

\$~ **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **RFA 329/2001**

FOOD CORPORATION OF INDIA Appellant

versus

PREM CHAND JAIN Respondent

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Advocates who appeared in this case:

For the appellant : Mr. Ajit Pudussery, Advocate.

For the respondent : Mr. Vinod Dhawan & Mr. Jagdeep Kr.
Sharma, Advocates.

CORAM:

HON'BLE MR. JUSTICE SUDERSHAN KUMAR MISRA

SUDERSHAN KUMAR MISRA, J.

1. This is the appeal of the defendants, Food Corporation of India and its Senior Regional Manager, impugning the decree granted by the court below to the respondent/plaintiff for a sum of Rs. 5 Lacs along with interest at the rate of 12% per annum from the date of filing of the suit till realization of the decretal amount along with costs. It arises in the following circumstances;

2. The respondent, Shri Prem Chand Jain, sued the appellant for recovery of Rs. 5 Lacs along with interest on the ground that even though he had withdrawn his offer to purchase rice; made by him in terms of a tender floated by the appellant; before the same could be accepted by the appellant; the appellant nevertheless proceeded to accept that offer and demand

performance from him in terms thereof; and on his non-performance, the appellant proceeded to illegally forfeit the earnest money of Rs. 5 Lacs furnished by him along with his bid in terms of the said tender.

3. On 6th June, 2000, the appellant floated a tender inviting offers from prospective buyers for the purchase of rice acquired by the Food Corporation of India, “Under Relaxed Specifications”, from farmers pertaining to the crop year 1997-1998. It stated as follows:

**“Food Corporation of India
Regional Office
Industry House, Ashram Road
Ahmedabad-28009**

Tender No.QC/5/(1-B)2000- TENDER SALE,
DTD. THE 6.6.2000

Cost Rs.150/-
SIGNAURE OF ISSUING AUTHORITY

Money Receipt No.005368 12.6.2000

The Tender is issued in duplicate. The copy marked original must be returned intact while submitting quotations. Copy marked duplicate be retrained by the tenderer.

Invitation to Tender and instructions to tenderers for disposal of rice (procured under relaxed specification Crop Year 1997-98)

TENDER SCHEDULE:

(A) Date of sale of tender forms

On all working days from 10.00 AM to 3:00 P.M. upto 20.6.2000 and upto 1:00 PM on 21.6.2000.

- (B) Date of receipt of tender:
Up to 1:00 PM on 21.6.2000
- (C) Date of opening tenders at 3.00 PM on
21.6.2000
- (D) Date for keeping the offer open for
acceptance:

Upto 20.7.2000.

Note:

All the tenders shall remain open for acceptance upto 21.7.2000. the Sr. Regional Manager, FCI, Ahmedabad also reserves the right to extend the period of acceptance of tender another fifteen days and such extension shall be binding on the tenderers.”

At sub-paragraph (D) of the aforesaid, “tender schedule”, against the column, “Date for keeping the offer open for acceptance”; it is stated, “upto 20.07.2000”. But in the note, which is appended just below, it is stated, “all the tenders to remain open for acceptance up to 21st July, 2000”. However, both counsel are agreed at the bar that the tender floated by the appellant remained valid for acceptance till 21.07.2000. That tender, inter alia, empowered the appellant to extend the period of acceptance for another period of 15 days. On 21.07.2000, the appellant exercised its right in terms of the said tender and extended the period prescribed for acceptance of any bid received to 5.8.2000.

4. Admittedly, on 27th July, 2000, the respondent withdrew his offer through a letter, Ex.PW1/1-2. It states, in effect, that since the respondent’s offer was open for acceptance till 20th July, 2000, and since the appellant

has not accepted that offer so far, the respondent is “uninterested in lifting the goods”. Although it appears that, initially, the respondent had decided to rest his decision to withdraw his bid on the ground that there had been no acceptance of the same till 20.07.2000, which was the date initially mentioned in the aforesaid paragraph (D) of the tender document, however, in view of the uncontroverted position that the initial period for which the bid of the respondent remained open for acceptance was, in fact, 21.07.2000, which was then validly extended to 5.8.2000; the respondent has chosen to pursue his claim of having validly withdrawn his offer solely on the ground that, notwithstanding the fact that the period for acceptance in terms of the tender floated by the appellant had not yet expired, the same was, in any case, withdrawn before its acceptance by the appellant. In other words, the case of the respondent was merely that, notwithstanding the language of his letter 20.07.2000; and the reasons mentioned therein; the only effect of that communication was that the respondent’s offer stood withdrawn; and that he was within his rights to do so. Despite this withdrawal, on 29.07.2000, a telegram was dispatched to the respondent by the appellant accepting his tender, and calling upon him to deposit the balance amount of Rs. 36,41,649/- within seven days towards 10% of the security deposit for the payment of the total contract amount. Thereafter, on 2nd September, 2000, the appellant issued a communication forfeiting the earnest money deposit of Rs.5 lacs in view of the aforesaid withdrawal of the bid and non-performance by the respondent.

5. According to the appellant, this forfeiture was prompted by the fact that the respondent did not have the power to withdraw his offer prematurely in the manner adopted by him, specially, in view of the Clause

F(v) of the terms of the tender. The said clause is as follows:

“F(v) The earnest money paid will be liable to forfeiture if the tenderer after submitting his tender does not keep his offer open or modifies, the terms and conditions thereof in a manner not acceptable to Food Corporation of India, or withdraws his offer before final acceptance it being understood that the tender documents have been issued to him and he is being permitted to tender in consideration of his agreement to this stipulation. The earnest money shall also be liable to be forfeited in the event of tenderer’s failure after acceptance of his tender either to deposit the amount in full or to remove the stocks sold within the specified time. The earnest money of all the unsuccessful tenderers will be refunded to them within 15 days on receipt of refund application with a pre-stamped receipt but the Food Corporation of India shall not be liable to pay any interest thereon.”

6. According to counsel for the appellant, the trial court has erroneously decreed the suit against the appellant on the sole ground that it is always open to a tenderer to withdraw his offer at any time before its acceptance. For this conclusion, learned trial court relied on Section 5 of the Indian Contract Act 1872, which states as follows:

“5. Revocation of Proposals and acceptance
– A proposal may be revoked at any time before the communication of its acceptance is complete as against the proposer, but not afterwards.

An acceptance may be revoked at any time before the communication of the acceptance is complete as against the acceptor, but not afterwards.

Illustrations

A proposes, by a letter sent by post, to sell his house to B

B accepts the proposal by a letter sent by post.

A may revoke his proposal at any time before or at the moment when B posts his letter of acceptance, but not afterwards.

B may revoke his acceptance at any time before or at the moment when the letter communicating it reaches A, but not afterwards.”

7. It appears that the learned court below has taken a rather simplistic view of the matter by concluding that notwithstanding all the conditions mentioned in the tender document; which formed part of the bid of the respondent; to the unambiguous effect that the respondent was obliged to keep his bid open for acceptance for the entire period envisaged in this regard in the tender, and that failure to do so, would entitle the appellant to forfeit the earnest money; it was nevertheless open to the respondent to withdraw his offer before acceptance in view of the aforesaid provisions of Section 5 of the Indian Contract Act, 1872. According to the court below, all such conditions prohibiting the respondent from withdrawing his bid during its period of validity, as prescribed by the tender conditions, are in violation of statute and, in effect, opposed to public policy, and therefore, unenforceable.

8. In arriving at its conclusion, the learned trial court has relied on a decision of this Court reported as AIR 1988 Delhi 224 and another decision being reported as AIR 1972 Madhya Pradesh 131. The cause title of both these decisions has not been mentioned.

However, whilst the matter was pending in appeal before this Court,

the Supreme Court has rendered another decision in a case of **National Highways Authority of India vs. Ganga Enterprises & Ors. (2003) 7 SCC 410**. In substance, this decision holds that although, in the normal course, where there are offers and counter offers, the point of time upto which a proposal can be withdrawn will undoubtedly be covered by Section 5 of the Indian Contract Act. However, in case both parties agree to be bound by the understanding that any offer made will remain open for acceptance by the other party upto a specified date, and that the offerer is bound to keep his offer open for that period; then the offerer cannot vary this understanding, and withdraw his offer prematurely, without the consent of the other party.

9. In that case, the appellant, National Highways Authority of India, had invited bids for the collection of tolls on Toll Plazas that would be handed over to the successful bidder. One of the conditions mentioned in the notice inviting tender obliged the bidder to furnish a bid security in the form of either a bank draft or a bank guarantee, which was liable to forfeiture in case the bidder withdrew his bid during the validity period. The bid was to remain valid for the period of 120 days after the last date fixed for submission of bids. In that case, the successful bidder chose to furnish a bank guarantee towards the aforesaid bid security. Admittedly, the bidder was obliged to keep his offer open for acceptance till 28th November, 1997. He, however, withdrew his bid prematurely on 20th November, 1997. Consequently, the National Highways Authority of India invoked the aforesaid bank guarantee of Rs.50 lakhs and forfeited the said amount. There also, a similar plea was taken to the effect that the offer was withdrawn before it was accepted and, therefore, no liability could be attached to the bidder in this behalf in view of Section 5 of the Indian Contract Act; and secondly, that even otherwise, the bidder was within his

rights to withdraw the offer because the contract itself was to commence from 1st October, 1997 but the respondent did not bother to accept the offer even till 20th November, 1997 when it was ultimately withdrawn by the bidder. Whilst rejecting both the contentions of the bidder the Supreme Court held that, “(3).....the moment the bank guarantee was given and accepted by the appellants the first portion of the offer, regarding bid security, stood accepted. Of course, this did not mean that a completed contract in respect of the work of toll collection had come into existence.”

10. As regards the question of forfeiture of earnest money by enforcing the bid security in such cases, the Supreme Court concluded as follows:

“9. 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.”

The contention of the bidder that it was within its rights to have withdrawn the offer before the expiry of 120 days because the period of contract had already commenced from 1st October, 1997 without any acceptance of the offer by the National Highways Authority of India and therefore, the bid was validly withdrawn on 20th November, 1997, was rejected on the reasoning that the respondent was aware when he gave his offer that acceptance could be delayed till 28th November, 1997 and, therefore, non acceptance till 20th November, 1997 could not have justified the bidder’s action in withdrawing his offer. It further concluded that, “(11)..... *The bid security was given to meet a specific contingency viz. non-withdrawal of the offer within 120 days. The contingency having arisen, the appellants were entitled to forfeit.*”

The only difference with regard to earnest money/bid security for keeping offer valid for a prescribed period between that case and one at hand is that, in the case of **National Highways Authority of India** (*supra*), the bidder had the option to either furnish the earnest money/bid security by way of a bank draft or through a bank guarantee and it chose to furnish a bank guarantee; whereas in the instant case, the bidder was required to furnish earnest money by way of bank drafts/pay orders, and he did so.

11. The tender floated by the appellant amounts to an invitation to offer

on the terms and conditions mentioned therein. There is no controversy with regard to the scope, effect and indeed the binding nature of the language mentioned in the tender document. The only stand of the respondent being that notwithstanding his agreement to be bound by the term which obliged him to keep his offer open and not to withdraw the same for the period specified; this obligation was void and unenforceable in view of Section 5 of the Indian Contract Act which permits any offer to be withdrawn before its acceptance.

12. The relevant clauses with regard to the obligation of the respondent to remain bound by his offer upto the period specified, state as follows;

“Earnest Money must accompany each tender as stipulated in Clause (F) and Security deposit payable as per clause (G) of the terms and conditions in Appendix-I.”

Clause (F) reads as under:-

- “(i) The tender shall pay the FCI Earnest money at the flat rate of one percent of the value of stocks intended to be purchased estimated at the rate being quoted by the buyer.
- (ii) No exemption shall be allowed to any party from deposit of earnest money.
- (iii) The earnest money deposit shall be converted into security deposit after the acceptance of tenders on receipt of request of the successful tenderer.
- (iv) Tender should be accompanied by earnest money in the form of MICR accounts payee bank demand draft, pay order or banker’s cheque etc. issued by a scheduled Bank in favour of Senior Regional Manager, Food Corporation of India payable at Ahmadabad. Tenders not accompanied by earnest money shall

be summarily rejected.

- (v) The earnest money paid will be liable to forfeiture if the tenderer after submitting his tender does not keep his offer open or modifies, the terms and conditions thereof in a manner nor acceptable to Food Corporation of India, or withdraws his offer before final acceptance it being understood that the tender documents have been issued to his and he is being permitted to tender in consideration of his agreement to this stipulation. The earnest money shall be liable to be forfeited in the event of tenderer's failure after acceptance of his tender either to deposit the amount in full or to remove the stocks sold within the specified time. The earnest money of all the unsuccessful tenderers will be refunded to them within 15 days on receipt of refund application with a pre-stamped receipt but the Food Corporation of India shall not be liable to pay any interest thereon."

Clause 7 of the Appendix II to the tender submitted by the respondent reads as under:-

"I/we agree to hold the offer open upto 21.7.2000 and inclusive of 21.7.2000 and if the said date be declared to be holiday for FCI office till the next following working day and shall be bound by the communication of acceptance dispatched within this time. I/we further undertake that this offer shall not be retracted or withdrawn by me/us hereinafter."

A reading of the aforesaid clauses shows that a significant feature of the understanding between the parties was payment of earnest money along with the bid. Ultimately, if the bid was accepted, this money was to be included in the security deposit of 10% of the offer, and in such a case, the

bidder would be obliged to deposit the balance security amount; which in turn was liable for adjustment towards the total price payable under the contract in terms of paragraph G(ii) Appendix X-I thereof which postulates that, “The security deposit will be adjusted on the due completion of the contract against the last instalment of the payment. The Corporation shall not be liable to pay any interest thereon.” If, however, the bid was not accepted on or before the last date, the earnest money furnished with the bid would obviously be returned. In other words, this amount of Rs. 5 Lacs towards earnest money is first part of the consideration which binds the offerer i.e. the respondent herein, to keep his offer open for the stipulated period and obliges the appellant to accord due consideration to that offer in all seriousness. Of course, in the event of acceptance of the offer, this money would then ultimately form part of the purchase price in the aforesaid manner.

13. Indubitably, separate and independently enforceable contracts can and do come into existence through a single document to be enforced by either party having cause within the scope of the main contract. An example of this is an arbitration agreement in a contract inter parties for supply of goods or services etc. Similarly, there can be no impediment with regard to the separate enforceability of certain preliminary obligations undertaken by either party and, to that extent, the clauses whereby such preliminary obligations are undertaken, regardless of whether a final contract comes into being or not, are independently enforceable if the circumstances so warrant. The enforceability, or otherwise, of these obligations cannot be solely dependent upon the fructification of the main contract. For example, as is well known, an arbitration agreement is a concluded contract that is independently enforceable, and remains alive, even if the main contract has

come to an end. Similarly, in this case also, an agreement obliging the offerer to keep his bid open for a specified period, and subject to the pre-deposit of earnest money which is liable to forfeiture, which in turn obliges the offeree to duly consider this offer, constituted a separate, enforceable agreement; and once the acceptance of the offer is complete as against the offerer or proposer, it falls outside Section 5 of the Indian Contract Act, 1872.

14. To put it differently, in the invitation to offer issued by the appellant, there were, in fact, two proposals. The first was an invitation to the respondent to send a proposal to the effect that he would remain bound by the same for the period specified, along with the consideration termed as, “earnest money”, which would be open to forfeiture in case he breaches this term. The second proposal, linked to the first one, was an invitation to offer a price for the goods alongwith his willingness to pay 10% of his offer as a security in advance towards due performance by him. Further, that in case his offer was accepted, the earnest money deposited by him in terms of the former proposal would then first go to make up the security deposit, which in turn would be ultimately adjusted towards the total price. To my mind, by the very act of submission of the bid by the respondent, along with the earnest money, incorporating all the terms of the invitation to offer, the first proposal as aforesaid, which was invited by the appellant, stood accepted by the appellant. While it is not clear whether any receipt or acknowledgement amounting to a formal communication of its acceptance was issued by the appellant to the bidder on his submission of his bid; the nature of this agreement was such that the mere knowledge that he has been permitted to submit his offer amounted to a communication to the bidder/respondent that the acceptance of the first proposal by the appellant was complete as against the bidder/respondent. There was, therefore, no question of any right being

available to the respondent/offeree to revoke the same in terms of Section 5 of the Indian Contract Act.

At this juncture, one more fact needs to be kept in mind, which is, that there is a slight distinction between the terms on which the bidder was obliged to deposit what was called, “earnest money”, and the generally understood concept of the term. Earnest money is defined as follows; “Giving an earnest or earnest money is a mode of signifying assent to a contract of sale or the like by giving to the vendor a nominal sum (e.g. a shilling) as a token that the parties are in earnest and have made up their minds.” (Refer Jowitt, The Dictionary of English Law) and it is, “16.... part of the purchase price and is adjusted as such when the transaction goes forward; it is forfeited when the transaction falls through by reason of the fault or failure of the Vendee” (**Susheela (died) and Anr v. T.M. Muhammedkunhi** 2012 (1) KLJ 780).

In the instant case, not only was the bidder obliged to furnish, “earnest money” to the tune of 1% of the price offered, in addition, he was also bound by a further specific term to keep the offer open for acceptance for a specified period failing which earnest money furnished was liable to forfeiture. Consequently, and without going into the question of the availability of the rights reserved under Section 5 of the Indian Contract Act in a case where the bidder was not specifically obliged to keep the offer open for a prescribed period, one thing is clear, that at least in the case at hand, it was not open for the bidder to withdraw his offer before the agreed date.

15. In trying to distinguish the decision of the Supreme Court in the aforesaid case of **National Highways Authority of India** (supra), counsel

for the respondent/decreeholder has taken the position that in that case, the Bank guarantee was a completed contract that had come into existence, and could, therefore, be enforced whereas in the instant case, no completed contract came into existence between the parties. As I have already concluded above, this is an erroneous approach. Even if it is assumed that the final contract between the parties did not come about, certain binding obligations did come into existence because the very terms on which the respondent was invited to bid, which were accepted by the respondent by the submission of his bid, form a separate contract by which he was bound. It could not be that even the term prescribing forfeiture of earnest money on breach of the obligations to keep himself bound by the offer for the duration specified, could be enforced only if the principal contract had itself come into force. Such an approach would render the condition of forfeiture unenforceable and illusory. This is because on the one hand, after the principal contract itself comes into force, the question of premature withdrawal of the offer or of the breach of the obligation to be bound by the offer till the expiry of the period specified for its acceptance, would not arise; on the other hand, if the bidder breached his obligation by actually withdrawing prematurely, nothing could be enforced against him and the other party would be remediless. This line of reasoning also goes to validate the proposition that a clear and binding agreement, of the nature mentioned above, had indeed come into force between the parties as a sort of preliminary agreement, as it were. As explained, if the construction sought to be placed upon it by the counsel for the respondent is accepted, then the clause enabling the appellant to forfeit the earnest money for premature withdrawal would be useless or ineffectual; and it cannot be presumed that parties have agreed to terms that are illusory, useless, or unenforceable. In this case, there is no doubt that the consideration flowing

from the appellant, who had issued the invitation to offer in the form of a tender floated by it, was its obligation to receive the bid and to thereafter duly consider the same, and therefore, it cannot be said that no enforceable agreement came into force between the parties by the very submission of the bid by the respondent, along with the earnest money in question.

16. Admittedly, by the terms and conditions of the invitation to offer, an obligation was imposed on the bidder to keep his offer open upto a certain date. It was also clear that if he failed to do so, he would forfeit the earnest money. The purpose of the forfeiture clause, extracted above, is very clear and to that extent there was consensus ad idem. The rights and obligations under these clauses are clearly separable from the other obligations that may or may not have come into being later on. And once bidder's offer to keep himself bound on the terms specified is accepted in the aforesaid manner, he cannot have recourse to Section 5 of the Indian Contract Act, 1872 to withdraw the same.

17. Lastly, counsel for the respondent has tried to urge that, in fact, the entire earnest money could not have been forfeited in view of the provisions of Section 74 of the Indian Contract Act since, according to him, it merely represented the upper limit of the amount which the respondent may have been obliged to pay as a penalty penalized for withdrawing his offer prematurely. Section 74 of the Indian Contract Act, 1872, provides as follows:

“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.

... ..”

The distinction between the provision for what is essentially a penalty, and earnest money; and the treatment to be accorded to the two in the light of Section 74 of the Indian Contract Act, has been examined by the Division Bench of this Court in *Ashwani Kapoor & Anr. V. Union of India & Anr.*, 73 (1998) DLT 843, where decisions of the Supreme Court in the case of *UOI v. Rampur Distillery & Chemical Co. Ltd.*, AIR 1973 SC 1098; *Maula Bux v. Union of India* [1970] 1 SCR 928; as well as an earlier decision of the Judicial Committee in *(Kanwar) Chiranjit Singh v. Har Swarup*, AIR 1926 P C (1), have been referred to. It also referred to the decision of the Supreme Court in *Shree Hanuman Cotton Mills and Another v. Tata Limited*, 1973 SCR 127.

After examining the said authorities, this Court concluded that;

“15. From the above mentioned decisions of the Supreme Court, it clearly emerges that when the earnest money or the deposit by way of earnest is liable to adjustment in the total price, it will not be a case falling under Section 74 of the contract Act and the forfeiture has to be accepted as justified by the terms of the contract.”

In substance, the contention of counsel for the respondent for invoking Section 74 of the Indian Contract Act is the same as the contention of the petitioner in Ashwani Kapoor's case (supra). Here also, he contends that out of earnest money deposited, only such amount which can be considered reasonable, could be forfeited, and no more. The conclusions drawn by the Division Bench of this Court in Ashwani Kapoor's case (supra) are clear and unequivocal to the effect that a case such as the one at hand does not fall within the ambit of Section 74 of the Contract Act. In the instant case also, the deposit of the respondent by way of earnest money was liable to adjustment in the total price. In that view of the matter alone, this submission on behalf of the respondent must fail.

17. With regard to application of Section 74 of the Indian Contract Act, 1872, I am inclined to find against the respondent by another route as well. As I have already concluded in the preceding paragraphs, the money deposited by the respondent along with his bid, though termed as, “earnest” money, had a further unique condition attached. It formed part of a preliminary and separately enforceable contract, under which the said amount was liable to forfeiture in case of any breach of the obligation of the bidder to keep the offer open for a fixed period. Admittedly, the respondent/bidder acted in breach of this obligation and broke that contract. Under the circumstances, even on a straight forward application of Section 74 of the Indian Contract Act, the appellant, who suffered the breach, was entitled to receive reasonable compensation not exceeding the amount which was named in the contract as liable to forfeiture, whether it be earnest money or anything else. In this context, one cannot lose sight of the fact that, admittedly, the appellant had invited offers for the purchase of rice,

which the appellant intended to dispose off after having procured the same from the farmers “Under Relaxed Specifications (URS)” pertaining to the crop year 1997-1998, on ‘as is where is basis’. Clearly, the rice on offer did not conform to the approved specifications and was of inferior quality. Also, the appellant who had invited the bids on terms is the Food Corporation of India, who has pleaded that offers received from various parties were tabulated keeping in mind, “the lotwise/stockwise highest rates received”. After this exercise was carried out, the information was to be put up to the competent authority for a decision. Obviously, both parties were fully aware that a decision in this regard is likely to entail time and effort on the part of the appellant/Food Corporation of India. It is equally obvious that any disruption of the process by a premature withdrawal of the offer by a bidder could well set the whole thing at naught, and perhaps make the situation even worse than what it was at inception because of the fact that food grains are inherently perishable, etc. Under the circumstances, to my mind, the earnest money deposited in this case, which was to the tune of only 1% of the total purchase price offered can be regarded as a genuine pre-estimate of the loss occasioned to the appellant/Food Corporation of India. Furthermore, in any case, this amount, which was liable to forfeiture, cannot be said to be unreasonable.

18. For all the above reasons, the appeal is allowed. The impugned judgment is set aside and the suit filed by the respondent/plaintiff stands dismissed. The bank guarantee furnished by the appellant as a condition of interim stay of the impugned judgment granted on 20.08.2011, and continued thereafter, stands discharged. It will be duly returned to the appellant after completion of the necessary formalities.

19. No costs.

SUDERSHAN KUMAR MISRA, J.

May 08, 2013
dr/sl/rd