



2026:DHC:6427-DB



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

*Date of decision: 07<sup>th</sup> August, 2026*

# **CNR No. DLHC010360842026**

+ **CO.APP 4/2026 & CM APPL. 51918/2026, CM APPL.  
51919/2026**

**R. A. ENTERPRISES**

THROUGH ITS PARTNER MR. AMIT KUMAR SINGH  
HAVING ITS REGISTERED OFFICE AT:  
ASTF 09, SADAN APARTMENT, 3<sup>rd</sup> FLOOR,  
BLUNT SQUARE, DURGA PURI, LUCKNOW,  
UTTAR PRADESH – 226004

**...PETITIONER**

Through: Mr. Shivek Rai Kapoor, Mr.  
Ayush Verma, Mr. Saksham  
Dixit, Mr. Vansh Bajaj, Mr.  
Vishal Jaswal, Advs.

Versus

**O/o THE OFFICIAL LIQUIDATOR**

MINISTRY OF CORPORATE AFFAIRS  
ATTACHED TO THE DELHI HIGH COURT  
8<sup>th</sup> FLOOR, LOK NAYAK BHAWAN,  
KHAN MARKET, NEW DELHI – 110003.

**... RESPONDENT**

Through: Ms. Ruchi Sindhwani, Sr.  
Standing Counsel with Ms.  
Megha Bharara, Adv.

Signature Not Verified

Signed By: AKASH  
YADAV  
Signing Date: 14.08.2026  
11:30:06

CO.APP 4/2026

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**CORAM:**

**HON'BLE MR. JUSTICE NITIN WASUDEO SAMBRE**

**HON'BLE MR. JUSTICE AMIT SHARMA**

**JUDGMENT (ORAL)**

**NITIN WASUDEO SAMBRE, J.**

**CM APPL. 51917/2026 (delay of 105 days in filing)**

1. The delay of 105 days in filing the present appeal stands condoned, subject to the deposit of the cost of Rs.25,000/- within a period of two weeks in the account of Delhi High Court Advocates Welfare Trust, *i.e.*, Current Account No. 15530210002995 (IFSC-UCBA0001553), Bank Name- UCO Bank, Branch – Delhi High Court.
2. The acknowledgement about the payment of the cost be produced before the learned Company Judge, failing which, it will be presumed that the application for the condonation of delay is rejected as well as the present appeal.

**CO.APP. 4/2026**

3. Pursuant to the *E-Auction* Sale Notice dated 16<sup>th</sup> January, 2024, the petitioner participated by depositing the earnest money of Rs. 9,83,700/-.
4. Clause 5 and 6 of the said notice reads thus:-

*“5. The tenderers should collect the detail information, terms & condition through the website <https://olauction.enivida.com> and may also take help from the below contacts:-*

*Navneet Mishra 93550030630; Amrendra Kumar 8448288980; Anand Kumar 9355030602; Official*



*Liquidator: 011-24693393-94.*

*6. The EMD amount (interest free) should be deposited through the modes available on the portal. The last date of participation in e-Auction and online submission of EMD is 02.02.2014 till 04:00 P.M.”*

5. The Terms and Conditions of the *E-auction Sale* defines the abbreviations and clause 2.3 defines the earnest money/pre-bid EMD [**‘Earnest Money Deposit’**], which reads thus:-

*“2.3 EMD” means “Earnest Money Deposit” and/or “Pre-Bid EMD” to be paid as described in the e-Auction catalogue to qualify for participation in e-auction.”*

6. Clause 5.1 deals with the right of the party, like the petitioner, to participate in the *E-Auction*, provided that the EMD is deposited. The pre-bid EMD is subject to forfeiture automatically, if the highest bidder fails to pay the required post-bid payment for the lot awarded to them. Clause 5.1 reads thus:-

*“5.1 The Earnest Money Deposit (EMD)/Pre-Bid EMD needs to be paid by the participating bidders through e-Payment Gateway, and no other payment mode will be entertained.*

*Only the registered customers who will submit the online EMD within the aforesaid period will be able to participate against the above mentioned lot/s in this e-auction. The EMD of the successful bidders will be transferred to the Official Liquidator electronically through payment Gateway. The entire PRE BID EMD of the successful bidders will be forfeited automatically if the highest bidder fails to pay the required Post-Bid Payment for the lot awarded to them. The PRE BID EMD of the unsuccessful parties will be refunded. No interest is payable on the Pre-Bid EMD/EMD.”*

7. Clause 9.2 mandates that the successful bidder shall pay the full and final bid amount along with the GST [**‘Goods and Services Tax’**]



as may be applicable, within the time prescribed in Schedule No. 2, failing which, the 25% of the bid amount which was remitted post the acceptance of the highest bid offer, shall be liable for forfeiture.

8. The Schedule II, clause 4 provides for security deposit which reads thus:-

|   |                  |                                                                                                                                                                                                                                                                              |
|---|------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 4 | Security Deposit | <i>25% of the bid amount to be deposited with the OL Delhi by the successful bidder within 7 days from the date of auction, failing which the Pre-Bid EMD/EMD shall be forfeited by the Seller. The buyer may adjust the Pre-Bid EMD/EMD with the Security deposit (SD).</i> |
|---|------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

9. The Official Liquidator, under the order of the Company Judge dated 30<sup>th</sup> January, 2025, has forfeited the entire 25% of the bid amount under clause 9.2 as referred hereinabove.

10. The petitioner thereafter approached the Company Judge objecting to the same, as according to him, only 10% of the amount which covers the EMD of the reserve price *i.e.*, Rs. 9,83,700/- is required to be forfeited and not the 25% of the highest bid amount offered by him, which comes to Rs. 35,68,197/-.

11. Drawing support from the provision of Section 74 of the Indian Contract Act, 1872 ['ICA'], it is the contention of the counsel for the petitioner that unless it is demonstrated by the respondent that it had suffered any loss *qua* failure of the petitioner to deposit the highest bid amount, the forfeiture clause to the extent of 25% of the total bid amount, shall be attracted.

12. According to petitioner, the right to forfeiture is only to the extent of 10% of the EMD that was deposited by it.

13. So as to substantiate the aforesaid contentions, reliance is



placed on the judgment of the Apex Court in the Civil Appeal No. 3334/2023, titled as **“Godrej Projects Development Limited vs. Anil Karlekar & Ors.”** decided on 03<sup>rd</sup> February, 2025. Para 19 and Para 38 whereof reads thus:-

*“19. This Court has held that to justify the forfeiture of advance money being part of “earnest money” the terms of the contract should be clear and explicit. It has been observed that the earnest money is paid or given at the time when the contract is entered into and, as a pledge for its due performance by the depositor to be forfeited in case of non-performance by the depositor. However, this Court clarified that if the payment is made only towards part-payment of consideration and not intended as earnest money then the forfeiture clause will not apply.*

*XXXX*

*XXXX*

*38. It can be seen that this Court has held that if the forfeiture of earnest money under a contract is reasonable, then it does not fall within Section 74 of the Indian Contract Act, 1872, inasmuch as, such a forfeiture does not amount to imposing a penalty. It has further been held that, however, if the forfeiture is of the nature of penalty, then Section 74 would be applicable. This Court has further held that under the terms of the contract, if the party in breach undertook to pay a sum of money or to forfeit a sum of money which he had already paid to the party complaining of a breach of contract, the undertaking is of the nature of a penalty.”*

14. As against above, the counsel for the respondent states that the clauses of the *E-Auction* Sale Notice and the Terms and Conditions of the *E-auction* Sale, if read conjointly, the only inference that can be drawn is that the liquidator is entitled for forfeiture of the 25% of total bid amount offered by the petitioner.

15. It is further urged that even under Section 74 of the ICA, the act of the respondent-liquidator is justified as the failure of the petitioner



to deposit the bid amount has resulted into delaying the entire process, and the stakeholders, who are entitled to have the said amounts in law, are deprived of the fruits, at the luxury of the present appellant.

16. Support is drawn from judgment of the Apex Court in Civil Appeal No. 5822/2025, titled as “***K.R. Suresh v. R. Poornima and Ors***”.

17. We have considered the rival submissions in the light of the observations made by the learned Company Judge in the impugned order.

18. At the outset, we must note that the aspect of the satisfaction to be recorded *qua* the ingredient of Section 74 of the ICA was not canvassed by either side before the learned Company Judge. As such, learned Company Judge had no occasion to appreciate the same in the light of the interpretation given to the various provisions *viz.*, EMD, Security Deposit etc., under the Indian Contract Act.

19. Apart from above, it is also not brought to our notice as to what was the occasion for the Official Liquidator to suffer the losses and the quantum thereunder, if the findings are to be recorded in view of the statutory mandate under Section 74 of the ICA.

20. Even otherwise, the various provisions of the *E-Auction* notice, particularly those relating to the amount of EMD and whether the same is to be calculated at 25% or 10% of the values disclosed in the *E-Auction* notice, also warrant examination.

21. As a sequel of above, we set-aside the impugned order dated 19<sup>th</sup> March, 2026, passed by the Company Judge only to the extent of the claim of the petitioner *qua* the refund and remit the matter to the Company Judge for deciding the said issue afresh.



22. We are of the view that for the purpose of said consideration instead of recording any finding by this court, at this stage, let the Company Court apply its mind and decided the issue afresh.

23. We permit both the parties to have their respective pleadings completed by filing additional affidavit within a period of four weeks from today. Rejoinder, if any, be exchanged between the parties within a period of two weeks thereafter.

24. Needless to clarify, we have not expressed our opinion on merits of the matter.

25. Pending applications, if any, also stand disposed of.

26. Judgment be uploaded on the website of this Court.

**NITIN WASUDEO SAMBRE  
(JUDGE)**

**AMIT SHARMA  
(JUDGE)**

**AUGUST 7, 2026/sky/gs**