time taken for obtaining certified copy of the judgment and order or decree, shall be excluded.
>
> (3) A memorandum of appeal under clause 10 of the Letters Patent shall be accompanied by two certified copies or one certified copy and one photocopy, or two photo copies of the judgment and order or decree appealed from."

11. On a perusal of the aforesaid Rule it is clear that there is provision for condonation of delay in preferring an appeal. But that does not necessarily mean that a cross objection or cross appeal can be filed awaiting notice in appeal. It is relevant to state that no cross objection is entertained under Article 226 of the Constitution of India like a counter claim in a suit. True it is, in a letters patent appeal the facts and law can be gone into by the Court deciding the intra-Court appeal but that does not necessarily convey that while hearing an appeal, a cross objection would be entertained when a counter claim or counter relief is not entertained in a writ petition, at the instance of the opposite party or respondent therein. Another facet is worth noting. A cross objection has its own independent existence under the Code of Civil Procedure but the same cannot be construed to apply to a proceeding under writ jurisdiction or an appeal arising therefrom. The High Court of Andhra Pradesh in the decision rendered in the case of Chittoor Co-operative Town Bank Ltd. (supra) has applied concept of the Order 41, Rule 22 in entirety. In our considered opinion the same is not permissible as per the law laid down in the case of Puran Singh (supra) in the case of Puran Singh (supra) the Supreme Court has held that the High Court should be left to adopt its own procedure for granting relief to the persons. **An appeal from an order made under Article 226/227 is in a different realm altogether and can never be understood to mean that a cross objection which a matter of statutory right under the Code of Civil Procedure would lie to the Court when the LPA is admitted.**"

[Emphasis supplied]

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32. In response, Mr. Chetan Sharma, learned Additional Solicitor General, has submitted that a cross-objection is maintainable in an LPA and in this regard relies upon the judgment of the Supreme Court in **Dheeraj Singh v. Greater Noida Industrial Development Authority and Others**[6].

33. We are unable to agree with the contentions of the Respondent with respect to maintainability of the cross-objections under Order XLI Rule 22 CPC in an LPA.

34. In addition to the judgment of the full bench of the High Court of Madhya Pradesh relied upon by the Appellants, we find it apposite to refer to the judgment of the Supreme Court in **Puran Singh v. State of Punjab**[7]**,** wherein the Supreme Court, after referring to the Explanation to Section 141 CPC, unequivocally held that provisions of CPC have no application to proceedings under Article 226 of the Constitution of India. The relevant paragraphs read as under: -

> "7. When the High Court exercises extraordinary jurisdiction under Article 226 of the Constitution, it aims at securing a very speedy and efficacious remedy to a person, whose legal or constitutional right has been infringed. If all the elaborate and technical rules laid down in the Code are to be applied to writ proceedings the very object and purpose is likely to be defeated. According to us, in view of the conflicting opinions expressed by the different courts, Parliament by the aforesaid amending Act introduced the explanation saying that in Section 141 of the Code the expression 'proceedings' does not include "any proceedings under Article 226 of the Constitution" and statutorily recognised the views expressed by some of the courts that writ proceedings under Article 226 of the Constitution shall not be deemed to be proceedings within the meaning of Section 141 of the Code. After the introduction of the explanation to Section 141 of the Code, it can be said that when Section 141 provides that the procedure prescribed in the Code in regard to suits shall be followed, as far as it can be made applicable "in all proceedings in any court of civil jurisdiction" it shall not include a proceeding under

[6] 2023 SCC OnLine SC 768
[7] (1996) 2 SCC 205

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Article 226 of the Constitution. In this background, according to us, it cannot be held that the provisions contained in Order 22 of the Code are applicable per se to writ proceedings. If even before the introduction of the explanation to Section 141, this Court in the case of Babubhai v. Nandlal [(1974) 2 SCC 706 : AIR 1974 SC 2105 : (1975) 2 SCR 71] had said that (SCC Headnote p. 707) the words "as far as it can be made applicable" occurring in Section 141 of the Code made it clear that, in applying the various provisions of the Code to the proceedings other than those of a suit, the court has to take into consideration the nature of those proceedings and the reliefs sought for after introduction of the explanation the writ proceedings have to be excluded from the expression 'proceedings' occurring in Section 141 of the Code. If because of the explanation, proceeding under Article 226 of the Constitution has been excluded, there is no question of making applicable the procedure of Code "as far as it can be made applicable" to such proceeding. The procedures prescribed in respect of suit in the Code if are made applicable to the writ proceedings then in many cases it may frustrate the exercise of extraordinary powers by the High Court under Articles 226 and 227 of the Constitution.

……

11. We have not been able to appreciate the anxiety on the part of the different courts in judgments referred to above to apply the provisions of the Code to writ proceedings on the basis of Section 141 of the Code. When the Constitution has vested extraordinary power in the High Court under Articles 226 and 227 to issue any order, writ or direction and the power of superintendence over all courts and tribunals throughout the territories in relation to which such High Court is exercising jurisdiction, the procedure for exercising such power and jurisdiction have to be traced and found in Articles 226 and 227 itself. No useful purpose will be served by limiting the power of the High Court by procedural provisions prescribed in the Code. Of course, on many questions, the provisions and procedures prescribed under the Code can be taken up as guide while exercising the power, for granting relief to persons, who have invoked the jurisdiction of the High Court. It need not be impressed that different provisions and procedures under the Code are based on well-recognised principles for exercise of discretionary power, and they are reasonable and rational. But at the same time, it cannot be disputed that many procedures prescribed in the said Code are responsible for delaying the delivery of justice and causing delay in securing the remedy available to a person who pursues such remedies. The High Court should be left to adopt its own procedure for granting relief to the persons concerned. The High Court is expected to adopt a procedure which can be held to be not only reasonable but also expeditious."

[Emphasis supplied]

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35. In these proceedings, the writ petitions filed under Article 226 of the Constitution were entertained by the learned Single Judge in exercise of the original jurisdiction vested in the High Court under Section 5(1) of the Act of 1966. As held by the Supreme Court in **Puran Singh** (supra), the provisions of the CPC do not apply proprio vigore to proceedings under Article 226 of the Constitution of India, unless expressly made applicable by statute.

36. The appeal against the impugned order has been filed under Clause 10 of the Letters Patent of Lahore as applicable to Delhi. CPC has neither been made applicable to the proceedings entertained by the High Court under Article 226 of the Constitution of India nor to an appeal filed under Clause 10 of the Letters Patent. The Respondent therefore could not have filed cross-objections under Order XLI Rule 22 CPC, considering that CPC does not apply to the appeal filed under Letters Patent. The Respondent was not remediless and ought to have exercised its right to file an independent appeal against the impugned judgment, in accordance with law.

37. The reliance placed by the Respondent on the judgment of **Dheeraj Singh v. Greater Noida** (supra) is misconceived. The said judgment arose in proceedings arising under the Land Acquisition Act, 1894 [‘Act of 1894’]. The issue arising for consideration was with respect to non-consideration by the High Court of the cross-objections filed by the Government authority in the appeal filed by the landowners against the rate of award of compensation. The Supreme Court, on a perusal of the impugned judgment of the High Court, found that the cross-objections were neither considered nor adjudicated by the High Court, and in this background, it was held that the High Court had erred. We are unable to

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appreciate how this judgment would enable the Respondent herein to maintain the cross-objections in this LPA, as under the Act of 1894, provisions of CPC have been specifically made applicable to appeals, and in this regard, Sections 53 and 54 of the Act of 1894 are expressly clear. Thus, indeed, cross-objections under Order XLI Rule 22 CPC are available to a respondent in appeals filed under the Act of 1894.

38. Since the right to file cross-objections as per Order XLI Rule 22 CPC is a substantive right granted by the statute, unless the provisions of CPC have been made expressly applicable to the legal proceedings in question, a Respondent cannot file the cross-objections in an LPA, and its remedy to challenge the impugned order has to be exercised in accordance with the statute which governs the original proceedings.

39. Nevertheless, to put a *quietus* to the issue, we have examined the impugned order and the legality of the reasons recorded by the learned Single Judge for issuing a direction for refund of the EMD amount of Rs. 2,95,26,590/- on the grounds pleaded in CM No. 26138/2021.

40. The reasons recorded by the learned Single Judge are as under: -

> "28. A reading of the above Section of the Integrity Pact would clearly show that where the bidder is disqualified from the bid due to transgression of the Integrity Pact, the respondent is entitled to "demand and recover" from the bidder "liquidated damages" equivalent to earnest money deposit/bid security. The bidder has to pay the same without protest subject only to the condition that if the bidder/Contractor can prove and establish that the exclusion of the bidder from the tender process has caused no damage or less damage than the amount of the liquidated damages, then the bidder/Contractor shall compensate the Principal only to the extent of the damage in the amount proved. **Therefore, on a transgression of the Integrity Pact being found by the respondent to have been committed by a bidder, the respondent has to first raise a demand for the liquidated damages equivalent to the earnest money deposit/bid security. On such demand being raised, the bidder would be entitled to prove and establish that no**

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loss or loss of a lesser amount has been caused to the respondent, in which event either no amount or lesser amount shall be claimed payable by the bidder.

29. In the present case, the bank guarantee of the petitioners towards the earnest money deposit was encashed by the respondent without any notice to the petitioners. The question therefore is whether the amount so received can be retained by the respondent in the facts of the present case. Admittedly, the respondent has not issued any notice to the petitioner demanding the above amount as liquidated damages. Infact, it is the case of the respondent that the same automatically stood forfeited. The petitioners have claimed that due to the disqualification of the petitioner, no loss was caused to the respondent. On the other hand the respondent claimed that no such loss is required to be shown. They have placed reliance on the judgment of the Supreme Court in Kailash Nath and Associates, (Supra), wherein the Supreme Court has inter alia held as under:-

> *"41. It must, however, be pointed out that in cases where a public auction is held, forfeiture of earnest money may take place even before an agreement is reached, as DDA is to accept the bid only after the earnest money is paid. In the present case, under the terms and conditions of auction, the highest bid (along with which earnest money has to be paid) may well have been rejected. In such cases, Section 74 may not be attracted on its plain language because it applies only "when a contract has been broken".*
>
> *xxxxxx*
>
> *40.7 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."*

30. In the present case, though Section 74 of the Indian Contract Act, 1872 may not have any application, Section 4 of the Integrity Pact itself requires a demand to be raised on the earnest money deposit and a right is created in favour of the bidder to show on such demand that no damage is suffered by the respondent or that the damage suffered is lesser than the earnest money deposit, in which case, either no such amount can be recovered from the bidder or a lesser amount is to be recovered.

31. As noted, the respondent has not denied that no loss was suffered by

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> the respondent due to the disqualification of the petitioners from the bid on account of their transgression of the Integrity Pact. There would therefore, be no disputed question of fact to be adjudicated. The forfeiture of the earnest money deposit of the petitioner, therefore, cannot be sustained and is ordered to be refunded to the petitioners.
>
> 32. Accordingly, while the impugned orders in so far as they ban the petitioners from all business dealings with the respondent for a period of six months are upheld. The respondent is however, directed to refund the Security Deposit/Earnest Money Deposits of the petitioners forfeited by it, within a period of four weeks of this order."
>
> [Emphasis supplied]

41. The learned Single Judge directed the refund on two grounds:

(a) Non-following of the procedure set out in Section 4 of the Integrity Pact by issuing a notice of demand; and

(b) No loss having been suffered by the Respondent due to the exclusion of the bidder from the tender process.

42. The Respondent has impugned the said findings of the learned Single Judge on the ground that it has *indeed* suffered losses, as the disqualification of the Appellants from the bidding process made the tender process less competitive. It also contended that the communications dated 16.03.2018 and 26.03.2018 sufficiently complied with the requirement of issuing a notice as required under Section 4 of the Integrity Pact.

43. In our considered opinion, the submission of the Respondent in the pleadings that it has suffered losses due to the exclusion of the Appellant from the bidding process cannot be accepted as *proof* of loss.

In the facts of this case, the tender process continued [smoothly] and was awarded to the successful bidder, Western Carrier Pvt. Ltd., on 10.03.2018, even prior to rejection of the Appellant's bid on 26.03.2018 and initiation of the banning proceedings against the Appellant herein, which only began on 09.04.2018. The award of the tender on 10.03.2018 to the

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successful bidder belies the contention of the Respondent that it suffered any loss due to the exclusion of the Appellant from the bidding process.

We have also perused the SCN and the impugned banning orders; neither the SCN nor the order records that any loss was suffered by the Respondent due to the Appellants' transgression of the Integrity Pact. Similarly, the e-mail dated 26.03.2018 issued by the Respondent communicating to the Appellants the rejection of their bid due to the violation of the Integrity Pact does not make any assertion of loss. Also, the initial letter dated 16.03.2018 issued by the Respondent to the Appellant in response to the letter dated 14.03.2018 only makes reference to the initiation of banning proceedings and does not assert any loss suffered.

44. In these facts, the finding recorded by the learned Single Judge that the Respondent had not suffered any loss is correct and does not require any interference. Also, the finding of the learned Single Judge that the issue of alleged loss is not a disputed question of fact is correct in the facts of this case, as no documents or information have been placed on record by the Respondent to even remotely prove the alleged loss suffered by it.

45. The Respondent has also challenged the finding of the learned Single Judge with respect to the non-following of the procedure of forfeiture of EMD contemplated under Section 4 of the Integrity Pact with respect to issuance of notice of demand. The Respondent has contended that the communications dated 16.03.2018 and 26.03.2018 would amount to implied notice of forfeiture of the EMD. We have perused the contents of the said communication and are unable to find any merit in this submission of the Respondent. These communications make no reference to any demand for liquidated damages and also make no reference to any intention of the

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Respondent to forfeit the EMD. The said communications cannot even be read to imply any intention of the Respondent to forfeit the EMD. Clause 16.7 of the said tender and Section 4 of the Integrity Pact no doubt entitles the Respondent to forfeit the EMD; however, the said right of the Respondent is subject to compliance with the twin conditions of notice and suffering actual loss. In the facts of this case, the Respondent has not been able to satisfy these twin conditions, and therefore, the findings of the learned Single Judge do not merit any interference.

46. The grounds raised by the Respondent in CM No. 26138/2021 challenging the findings and direction in the impugned order directing them to refund the EMD amount of Rs. 2,95,26,590/- are bereft of merits and are accordingly dismissed.

47. The Respondent and the Registry are directed to comply with the directions set out at paragraph nos. '17' and '19' respectively of this judgment, within two [2] weeks.

48. With the aforesaid findings and directions, the present appeals along with the cross-objections filed by the Respondent are disposed of.

MANMEET PRITAM SINGH ARORA, J

V. KAMESWAR RAO, J

JULY 01, 2026/mt/aa/aj

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