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

+ **RFA(OS)(COMM) 23/2025, CM APPL. 46931/2025 & CM APPL. 65068/2025**

APEEJAY OVERSEAS LIMITED & ANR.Appellants

Through: **Mr. Mriganga Dutta, Sr. Adv., Mr. Arpan Behl, Mr. Udipto Koushik Sarmah, Advs.**

versus

ANIL PITTIRespondent

Through: **Mr. Kushagra Bansal, Adv.**

CORAM:

HON'BLE MR. JUSTICE DINESH MEHTA

HON'BLE MR. JUSTICE VIMAL KUMAR YADAV

ORDER

12.11.2025

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1. The instant appeal arises out of the order dated 27.02.2025, whereby the learned Single Judge in CS(COMM) 489/2022 has passed the following order:

“13. Defendant nos. 1 & 2 submitted their written statements. Defendant nos. 3 & 4 did not file their written statements and, therefore, their right stood closed by order of this Court dated 13th July 2023.

14. Defendant no.1 registered themselves on the online portal of defendant no. 4 for trading of coal through online mode and a user ID was provided to plaintiffs firm for them to indulge in sale and purchase of coal.

15. Defendant no.1 had imported high grade value coal from USA & placed its offer to sell its imported coal on the online portal of defendant no.4. The plaintiff firm was in need and, therefore, submitted a bid. Defendant no.4/online portal made the match of plaintiffs demand with defendant no.1's supply and agreement



dated 04th August 2021 was entered into. Notably, this aspect is not denied, as evident from para 12 of the plaint and that of the written statement.

16. Though, defendant no.1 claims that there was no written agreement, plaintiff had asserted in its application that due to online training, the agreement was shared with them, as is evident from the WhatsApp chat at page 103 of plaintiffs documents. A perusal of the said chats would show that the exchange of communication seems to be in the regular course of trade and has not been denied by defendant no.1, with due details of the supply quantity.”

2. Learned counsel for the Appellant-defendant argued that learned Single Judge has directed the Appellant-defendant to pay the amount of the Earnest Money Deposit (Amount Rs.28,37,500/-) along with interest, without considering the *prima-facie* case of the defendants. It was further argued that the defendants have all reasons and justification to forfeit the Earnest Money Deposit, and if the direction to refund the Earnest Money Deposit is upheld, the whole terms and conditions of the agreement or the contract shall stand frustrated.

3. Learned counsel submitted that the learned Single Judge has not only issued directions to pay the amount of Rs. 28,37,500/-, but has also not ensured that in case the suit is dismissed, how the defendants shall be secured of the amount already paid.

4. Having invited the Court's attention towards the merits of its defence so also in support of the argument that the Earnest Money Deposit has rightly been forfeited, learned counsel argued that the Appellant-defendant is prepared to furnish an auto renewal Fixed Deposit Receipt in the name of Respondent-plaintiff, which be kept in the Registry of this office till the disposal of the suit.



5. Learned counsel for the Respondent-plaintiff, on the other hand, submitted that in place of furnishing Fixed Deposit Receipt, the appellant - defendant be directed to pay the amount to the Respondent-plaintiff, however, subject to a condition that the defendant shall furnish a bank guarantee of the equal amount, in the Registry of this Court.

6. After considering the submissions, which were advanced at the Bar in relation to the justification of forfeiture of Earnest Money Deposit, we are of the view that instead of refunding the amount unconditionally, the Respondent-plaintiff be directed to furnish a bank guarantee of the amount of Earnest Money Deposit i.e. Rs. 28,37,500/-. On furnishing the bank guarantee, issued by some nationalized bank (with a photo-copy thereof to the appellant-defendant), with the Registrar General, the appellant-defendant shall pay a sum of Rs. 28,37,500/- to the Respondent-plaintiff within a period of 10 days of the furnishing of the bank guarantee.

7. The Registrar General or his office shall keep the same in safe custody. The bank guarantee shall be got renewed by the Respondent/Plaintiff from time to time. Its fate shall obviously depend upon the final adjudication of the subject suit.

8. The appeal stands disposed of accordingly.

DINESH MEHTA, J

VIMAL KUMAR YADAV, J

NOVEMBER 12, 2025/hk