

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

**Reserved on: 18.04.2016**  
**Pronounced on: 21.07.2016**

+ **W.P.(C) 1993/2014, C.M. NOS. 4164/2014 & 20376/2014**

**INDISTOCK FINANCIAL SERVICES PVT. LTD.**

.....Appellant

Through: Sh. A.K. Vali with Sh. Ramesh. N. Keswani, Sh. Bharat Manuberwala and Sh. Tuhin, Advocates.

Versus

**LIQUIDATOR, PETROFILS CO-OPERATIVE LTD. AND ORS.**

.....Respondents

Through: Mrs. Manisha. L. Shah with Sh. Rohan Lav Kumar, Advocates, for Respondent Nos. 1 and 4.

Sh. Bhagvan Swarup Shukla, CGSC for UOI with Sh. Rachit Goel, Advocate.

**CORAM:**  
**HON'BLE MR. JUSTICE S. RAVINDRA BHAT**  
**HON'BLE MS. JUSTICE DEEPA SHARMA**

**MR. JUSTICE S. RAVINDRA BHAT**

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1. The petitioner, by these proceedings under Article 226 of the Constitution of India, seeks a direction for quashing the decision of the respondents cancelling its bid to purchase the Naldhari Plant, Valia, Dist. Bharuch, owned by the Petrofils Co-operative society, which was directed to be wound up.

2. The facts necessary to decide the case are that an order was passed by the Government of India (GoI) and Central Registrar of Co-operative Societies on 11.04.2001 under Section 77(1) read with sub-section (1) of Section 80 of the Multi-State Cooperative Act, 1984 for winding up of Petrofils Co-operative Limited ("PCL") and appointing its Liquidator. Pursuant to the winding up of PCL, its assets were to be sold by the Liquidator; these assets included the Naldhari Plant, Valia, Dist. Bharuch. The Liquidator issued an advertisement published in the *Indian Express*, for the sale of the plant through tender. The total land area was 6,24,970 Sq Metres; the terms of the tender were: firstly the tender was for the land as well as the plant and machinery. Secondly, the last date for submission of the bid was 23.04.2013. The EMD requirement was ₹5 Crores. Thirdly, the sale was to be on "AS IS WHERE IS WHATEVER THERE IS BASIS". Fourthly the successful bidder had to execute a sale agreement within a period of 30 days of full and final payment for the property. Fifthly, the price of the property was ₹ 98.50 Lakhs; 50% of the upfront amount was to be deposited by the successful bidder within 60 days from the letter of offer and the remaining 45% was to be by a bank guarantee.

3. As the tender did not elicit any response, the time limit for submission of the bid was extended further, initially to 10th May 2013 and thereafter to 27th May 2013 with the Asset Sale Committee reserving discretionary rights to confirm the first valid tender received on or after 10th May 2013. The Petitioner forwarded its tender (No. 639) for the sale of the plant, together with a demand draft of ₹5 crores, towards EMD, dated 10th May, 2013, in favour of the Liquidator. The petitioner's bid was for ₹98.55 crores net of liabilities, for (i) land and building admeasuring 154Acres (bid amount of ₹

36.71 crores), (ii) Plant & Machinery, Furniture, Fixtures and Fittings (excluding leased assets) ₹ 59.75 crores, (iii) Stocks/Inventories ₹ 24.50 lakhs, (iv) leased property ₹1,84,50,000/-, making a total of ₹98.55 crores for sale on "AS-IS-WHERE-IS WHATEVER-THERE-IS-BASIS". On 13th June, 2013, the Liquidator, PCL communicated the acceptance, by the Asset Management Committee of the petitioner's *"offer at the quoted price of Rs.98.55 Crores net of liabilities"*. The petitioner, on 5th August, 2013 acknowledged the receipt of the approval and reiterated that it would not be responsible for liabilities upto the date of transfer. In reply, the PCL stated, *inter alia*, that:

*"...we once again reiterate that the sale of the property is inclusive of liabilities as per tender document. Kindly be informed that Liquidator is a Quasi Judicial Authority empowered to settle all the issues as per the provisions of MSGS Act. All the necessary formalities required on the appointment of Liquidator pertaining to Liquidation were carried out as per the Statute. The modalities to be adopted in tackling and settling the issues with various Agencies/Authorities should be left to the Office of the Liquidator.*

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*We wish to inform that 16th August 2013 is the last date for paying 50% of the up front amount.."*

4. To this reply, the Petitioner responded on 8th August, 2013, contending that its bid was net of liabilities. However, the Liquidator of PCL replied- the same day, stating that the bid price of ₹98.55 crores **was inclusive of liabilities**. The petitioner's request for the draft Sale Agreement *Proforma* was declined; the liquidator stated that it would be sent at an appropriate time after getting full and final payments. It is thereafter averred

in the writ petition that an extension to deposit the amounts payable, was sought in the following circumstances:

*"6.10. Since no co-operation was forthcoming by the Liquidator, the Petitioner on the pretext of unforeseen circumstances in the currency markets leading to the Rupee depreciation which inter alia led to the RBI tightening liquidity the Petitioner on 12.08.2013 wrote to the Liquidator seeking for a 30 day extension of the deadline. Having received no response from the Liquidator, the Petitioner once again, on 16.08.2013, made a request for an extension by 30 days. The Petitioner also specifically stated that the Petitioner would be willing to bear whatever cost/expenses due to the delay as may be decided by the Asset Sale Committee."*

5. It is not in dispute that the Liquidator by letter dated 04.09.2013 accepted the plea for extension by 30 days and communicated it to the petitioner. The Petitioner, however on 09.09.2013 sought a clarification that the extension should be operative from 04.09.2013; it also stated that in regard to the method of payment of the remaining amount, as permitted in the Tender, the Petitioner proposed to issue ₹50 crores by way of Demand Draft and the balance ₹43.55 crores by way of Bank guarantee. The Liquidator's reply of 11th September, 2013 was that the Petitioner's proposals were not tenable unless ₹5 crores was deposited in the bank account of the Liquidator, so that its request for extension could be favorably considered by the members of the Asset Sale Committee. In regard to the method of payment proposed by the Petitioner, the Liquidator, stated that the Deed of Assignment of land with GIDC cannot be executed till the Bank Guarantee amount is converted into cash/Demand Draft in the bank account of PCL.

6. On 26th September, 2013, apparently a theft took place at the premises which were put to auction. The petitioner's Managing Director met the Asset Managing Committee of PCL on 27.09.2013, when decisions to reschedule the payment commitments of the petitioner were taken. These were embodied in minutes of meeting; the relevant decisions are extracted below:

*"1. Mr. Mehta of M/s. Indistock Financial Services Pvt. Ltd. has agreed to pay Rs. 10.00 crores latest by 10th October, 2013. Non fulfillment shall result in the cancellation of existing offer and forfeiture of EMD amount of Rs. 5.00crores.*

*2. M/s. Indistock Financial Services Pvt. Ltd. will be given an extension of 75 days starting from 1st October, 2013.*

*3. It was further agreed that balance Rs.83.55 crores will be deposited by M/s. Indistock Financial Services Pvt. Ltd. within the remaining 65 days i.e. latest by 15th December, 2013.*

*4. Possession of the Assets will be given after full and final payment i.e. 15th December, 2013."*

7. The petitioner contends that its Managing Director, Mr. Dharmen Mehta, met PCL's Liquidator at Vadodara and personally handed over letter dated 9th October, 2013 and cheque dated 10th October, 2013 for ₹10 crores issued by it in favour of the Liquidator PCL Vadodara. The Petitioner urges that the cheque was received and accepted by the office of the Respondent on 10th October, 2013. However to the Petitioner's surprise and shock, later the same day the Respondent's office returned back the cheque. The first Respondent had left the office earlier on the pretext of another urgent pressing meeting. The Petitioner pleaded with his office to accept the said

cheque. However, all such requests were turned down. Mr. Mehta tried multiple phone calls to get in touch with the first Respondent but to no avail. In these circumstances, on 11th October, 2013, the Petitioner received a letter from the Liquidator stating that since the amount was not received by 10th October, 2013 the sale offer dated 13th June, 2013 and EMD amounting to ₹5 crores submitted by the Petitioner stood cancelled/forfeited. On 14.10.2013, a fresh Tender Notice of Sale was published by the Liquidator in the Indian Express and other newspapers calling for bids to be submitted on or before 8th November 2013.

8. The petitioner preferred an appeal to the Joint Secretary (Credit & Cooperation), the appellate authority. An intimation of hearing (to be held on 21st November, 2013) was received by the petitioner; it accordingly was represented before the Appellate Authority on that day. The Appellate authority concluded the hearing and appraised the parties the same day that the order would be made in due course and communicated to them. By order dated 27.11.2013, the appeal was rejected. The appellate order- impugned in these proceedings, *inter alia*, states as follows:

*"Heard the parties and gone through the points raised in the appeal and the written statements made by the Respondent i.e. the Liquidator. It is seen that the tender was floated by the Liquidator of the Society along with specific terms & conditions. The-appellant had submitted a valid offer along with an EMD of Rs. 5 crores quoting a value of Rs. 98.55 crores on 10-5-2013. The offer was acceptable to the Asset Sale Committee, the sale offer was given to the appellant vide letter dated 13.6.2013 and the same was received and accepted by the appellant on 13.06.2013. As per the terms of the above sale, 50% of the upfront price Rs.49.25 crores was to be paid on or before 16.8.2013. However, based on the request of the appellant for extension of time for payment of the committed*

*charges, the Memorandum of Agreement was signed between the parties on 27.9.2013, and accordingly, the appellant was required to pay Rs. 10 crores on 10.10.2013. Non-fulfillment of the same shall result in cancellation of the existing offer and forfeiture of EMD amount of Rs. 5 crores. It is seen that the appellant has failed to comply with the terms & conditions and hence is liable for the consequences emanating there from as enshrined in the Memorandum of Agreement signed between the parties on 27.9.2013. The reasons given by the appellant for non-payment has no relevance when read along with the terms and conditions of the offer of the Memorandum signed between the parties. As such, I find no reason to set aside the cancellation order dated 11.10.2013 issued by the Respondent, i.e. the Liquidator. Accordingly, the appeal is disposed off."*

9. The petitioner received, on 5th December, 2013, a communication enclosing the proceedings and order. Later, on 19.12.2013, the petitioner complained of not being provided a copy of the written submissions given by the Liquidator on the date of hearing. The respondents provided a copy later, through letter but refuted the allegation of not providing sufficient opportunity of hearing.

10. It is alleged by the Petitioner and argued by its counsel, Mr. Nayar - and later Mr. Wali, that the order of the appellate authority is in error of law and requires to be set aside. It is argued that when the petitioner's Managing Director met the first respondent and handed over a cheque for the agreed amount, i.e. ₹10 crores, the question of non-compliance with the terms of agreement after the acceptance of the bid could not have arisen. In this context, reliance was placed on the minutes of meeting dated 27th September, 2013, which nowhere stipulated that cheques could not be deposited; counsel also relied on copies of the air tickets, boarding cards,

gate pass, etc to show that Mr. Mehta in fact visited the premises of PCL on 10.10.2013. It was submitted that the stand taken by PCL before the appellate authority that a cheque could not be accepted in view of the terms of the tender, were clear afterthoughts.

11. Mr. Wali emphasized the fact that there was a theft in the premises of PCL on 26th September, 2013, which it was duty-bound to appraise the Petitioner of, but did not. Instead in the meeting held the next day, its representatives pressurized the Petitioner's Managing Director to pay the agreed consideration within a stipulated time frame. This was both arbitrary and unfair, because the value of the properties that had been bid included the items, which were stolen. Though the petitioner's Managing Director stressed on this fact, PCL and its Asset Managing Committee took no remedial action, but rather insisted on the full payment of the bid amount. In contrast to this, the reserve price of the same goods, in the auction conducted later were significantly less- by at least 10 per cent or so. These facts were vital and should have been taken into consideration by the appellate authority, while deciding the appeal on its merits, as well on the issue of forfeiture of the EMD.

12. Mr. Wali submitted that the Asset Management Committee of the PCL acted arbitrarily in cancelling the bid. It was highlighted that the petitioner's bid and later clarifications were forthright that the offer was exclusive and liabilities were to be borne by the PCL. However, the later correspondence by the PCL's Committee unfairly insisted that the petitioner had to bear those liabilities although there was no warrant for it. The matter remained unresolved for quite some time and having regard to this circumstance as well, the petitioner did not deposit the amounts. Ultimately, when the

minutes of meetings were drawn on 27.09.2013, the parties' understanding for rescheduling of payment (by the petitioner) was agreed upon. This rescheduling of payments replaced the original terms; nowhere did the parties agree that the amounts were to be paid only by Demand Draft.

13. In these circumstances, having regard to the overwhelming materials on the records which showed that the petitioner's Managing Director was present and had furnished the letter as well as the cheque, the cancelling of the bid and forfeiture of the EMD was unjustified and arbitrary. Learned counsel urged that as a State agency, the respondents were duty-bound to issue notice to the petitioner before forfeiture of the EMD of a substantial amount of ₹5 crores. It was highlighted that having regard to the overall circumstances whereby the subsequent tender document of 14.10.2013 itself invited lower bids which were ultimately settled, the question of any loss accruing to PCL did not arise. Learned counsel relied upon the judgment of the Supreme Court in *Gorkha Security Services v. GNCTD* 2014 (9) SCC 105; *Sarvesh Security Services Private Limited v. GNCTD* 2014 (212) DLT 6 (DB) and *M/s. India Government Mint and Ors. v. Shribhumi Steel Private Limited* 2010 SCC Online Cal 2545.

14. It was submitted that an essential prerequisite for the exercise of the power of forfeiture – which entails serious civil consequences, be it in the realm of contract or public law, is fair procedure. By firstly not issuing a separate notice before ordering forfeiture and consequently not considering the relevant circumstances, the respondents acted in an unfair and arbitrary manner.

15. The respondent – PCL, in its counter affidavit disputes that it acted arbitrarily. It alleges that the subject matter of the dispute cannot be

adjudicated under Article 226 of the Constitution because it falls within the realm of contract. It is further submitted that the subject matter comprises of disputed questions of fact which this Court would not adjudicate in writ proceedings. On the merits, it is contended that the terms of the tender clearly stated that bids were to be received inclusive of liabilities. The petitioner clearly understood this to be so but sought to give its own gloss in its letters. At the appropriate stage when the Asset Management Committee of the PCL had to decide, it clearly stated on 08.08.2013 that the bid of ₹98.55 crores was inclusive of liabilities. Here, reliance is placed on the tender condition that the bidders were to furnish their offers on “*As is there is whatever there is basis*”.

16. Ms. Manisha Ben, learned counsel urges that these facts were within the knowledge of the petitioner. Thereafter – on receipt of letter dated 08.08.2013, the petitioner accepted that its bid too was inclusive of liabilities. Furthermore, it was submitted by Ms. Manisha Ben that the question of revising the bid terms did not arise and in any case, cannot be urged by the petitioner in these proceedings. In this context, it is submitted that the minutes of meeting dated 27.10.2013 clearly embodied the decisions taken and agreed upon by all concerned, including the petitioner. This nowhere cast any obligation upon the respondents to revise the bids in the light of the alleged theft incident. The said incident, it was submitted, is a mere device thought of by the petitioner to somehow wriggle out of its obligations and avoid forfeiture of the amounts.

17. Learned counsel highlighted that in the appeal, filed on 06.11.2013, the question of unfairness in the terms and the liabilities payable by the successful bidder had not been highlighted at all. She furthermore submitted

that the respondent's clear understanding and insistence on payments through Demand Drafts is because of a specific term in the tender document to the effect which the petitioner was aware of at all times, i.e. Clause 5.01 which states that all payments, including EMD shall be "*by Demand Draft only*" of any nationalized bank/scheduled commercial bank drawn in favor of the liquidator, cooperative limited payable at Vadodara. In the light of this stipulation, which bound the petitioner and which had not been altered in any manner, the contention that the cheque had been accepted but later on returned and that it constituted due payment of ₹10 crores by the date agreed is unacceptable. It is highlighted in this context that PCL, as a state agency is bound by the standards which it published and applied at the time of accepting the tender by the highest bidder, i.e. the petitioner. If the facility of payment by cheque -in a manner at variance with the express terms, was to be given as sought for by the petitioner in these proceedings the respondent's actions will be contrary to its declared policy, and therefore, violative of Article 14 of the Constitution of India.

18. It was submitted that the clear terms of the bid accepted and the tender conditions which applied were that the petitioner was to pay the entire amount by the stipulated date. Its request for extension of time was granted not once but twice. The minutes of meeting dated 27.09.2013 were categorical in that ₹10 crores were to be received latest by 10.10.2013. In the circumstances, the tendering of a cheque on 09.10.2013 – even if accepted as true, would not be in compliance. Furthermore, it was highlighted that the materials placed on the record of these proceedings demonstrated that the petitioner was not in possession of ₹10 crores but is rather relying upon certificates issued by third parties – letters to the effect that they would have

made available to the petitioner, a sum of ₹10 crores based upon the amounts lying to their credit, i.e. in excess of ₹7 crores in their bank account. This, it is highlighted, does not amount to a *bona fide* contention by the petitioner that it in effect did deposit ₹10 crores by the agreed date.

19. It was submitted that the later tender and the amounts received for the said properties by the PCL are not the subject matter of these proceedings. The petitioner's reneging on the contract and the express stipulations clearly entitled PCL to forfeit the EMD. Its actions, therefore, are just and appropriate. Lastly, Ms. Manisha Ben asserts that the order impugned is neither unfair nor violative of any principle of public law, nor in any manner unfair.

*Analysis and Conclusions:*

20. It is quite evident from the above discussion that the Asset Management Committee of the PCL had advertised, for the sale of its assets – which included land, plant and machinery thereon. The last date for submission of the bid was 23.04.2013 – this was later extended subject to certain conditions – the exact particulars advertised was ₹98.5 crores. 50% of upfront amount was to be payable by the successful bidder within 60 days from the date of offer and the rest was to be by bank guarantee. The petitioner's tender offer of ₹98.55 crores turned out to be the highest.

21. The acceptance was communicated by PCL through its letter dated 13th June, 2013. Much later on 08.08.2013, the petitioner conveyed that the bid was net of liabilities, i.e. it was absolved of the responsibility of bearing liabilities. The management Committee of PCL was quick to clarify that it

was not so by the letter of 08.08.2013 itself. The petitioner initially requested for extensions by 30 days - (of its liability to pay its 50% of the upfront amount). This request was accepted on 11.09.2013 but with the rider that ₹5 crores was to be deposited with the Liquidator so that the Asset Sale Committee could in fact consider the request for extension. A meeting took place between the competent authority of the PCL and the petitioner's Managing Director on 27.09.2013. In this, it was clearly agreed that the petitioner would pay "*Rupees 10 crores*" latest by 10.10.2013. It was further stipulated that failure to comply with this would "*result in the cancellation of existing offer of forfeiture of EMD amount of Rs.5 crores.*" It was subject to this that the petitioner was given extension of 75 days in depositing the balance of ₹83.55 crores.

22. The petitioner contends that in the meanwhile, a theft took place on 26.09.2013 at the Naldhari Plant, Valia of which it became aware on 01.10.2013. Its allegation is that this theft resulted in drastic change in the circumstances requiring revision of the consideration payable. To support this contention it relied upon the reports received by it in that regard. This Court is of the opinion that this aspect cannot be gone into at all, given the fact that if indeed on 01.10.2013, the petitioner became aware of such circumstances, it would entirely have made its view known to the competent authority in the PCL in writing and insisted upon an alteration in the terms, and especially the consideration. Contemporaneous absence of any document supporting the petitioner's contention in this regard persuades this Court to hold that this fact is sought to be highlighted as an argument merely to support the petitioner's larger case and that nothing substantial turns upon it.

Indeed in the grounds of appeal dated 06.11.2013, the petitioner nowhere states that this fact was ever highlighted with PCL - rather its contention is that this amounted to a change of circumstances which *"Respondent 1 ought to have considered."*

23. Now as far as the payment terms are concerned, clause 5.01 of the terms of the tender, categorically state that all payments, including OD shall be payable by DD only, drawn in favour of PCL, Vadodara. Clause 5.04 states that *"50% of the upfront amount to be deposited by the successful bidder within 60 days from the receipt of letter of offer. Failure to pay such amount EMD so deposited shall be forfeited."*

24. The petitioner was intimated about the acceptance of its offer of ₹ 98.55 crores and that it was the successful bidder. This letter clearly stated that the terms and conditions of tender document shall form integral part of its offer. In terms of the tender conditions, the petitioner was duty bound to deposit 50% of the bid amount, i.e. sum in excess of ₹ 49.75 crores on or before 12/13.08.2009. Despite its knowledge of the tender terms, the petitioner entered into correspondence with PCL - whether the payments were inclusive or exclusive of the liabilities. The futility or untenability of this step is evident from the special condition of sale as is clearly stipulated below:

*"1.01 THE SALE IS ON AS-IS WHERE-IS AND WHATEVER THERE-IS BASIS. The Upset price is inclusive all liabilities like electricity dues, GUIDC dues, water charges and notified area charges attached to the Naldahari property."*

*1.02 The purchaser shall be liable to pay and shall pay full amount of taxes of all kinds whatsoever which will have to be paid in connection with the Sale of the Assets"*

In any case, the letter of PCL dated 08.08.2013 clarified that the petitioner had to bear all the liabilities. In these circumstances, the petitioner's submission with respect to lack of clarity in the terms is unpersuasive and without basis. Whatever be the reason, the petitioner sought for extension of time in making the payments. On 11.09.2013, the PCL responded stating that as a condition, a further amount of ₹10 crores was payable subject to which its application for extension will be considered. Apparently, this condition was not acceptable to the petitioner who continued to engaged in further dialogue. Ultimately, on 27.09.2013, a meeting was held between the petitioner's MD and all concerned within the PCL. The minutes of those meetings were drawn up which stipulated that the petitioner had to pay ₹ 10 crores by or before 10.10.2013 subject to which, it would be liable to deposit balance amount of ₹83.55 crores within 75 days. The petitioner contends that its MD visited the office of the respondent with a cheque on 09.10.2013, but that the first respondent refused to meet him and that even though the cheque was initially accepted, it was returned later. The cancellation of the bid and forfeiture of EMD followed subsequently. The petitioner submits that the payment by cheque sufficiently fulfilled its submissions under the tender terms spelt out in the minutes of meeting dated 27.09.2013.

25. This Court is of the opinion that there is no substance and merit in the petitioner's contention. As noticed earlier, the tender terms categorically required the successful bidder to make all payments by DDs issued either by nationalised bank or scheduled banks, payable to PCL at Vadodara.

Although it could be urged that this stipulation is not central to the performance of the contract, it acquires a great significance in the light of the facts of this case. Clearly, the petitioner was aware of the period provided to it for deposit of 50% of the upfront amount. Its request for extension had not met with unqualified acceptance. The minutes of meeting clearly recorded that ₹ 10 crores had to be paid by 10.10.2013. The handing over of a charge dated 9.10.2013 did not in these circumstances amount to payment of the total sum agreed upon. The attendant circumstance which persuades this Court to reject the petitioner's submission is that in the additional affidavit, it is nowhere asserted that the petitioner was in possession of the amount, either on 09th or 10.10.2013. It places reliance upon two certificates issued by M/s Lodha Building Private Limited - dated 20.04.2013. The first certificate states that M/s. Lodha Buildcon transferred ₹ 5 crores into the account of the petitioner to enable it to make EMD payments towards its bid. The second certificate was that Lodha Developers Private Limited agreed to pay ₹10 crores to PCL at the request of the petitioner for purchase of the property as and when required from its bank account no.095821400000050 with Kotak Mahindra Bank into the petitioner's account with HDFC Bank. The certificate further states that *"on 10.10.2013 credited balance in account no.095821400000050 on Lodhi Developers Private Limited with Kotak Mahindra Bank was Rs.1322973.20/- and the total overdraft limit available on the said amount on that date was Rs.50 crores."*

26. These documents, are certificates dated 20th May, 2015. In this Court's opinion, they do not establish that the petitioner in fact did pay the sum of ₹ 10 crores to PCL by the stipulated date even if it were to be accepted,

*arguendo*, that the cheque was duly deposited as contended by it. Such being the position, the petitioner's challenge to the cancellation of its bid is unmerited and therefore, rejected.

27. The next question is whether the forfeiture of ₹ 5 crores is in the circumstances of the case just and appropriate. The petitioner made a two fold submission, to say that such forfeiture was illegal. It was firstly contended that the procedure adopted by PCL was arbitrary in that no specific notice was issued and a hearing given. The second argument is that forfeiture was disproportionate having regard to the fact that the subsequent tender was for a much reduced amount.

28. So far as the procedure goes, this Court is of the opinion that the reliance placed upon certain decisions like *Gorkha* (supra) etc. are not apt. PCL is right in contending that the petitioner was aware of its rights and responsibilities when it furnished its bid and then it was accepted on 13.06.2013. The petitioner clearly knew that it had to deposit 50% of the bid amount upfront within 60 days of acceptance of its offer. The extension of the time to deposit this amount itself was a concession granted by PCL. However, the extension was made but since time was the key element, the extension was not on unqualified terms. This was because the basic 60 day period had ended much earlier. The PCL nevertheless agreed to the extension which substantially altered the terms. The terms of this extension were categorical that ₹ 10 crores had to be paid or deposited with PCL on or before 10.10.2013. The consequence of failure to comply with this condition too was categorically spelt out, i.e. forfeiture of EMD and cancellation of the bid. In these circumstances, the question of issuing further notice, in this

Court's opinion, could not have arisen at all. The petitioner's submission to this effect, is, therefore, rejected.

29. The next question is whether the forfeiture of entire EMD of ₹ 5 crores was justified having regard to the circumstances. Whilst there can be no dispute that the PCL was empowered to forfeit the amount, nevertheless, the question as to whether it could recover the entire earnest money deposited- i.e. ₹ 5 crores in the present case is moot. The subsequent advertisement towards tender floated on 14.10.2013 yielded in an offer by M/s. Impro Real Estate Pvt. Ltd. which was apparently approved by the Asset Sale Committee of PCL on 26.02.2014 and communicated on 07.03.2014. This resulted in the sale of Naldhari Plant for an amount of ₹ 89,21,10,000/-. These details are discernable from the affidavit on behalf of the PCL dated 28.05.2014. Such being the case, the petitioner's default was not such that the loss to the extent that the entire EMD could be forfeited. The petitioner's bid was for ₹ 98.55 crores. If in fact the petitioner had complied with the terms, the PCL would have benefited and perhaps secured the entire amount by end of December 2013. However, it initiated the process of retendering and settled for a substantially reduced amount (approximately ₹ 9 crores less than the petitioner's offer). Having regard to all these facts, the Court is of the opinion that the forfeiture of the entire amount of ₹ 5 crores is a decision which requires to be reconsidered.

30. In view of the above, the respondents are directed to take into consideration all facts and circumstances and decide whether forfeiture of the petitioner's EMD to the extent of ₹5 crore is justified. It is open to the petitioner to furnish a written representation in this regard to the respondents

within 15 days. The respondents are directed to take into consideration the petitioner's submissions and pass a speaking order within six weeks from today and shall also record reasons for such order. The rights and contentions of the parties are reserved.

31. The writ petition is allowed in the above terms. There shall be no order as to costs.

**S. RAVINDRA BHAT**  
**(JUDGE)**

**DEEPA SHARMA**  
**(JUDGE)**

**JULY 21, 2016**

