

**IN THE HIGH COURT AT CALCUTTA  
Constitutional Writ Jurisdiction  
(APPELLATE SIDE)**

**Present:  
The Hon'ble Justice Smita Das De**

**W.P.A. No 13131 of 2025**

**Shri Manoj Kumar Verma  
Vs.  
The Union of India & Ors.**

**For the petitioner** : Mr. Saptarshi Roy,  
: Ms. Kakali Das Chakraborty

**For the Union of India** : Mr. Kaushik Dey  
: Ms. Jayita Das Chakraborty

**Reserved on** : **25/11/2025**  
**Judgment on** : **19/12/2025**

**Smita Das De, J.:-**

1. The instant writ petition has been filed by the petitioner in WPA No. 13131 of 2025, challenging inter alia, the rejection of a bid dated May 8, 2025 for leasing under lot No 12381-SLR-R1-HWH-NDLS-25-1 coupled with forfeiture of the earnest money to the tune of Rs. 7,45,321/-
2. Apropos, the facts made out in the 'Writ Petition' is that the petitioner is a proprietorship firm engaged in the business of transportation of goods of various natures under the name and style of 'Vishal Enterprise'. The petitioner has submitted his bid and became the highest bidder pursuant to a tender notification dated May 8, 2025 for

leasing of a parcel space in SLR coach of 12381, ex HWH to NDLS Poorva express. The petitioner has been declared as the highest bidder. At the outcome of the tender process, the petitioner has secured the business commitments from customers to ensure smooth execution of the lease work, but as such no formal agreement has been executed with the railway authorities. The petitioners bid has been cancelled by the railway authorities by forfeiting the earnest money to the tune of Rs. 7,45,321/- without serving any formal notice and/or order of cancellation by the railway authorities, subsequently the same could be unravelled from the online portal.

3. The E-Auction process of the Railway Administration and subsequent conferment of leasehold right is at present is overall guided and regulated by F.M Circular No. 11 of 2022 read with Circular No. 12 of 2022 along with Standard Conditions of Contract.
4. To participate in the auction process the participants are adhered to certain rules of the circular which are categorically dealt with from Clause 1.2 to Clause 1.4 of F.M. Circular 11 of 2022 which is reproduced below-

*“1.2 The entity shall be required to upload the Audited Balance Sheets P&L Account Statements of the last three Financial Years in their profile in IREPS before start of bidding in the auction in which they want to participate. Railways shall verify the Audited Balance Sheet and P&L Account statement uploaded in the profile in IREPS of the successful contractors anytime after acceptance of the bid or during the currency of contract, and if the information about the Financial Eligibility is found to be false /misleading or the documents uploaded by the firm are found to be false/invalid , then the*

*allotment of a lot shall be cancelled or if the contract has been issued, the same shall be terminated forfeiting the EMD/ Security Deposit without any further notice.*

*1.3 If the Audited Balance Sheet and/or P&L Account Statement of all of the three preceding Financial Year(s) are not available, then the documents of the years (out of the three preceding years) for which the same are available shall be uploaded, and the same will be taken into consideration for judging the eligibility of the bidder.*

*1.4 If the turnover details are not entered by a registered entity in its IREPS profile, the system will not allow the entity to participate in auctions for lots for which the minimum turnover required is greater than zero.”*

- 5.** As per Clause 1.4 of the F.M Circular No. 11 of 2022 if all the requisite particulars are not filled up in computer generated IREPS, the system will not allow any entity to take part in the Auction process.
- 6.** As per Clause 1.0 to Clause 1.4 if the turnover details are not correctly uploaded the system itself will not allow any entity to register its Bid. One gets an opportunity to take part in the Auction process and submit it's Bid subject to the uploading of requisite documents in the portal. In the instant case petitioner is further allowed to submit its Bid as he has filled up all the requisite columns with relevant and authenticated information and documents as sought for.
- 7.** After taking part in the Auction process petitioner emerged as the Highest Bidder as it would reflect from the Bid sheet and was under legitimate expectation that he would be favoured with issuance of Formal E-Auction Digital Agreement. The Railway Administration could have justified their punitive action of forfeiture of earnest money

that petitioner uploaded any false, invalid and/or misleading documents. It clearly appears that the petitioner has not defrauded the Railways by uploading false, invalid and/or misleading documents. As such the punitive measures which have been applied has been exercised arbitrarily and does not have the sanction of law.

8. On May 15, 2025 the petitioner was called upon by the Railway Administration and sought few documents including PL Account & Audited Balance sheets which were duly sent to them on May 20, 2025 Via Email against which the Railway authority did not raise any objection.
9. The petitioner requested the Railway authorities to condone the technical lapse committed inadvertently and to allow the tender process to be completed in favour of the petitioner, since there is no intention to mislead and/or submit false documents. The omission has been purely unintentional and the contents of the audited balance sheets remained completely genuine and unaltered, save and except the signature of the auditor remained absent. Even after acceptance of money and submission of complete corrected documents, the Railway authorities neither issued any formal order of rejection, nor proceeded to issue the tender work order to the petitioner.
10. By efflux of considerable period of time, no effective steps have been taken by the Railways moreover, forfeited the EMD amount by rejecting the bid which is the subject matter of challenge in the instant writ petition.

**Contention of the petitioner-**

- 11.** It is stated by the petitioner, that the respondent authorities has proceeded to debit by retaining a substantial amount of Rs. 7,45,321/- from the petitioners account, without conducting any meaningful examination or verification of the uploaded documents.
- 12.** The petitioner submits that if the documents are fundamentally found to be defective or incomplete in any material manner, the Railway's procurement system (IREPS) would reject the bid at the stage of submission itself, preventing the petitioner from participating in the tender process. The fact remains that the petitioner's bid has been accepted, and the amount debited , clearly establishes that the issue is merely a mere unintentional mistake, which has been immediately rectified and acted upon by the petitioner as a result of which the petitioner should not have been penalised by way of forfeiture or cancellation.
- 13.** The petitioner submits that before resorting to any punitive or coercive action such as the disqualification of the bid and forfeiture of the earnest money, the competent authority ought to have issued a show cause notice to the petitioner, seeking clarification or allowing an opportunity to rectify the alleged defect. The petitioner also submits that no opportunity of hearing was ever granted prior to the imposition of such harsh and disproportionate punitive measures namely the cancellation of the bid and forfeiture of the substantial amount of earnest money. This unilateral action, taken without affording the petitioner any chance to present an explanation or rectify the inadvertent mistake, tantamounts to flagrant violation of the

principles of natural justice , particularly the fundamental principle of 'audi alteram partem' – that no person shall be condemned unheard.

- 14.** The petitioner submits that during submission of the documents, the audited balance sheet has been uploaded without auditor's signature due to unintentional oversight and the concerned officer has been duly informed by the petitioner vide letter dated May15, 2025, with a rider that 'the same has been uploaded mistakenly without any ulterior motive'.
- 15.** The petitioner draws the attention to the Bid-sheet and submits that, since the particulars of the documents are found to be inadequate, the lot is treated as forfeited by the Railway Authority.
- 16.** Upon receiving all necessary and required documents once again Railway Administration did not raise any objection with regard to its authenticity or veracity. Before exercising punitive measures Competent Authority could have at best intimated the petitioner before hand with prior notice for rectification/clarification of defect on any issues by taking your petitioner into a confidence before exercising any punitive/coercive measures in the form of disqualification of Bid and forfeiture of earnest money. No show cause notice has been issued before infliction of any punitive measures.
- 17.** On June 11, 2025 the petitioner submitted a representation before the Competent Authority which has been duly received on the even date but no effective steps were taken thereafter. The action of the respondent Railway Authority in cancelling the bid and forfeiting the

earnest money deposit wholly dehors the provision of Freight Marketing Circular No. 11 of 2022. This circular does not contemplate forfeiture of earnest money in cases of unintentional or rectifiable omissions or non- uploading of any vital document, particularly no element of fraud, misrepresentation or suppression is alleged.

18. The petitioner further submits that as per clause 1.2 of the Circular No.11 of 2022, the respondent authority can only forfeit the earnest money deposit subject to the cancellation of the allotment of lot or if the contract has been issued upon submission of any false and misleading documents. It is submitted that the Railway Authority arbitrarily and illegally forfeited the earnest money deposit at a pre contractual stage. Though the petitioner has been declared to be the highest bidder but is not a successful contractor due to uploading of inadequate particulars in the process. The petitioner asserts that a contractor can only come within the zone of consideration after complying all the formalities as required to perform the contract. In this context the petitioner relies upon a judgment of the Division Bench of this Hon'ble Court in **FMA 418 of 2024** with **CAN 1 of 2024** **The Senior Divisional Commercial Manager Eastern Railway, Howrah Division & Anr vs. Manjee Yadav & Ors** ,wherein it has been held that –

*“Clause 1.2 as relied upon by the appellants can only be activated against a successful contractor on an eventuality of breach of the terms and conditions of the contract or the allotment of lot inviting the serious consequences of*

*forfeiture of earnest money/security deposit .Whether the participation in the tender process without the offer being accepted constitutes a concluded contract is a question to be taken into account in this regard.”*

19. The petitioner also relies upon another unreported judgment of this Court in **(MAT 730 of 2020, CAN 1 of 2021, CAN 2 of 2021) The General Manager, Eastern Railway & Ors. Vs. Dileep Kumar Sah** wherein it has been held by relying upon a judgment of the Apex Court in **M/s Vedanta Ltd vs. M/s. Emirates Trading Agency LLC reported in AIR 2017 SC 2035**, that unless the offer made by the bidder is accepted without any conditions or putting any rider to it shall partake a character of a contract otherwise, it would not be treated as a concluded contract in the following-

*“It is manifest from the aforementioned letter that the bid of the writ petitioner /respondent was accepted having quoted the highest rate but the acceptance would be completed only after the execution of the agreement for which the writ petitioner /respondent was called upon to attend the office. If the acceptance is coupled with certain conditions or reasonably inferred that something more is required by both the parties to be performed, it is regarded as an offer and the acceptance cannot be presumed to take a character of a contract. The Apex Court in M/s. Vedanta Ltd. (supra) in an unequivocal terms held that an offer has to be accepted without any rider or further conditions to be incorporated to achieve the character of a contract in the following:*

*“13. Section 7 of the Indian Contract Act, 1872 (hereinafter referred to as the Act) provides that in order to convert a proposal into a contract, the acceptance must be absolute and unqualified. The existence of a concluded contract is a sine qua non in a claim for compensation for loss and damages under Section 73 of the Act arising out of a breach of contract. If instead of acceptance of a*

*proposal, a counter-proposal is made, no concluded contract comes into existence.”*

*The first and second paragraph of the said letter indicates that though the bid was accepted but in order to complete the exercise, an agreement is required to be executed by both the parties so that it may constitute a contract. The contract would be presumed not only from the languages used in the offer or acceptance of letter but can also be presumed from the conduct of the parties in relation to a transaction. It is apparent from the letter dated 19.6.2017 more particularly, the subject for which it is issued which is indicative of the fact that it is in the nature of an offer letter and the acceptance can only be made on execution of an agreement. The acceptance must be unqualified and/or unconditional which is sine qua non to a concluded contract as held by the Supreme Court in M/s. Vedanta Ltd. (supra).”*

- 20.** It is further submitted by the petitioner that despite being the highest bidder the bid is forfeited on the ground of furnishing inadequate particulars for which the petitioner cannot come within the zone of consideration and can be treated as successful contractor. The clause 1.2 is purely applicable against a successful contractor and not against an unsuccessful contractor.
- 21.** The petitioner submits that as per section 7 of the Indian Contract Act, 1872, it clearly envisages that in order to convert a proposal into a contract, the acceptance must be absolute and unqualified. In the instant case since the petitioner’s bid is not accepted therefore the question of treating the petitioner as a successful contract bears no relevance. The condition precedent to conclude a contract the acceptance must be unqualified and unconditional which remains absent in the instant case.

**Contention of the Respondent-**

- 22.** Per Contra, the respondent strenuously argues and submits that during the e-auction process 10% of the annual contract value as per bid value of the highest bidder is in lien marked as Earnest Money Deposit. It is also submitted that the IREPS is designed to auto-award the contract to the highest bidder once the bidding window closes. The auto-award, is followed by the generation of bid sheet, which constitutes a conclusive acceptance of the bid, thereby identifying the bidder as the “successful bidder”, triggering obligation under the auction framework.
- 23.** Learned counsel for the respondent submits that the petitioner has filled up all the details regarding the turnover details and uploaded the supporting documents and participated in the bidding process.
- 24.** Subsequently when the bid sheet has been scrutinized by Auction Conducting Officer (ACO) it is revealed that the uploaded balance sheet is not audited. On the contrary, the petitioner instead of uploading the profit and loss account as required, uploaded another document having no relevance.
- 25.** It is further stated by the respondent during registration on IREPS module it is presumed that the petitioner has given his consent at the time of uploading turnover data. Earnest money submitted by the bidder for a particular lot shall be forfeited if the documents are found to be false and/or invalid. Turnover is verified by the Railway authorities by scrutinizing the audited P & L statement after completion of the auction process as per Para 2.2 of The Standard

Conditions of contract of Freight Marketing Circular No. 11 of 2022. The potentiality of the bidders can be ascertained subject to the verification of the uploaded documents in IREPS module.

- 26.** Learned counsel for the respondent submits that after filling up of the turnover data and uploading the required documents one can participate in the auction. Thereafter data in the bid sheet are verified accordingly. The e-Auction process in IREPS is exclusively an automatic digital process which is completed in a streamlined manner.
- 27.** The respondent relies upon clause 18 of Circular No. 11 of 2022 along with clause 1.4 of the Standard Conditions of Contract (are hereinafter referred to as SCC) which is reproduced below-

*“18. Bids will be auto accepted (auto decision).contract will be awarded to the highest bidder if it bid rate is above or equal to the reserve price. Contracts will be generated online and will be signed digitally (e-contracts).”*

Following are the ‘standard conditions of contract’-

*“1.4 The entity shall be required to upload registered legal document in its profile in IREPS at the time of registration in IREPS or before participation in auction. Railways reserve the right to verify the documents uploaded in IREPS profile of the successful bidders at any time and if any information provided is found to be false /misleading or the document uploaded by the entity are found to be false /invalid then the Railway may take appropriate punitive action against the entity including but not limited to termination of the awarded /running contracts along with forfeiture of the security Deposit or cancellation of allotted lots with forfeiture of Earnest Money , without any further notice.”*

- 28.** Respondent also asserted upon the requirements of uploading relevant documents namely the Audited Balance Sheets and P&L Account Statements of the previous three Financial Years in their profile in IREPS prior to the auction in which they desire to participate. Thereafter, Railways reserve the right to verify the documents uploaded in IREPS profile of the successful bidder(s) as per 2.2 of Standard Conditions of Contract. It is also submitted that the awarded Lot can only be forfeited in a bid sheet in IREPS system forfeiting the Earnest Money Deposited (EMD) after forfeiture of awarded lot. Therefore, the EMD is forfeited together with the forfeiture of the awarded lot otherwise, there shall be a large revenue loss to the public exchequer. It is further submitted that if uploaded documents by the entity are found to be false/invalid, then the punitive action can be taken against the entity including but not limited to termination of the awarded contracts. The tender terms require strict compliance, and any incorrect document attracts automatic consequences. Circular No. 11 of 2022 empowers authorities to forfeit EMD in case of false information. Post bid rectifications are impermissible as they violate transparency.

**Analysis-**

- 29.** The moot question involved herein to be decided is to whether a bidder who has been declared successful highest bidder can be disqualified and subjected to forfeiture of bid security solely on the ground for uploading an incorrect document due to an inadvertent mistake in the light of the Railway Circular No. 11 of 2022.

- 30.** The Circular No. 11 of 2022 uses the term false / fabricated / incorrect information which is required to be established whether such 'false and fabricated' involves any intentional deception or not. Usually in administrative law the word 'incorrect' covers 'mistakes' for which the nature of the mistake must be assessed.
- 31.** In plethora of cases it has been affirmed that in cases of black listing and forfeiture being penal in nature should be read in harmony with the doctrine of mens rea. As it appears from the bid sheet that the authority failed to examine whether the mistake is clerical, inadvertent, curable or intentional. It is a settled proposition of law that any administrative action must be proportionate. Therefore forfeiture of EMD and cancellation of bid constitute serious civil consequences which requires finding of intent to mislead.
- 32.** From the plain reading of the tender it does not appear that the tender conditions can explicitly bar the post-bid verification or clarification regarding pre-existing documents. In the instant case the petitioner's eligibility is not in dispute save and except, uploading the file is found to be incorrect. In several judgments as held by the Hon'ble Apex Court, that minor procedural lapses should not disqualify if not otherwise, the eligible bidder with essential criteria stands fulfilled. In the instant case the petitioner despite being a successful highest bidder, the authority concerned disqualified the petitioner on a non-substantive mistake which is unreasonable and arbitrary. Forfeiture is permissible only upon establishing that the bidder uploaded false document with the intent to mislead. The

uploading of the incorrect documents is inadvertent and not false within the meaning of Circular No. 11 of 2022. The petitioner is improperly disqualified after being a successful highest bidder and the EMD amount has been forfeited illegally and disproportionately.

33. Having heard the parties and considering the documents available on record I am of the considered view that the petitioner should not be penalized by forfeiting his EMD on the ground of uploading incorrect documents without arriving at a finding that there exist an element of an intent to mislead.
34. The petitioner has relied upon a judgment of the Division Bench of this Court being **FMA 418 of 2024** with **CAN 1 of 2024 (The Senior Divisional Commercial Manager, Eastern Railway, Howrah Division and Anr. Versus Manjee Yadav and Others)** wherein the respondents participated in the tender process uploading the requisite documents but the documents are found not to be uploaded in the portal as a result of which the letter of termination is issued by the Railway authorities by cancelling the Bid in the E-Auction and forfeiting the amount of the earnest money in terms of Para 2.2 of the standard conditions of the Contract as mentioned above. The Division Bench of this Court has decided by relying upon the Clause 1.2 of the Circular No. 11 of 2022 in paragraph 18, 19 and 20, which is reproduced below:-

*“18. Clause 1.2 as relied upon by the appellants can only be activated against a successful contractor on an eventuality of breach of the terms and conditions of the contract or the allotment of lot inviting the serious*

*consequences of forfeiture of earnest money/security deposit, Whether the participation in the tender process without the offer being accepted constitutes a concluded contract is a question to be taken into account in this regard.*

19. *The unreported judgment of this Court in General Manager, eastern Railway Vs. Dileep Kumar Sah [MAT 730 of 2020 decided on 22.04.2024] where one of us – Harish Tandon, J was a member, had an occasion to consider the identical situation in pursuit of ascertaining whether the bid so offered would constitute a concluded contract. Relying on a judgment of the Apex court in Vedanta Limited Vs. M/s. Emirates Trading Agency LLC, reported in AIR 2017 SC 2025, it is held that unless the offer made by the bidder is accepted without any conditions or putting any rider to it shall partake a character of a contract otherwise it would not be treated as concluded contract in the following:-*

*“It is manifest from the aforementioned letter that the bid of the writ petitioner/respondent was accepted having quoted the highest rate but the acceptance would be completed only after the execution of the agreement for which the writ petitioner/respondent was called upon to attend the office. If the acceptance is coupled with certain conditions or reasonably inferred that something more is required by both the parties to be performed, it is regarded as an offer and the acceptance cannot be presumed to take a character of a contract. The Apex Court in M/s. Vedanta Ltd. (supra) in an unequivocal terms held that an offer has to be accepted without any rider or further conditions to be incorporated to achieve the character of a contract in the following:*

*“13. Section 7 of the Indian contract Act, 1872 (hereinafter referred to as “the Act”) provides that in order to convert a proposal into a contract, the acceptance must be absolute and unqualified. The existence of a concluded contract is a sine qua non in a claim for compensation for loss and damages under section 73 of the Act arising out of a breach of contract. If instead of acceptance of a proposal, a counter-proposal is made, no concluded contract comes into existence.”*

*The first and second paragraph of the said letter indicates that though the bid was accepted but in order to complete the exercise, an agreement is required to be executed by both the parties so that it may constitute a contract. The contract would be presumed not only from the languages used in the offer or acceptance of letter but can also be presumed from the conduct of the parties in relation to a transaction. It is apparent from the letter dated 19.6.2017 more particularly, the subject for which it is issued which is indicative of the fact that it is in the nature of an offer letter and the acceptance can only be made on execution of an agreement. The acceptance must be unqualified and/or unconditional which is sine qua non to a concluded contract as held by the Supreme Court in M/s. Vedanta Ltd. (supra).”*

- 35.** The petitioner also relies upon another judgment of the Hon’ble Supreme Court reported in **AIR 2017 SC 2035 M/s. Vedanta Limited Versus M/s. Emirates Trading Agency LLC** also decides the issue that when an offer has been made by the Railways and the same has not been accepted then in absence of any offer and acceptance there cannot be any concluded contract which has also been relied upon in an unreported judgment of the Division Bench of this Hon’ble Court in the case of **MAT 730 of 2020, CAN 1 of 2021, CAN 2 of 2021, The General Manager, Eastern Railway and Others Vs. Dileep Kumar Sah.** The Hon’ble Apex Court in the case of **Dresser Rand S.A. Versus Bindal Agro Chem Limited, reported in (2006) 1 SCC 751** has categorically held that in absence of any offer and acceptance there cannot be any concluded contract. Concluded contract means when an offer is made and the concerned party sends his acceptance it becomes a contract of a binding nature. Section 7 of the Indian Contract Act, 1872 (hereinafter referred to as “the Act”)

provides that in order to convert a proposal into a contract, the acceptance must be absolute and unqualified. The existence of a concluded contract is a *sine qua non* in a claim for compensation for loss and damages under section 73 of Act arising out of a breach of contract. If instead of acceptance of a proposal, a counter proposal is made, no concluded contract comes into existence.

- 36.** The word 'unqualified acceptance' means agreeing to all terms of an offer exactly as they are presented, without any changes or added conditions. It is a clear, unequivocal and absolute acceptance that forms a binding contract. If an acceptance includes any modifications, it is considered as a counter-offer which rejects the original offer. Thus, in order to become a concluded contract there must be meeting of minds of the parties and the parties must be *ad-idem*.
- 37.** The Railway authorities are empowered to verify the turnover details only in respect of successful contractors at any time after the acceptance of Bid or during the currency of the contract and not prior to that. In the instant case the offer was made from the petitioner's end, unless there is an acceptance by the respondent the same cannot be held to be a concluded contract. Since there is no letter of acceptance issued in favour of the petitioner, there can also be no intention to forfeit the earnest money even in the event, the bidder gets disqualified for not meeting the eligibility criteria. It appears from the record that after realisation, immediately the petitioner took steps to rectify the inadvertent error committed by the petitioner, by uploading an incorrect document which shows the bonafide intention

of the petitioner is not to mislead the respondent with any ulterior and/or oblique motive. As per the Clause 1.2 of the Circular No. 11 of 2022 would show that same can be invoked in respect of allotment of lot and not otherwise, since the contract shows in respect of a successful contractor and not against a successful bidder. If the offer is adjudged as highest bid then it has to be followed by an agreement which remained absent in this case. In this context, an unreported judgment in the case of the **Senior Divisional Commercial Manager, Eastern Railway, Howrah Division & Anr. Vs. Manjee Yadav & Ors. In (FMA 418 of 2024)** dated 25.06.2024 has held that a clause has to be interpreted in a meaningful manner in order to ascertain the applicability in a given situation. It has been categorically observed in paragraph 13 of the judgment which is reproduced below:

*“13. The clause has to be interpreted in a meaningful manner in order to ascertain its applicability in a given situation. The verification of the documents i.e. the audited balance sheets and the profit and loss account uploaded is in relation to a successful contractor and not at the stage when the declaration of the results of such tender process has not been made. The words “successful contractors” have to be understood in such perspective with distinction and such qualification does not imbibe within itself the unsuccessful contractors whose bid is not accepted. Apart from the same, the expressions “The allotment of lot shall be cancelled” or “if the contract has been issued” has to be read in conjunction with the acceptance of the bid or the offer made by a successful contractor does not have the privilege either of the allotment of lot or the contract having entered into inviting the consequences of termination of the same and forfeiting of the EMD/ security deposit without any further notice.”*

- 38.** After examining the entire matter in the light of the settled legal position as adumbrated herein above, this Court finds that a successful bidder is not a successful contractor and has no contractual rights but only have a prospective right. An EMD can be forfeited before issuing letter of acceptance i.e. at the stage of successful bidder (a) if there is false /fabricated documents (b) withdrawal bid (c) failure to honour bid consideration or suppression of material facts. The bid lot was forfeited prior to acceptance as such did not conclude the contract to forfeit the EMD amount. It is well settled proposition of law that Clause 1.2 can only be activated against a successful contractor if there is any breach of terms and conditions of the contract or the allotment of the lot inviting the serious consequence of forfeiture of earnest money /security deposit. Therefore mere participation in the tender process without the offer being accepted cannot be held the contract to be concluded. As already decided in the unreported judgment of Division Bench of this Court in **The General Manager, Eastern Railway & Ors Vs. Dileep Kumar Sah in MAT 730 of 2020** decided on 22.04.2024 by relying upon another judgment of Apex Court in **M/s. Vedanta Limited Vs. M/s Emirates Trading Agency LLC** reported in **AIR 2017 SC 2035** where it has been held that acceptance must be unqualified and/or unconditional which is *sine qua non* to a concluded contract.
- 39.** With the above observation and directions it is held that, forfeiture is permissible only upon establishing that the bidder uploaded false documents with an intent to mislead. No such finding was recorded by

the authorities. Moreover, the respondent authority mechanically and arbitrarily, without proper application of mind has invoked the relevant clause of the Circular No. 11 of 2022. A bidder cannot be penalized or disqualified for a bonafide clerical error as long as the essential eligibility remains to be undisputed. The Circular No. 11 of 2022 also does not mandate punitive measure in absence of intentional falsification.

- 40.** The order dated May 8, 2025 cancelling the petitioners bid and forfeiting the EMD is hereby quashed and is set aside. The uploading of the incorrect document is inadvertent but not false within the meaning of the Circular No. 11 of 2022. The petitioner has been disqualified improperly by forfeiting the EMD. Such rejection of bid by forfeiting the EMD is bad, illegal and disproportionate. In contract the phrase 'not limited to' signifies an inclusive and not exhaustive list. It means that the defined term covers the listed items in addition to other similar items or actions falling under the general category. A decision can be punitive only if it satisfies the test of proportionality and fairness. This clause is applicable in those cases where there is an element of intentional falsification which is absent in the present case, therefore, forfeiture of EMD fails to stand.
- 41.** The writ petition is allowed by quashing the rejection of the bid dated May 8, 2025 and the forfeiture of EMD. The authority shall refund the forfeited amounts of Rs. 7,45,321 /- to the petitioner within a period of 60 days from the date of communication of the order.

- 42.** Urgent Photostat certified copy of this order if applied for be supplied to the parties on priority basis upon compliance of all requisite formalities.

**(Smita Das De, J.)**