



2026:DHC:833



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IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment pronounced on : 02.02.2026

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W.P.(C) 6570/2021

PAHARPUR COOLING TOWERS LTD

.....Petitioner

Through: Mr. Sanjay Ghosh, Sr. Advocate
along with Mr. Naman Jain,
Mr. Rohan Mandal and
Mr. Mohit Garg, Advocates.

versus

**RAMAGUNDAM FERTILIZERS AND CHEMICALS LTD &
ANR.**

.....Respondents

Through: Mr. Dipak Kumar Jena, Mr.
R.K. Poshwal, Mr. Sandip
Munain, Mr. Ashutosh Singh
Deo and Mr. Raj Shekar Jena,
Advocates. and Ms. Priya
Chaudhary, MT Law.
Mr. Abhimanyu Garg, Advocate
and Mr. Himanshu Singh
Yadav, Dy. Manager, Legal
(EIL).

CORAM:

HON'BLE MR. JUSTICE SACHIN DATTA

JUDGMENT

1. The present petition has been filed by the petitioner being aggrieved by the encashment/forfeiture of the Bank Guarantee towards the Earnest Money Deposit (hereinafter referred as “EMD-BG”) amounting to Rs. 47,50,000/- by the respondent no.1/Ramagundam Fertilizers and Chemicals Ltd. The said EMD-BG was furnished on



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16.12.2015 (with a validity up to 27.12.2016) by the petitioner while participating in a tender dated 09.11.2015 floated by the respondent no.2/Engineers India Ltd (EIL) for the work of “*cooling tower and CWTP packages for revival of Ramagundam Fertilizers and Chemicals project*”.

2. The petitioner is a company engaged in the business of manufacturing and supplying of cooling equipments including cooling towers. Respondent no.1 is a Joint Venture (JV) company of EIL/respondent no.2 (an engineering consultancy and EPC company under the ownership of the Ministry of Petroleum and Natural Gas, Government of India), National Fertilizer Ltd (NFL) and Fertilizer Corporation of India Ltd (FCIL) formed for setting up gas-based Urea manufacturing plant at Ramagundam, Telangana. Respondent no.2/EIL was awarded the detailed engineering and project management for revival of Fertilizer Plant at Ramagundam, Telangana and in pursuance of the same, floated a tender dated 19.11.2015 for supply, erection and construction of FRP cooling tower.

3. Pursuant to the scrutiny/verification of the requisite documents submitted by the petitioner for the aforementioned tender, a Show Cause Notice (SCN) dated 14.10.2016 came to be issued against the petitioner proposing suspension and debarment of its business on account of alleged submission of forged document/certificate for satisfying the bidder qualification criteria. The said SCN reads as under:



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इंजीनियर्स इंडिया लिमिटेड
(भारत सरकार का उपक्रम)
पंजीकृत कार्यालय : इंजीनियर्स इंडिया भवन, 1, भीकजी कामा प्लेस, नई दिल्ली-110066
Regd. Office : Engineers India Bhavan, 1, Bhikaji Cama Place, New Delhi-110066



ENGINEERS INDIA LIMITED
(A Govt. of India Undertaking)

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ANNEXURE A3

Procurement Development Department

BY REGISTERED POST

REF. NO.: 1844/8018/16-17/RK/SCN/P006

Date: 14th October, 2016

M/s Paharpur Cooling Towers Limited,
Paharpur House, 8-1/B,
Diamond Harbour Road,
Kolkata-700027(West Bengal)



Phone No. : 033-40133000

Email : pctccu@paharpur.com

Kind Attn. : Mr. Vikram Swarup

Subject : Show Cause Notice

Ref. : Cooling Tower & CWTP Package for Revival of Ramagundam Fertilizers and Chemicals Project (Bidding Document No. UKM/A747-304-PB-TN-7200/1007)

Dear Sir,

You are hereby required to Show Cause in writing within 10 calendar days from the date hereof why there should not be suspension of Business with you and you be debarred from entering into any contracts with EIL for the following reasons:

"Submission of forged certificate to meet bidder qualification criteria of one year of operation against Bidding Document No. UKM/A747-304-PB-TN-7200/1007 for RFCL Project".

Your reply (if any) should be supported by documents and documentary evidence which you wish to rely in support of your reply.

Should be fail to reply to this Show Cause Notice within the time and manner aforesaid, it will be presumed that you have nothing to say and we shall proceed accordingly.

Your reply, if any, and the documents/documentary evidence given in support shall, be taken into consideration prior to arriving at a decision.

Yours faithfully,


(Rajeev Kumar)

Dy. General Manager

4. The aforementioned allegations were also communicated *vide* a letter dated 17.10.2016 to the respondent no.1 by the respondent no.2. The same reads as under:



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इंजीनियर्स इंडिया लिमिटेड

ENGINEERS INDIA LIMITED

(भारत सरकार का उपक्रम)

(A Govt. of India Undertaking)

पंजीकृत कार्यालय : इंजीनियर्स इंडिया भवन, 1, भीकाली कामा प्लेस, नई दिल्ली-110066
 Regd. Office : Engineers India Bhavan, 1, Bhikaji Cama Place, New Delhi-110066

17th October, 2016

A747/EIL/RFCL/L/RR/237

M/s Ramagundam Fertilizers and Chemicals Ltd.,
 Mohita Tower, 4th Floor,
 Bhikaji Cama Place,
 New Delhi - 110066

Kind Attn: Mr. V. S. Chhaya, GM - Projects

Subject: Evaluation of Cooling Tower & CWTP Package- (Bidding Document No. UKM/A747-304-PB-TN-7200/1007) -- Revival of Ramagundam Fertilizers Project

Dear Sir,

This has reference to your letter no. RFCL/EPCM/0062 dtd 29.9.2016 and subsequent discussions at the management level on the subject matter. We have reviewed the contents of your letter and initiated actions as necessary to clarify the matter. The same are summarized as below alongwith our observations / clarifications:-

1. M/s Paharpur - The issue of verification of certificate submitted by PAHARPUR in support of one-year operation was taken up with their Client (M/s Godawari Green Energy Ltd. - GGEL). As per the email dated 10.10.2016 (copy attached) received from GGEL, the said certificate has not been issued by them. Accordingly, the matter towards taking punitive actions against PAHARPUR has already been initiated separately at our end.

Further, it may be noted that the certificate submitted by the Bidder falls under the purview of Corrupt and Fraudulent Practices as per RFCL GCC (Clause 36.8). RFCL is therefore, also advised to take suitable actions against PAHARPUR in line with their GCC and the documents submitted by PAHARPUR. Penal actions proposed against M/s Paharpur in line with aforesaid Clause 36.8 of GCC is as follows:

- a) Rejection of bid
- b) Forfeiture of EMD (EMD validity up to 21.11.2016 only. Original BG along with its Amendment is being forwarded to you separately.)
- c) Blacklisting / Putting on Holiday of M/s Paharpur

Further please be informed that M/s Paharpur have submitted an Affidavit wherein they have certified that certificate dated 18.04.2016 (original already forwarded to RFCL along with PBO Recommendation, scan copy attached) is authentic, genuine, copy of its original and have been issued by the issuing authority mentioned in the Affidavit. M/s Paharpur have also declared that no part of their Affidavit is false and that the affidavit and the declaration in respect of genuineness of the document has been made having full knowledge of (i) the provisions of the Indian Penal Code in respect of offences including, but not limited to those pertaining to criminal breach of trust, cheating and fraud and (ii) provisions of bidding conditions which entitle the Owner / EIL to initiate action in the event of such declaration turning out to be a misrepresentation or false representation. Accordingly, it is proposed that RFCL take appropriate actions against M/s Paharpur as per the provisions of the Affidavit submitted by them.

सर्व शिक्षा अभियान

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In conclusion, please be informed that in the PBO recommendation and supplementary PBO recommendation sent on dt 2.9.2016, the status of recommended bidders for price bid opening stands modified to the extent that bid of M/s Paharpur stands rejected due to fraudulent practice adopted by bidder as elaborated against S.no 1 above.

RFCL is therefore requested to process the PBO recommendation based on the remaining single bid at the earliest as the validity of the bid is only till 28th October 2016. Further it is brought to RFCL's notice that awarding of this package is critical as release of a significant work front to the civil contractor for offsites M/s Cinda is held up (approximately 25% of concrete works) which will adversely affect the progress of the project. RFCL is therefore once again requested to process the case on priority and provide priced bid opening approval at the earliest.

Thanking and assuring you of our best services at all times.

Sincerely yours,

(R.R. Rangarajan)
General Manager (Projects)

Encl : As per above

5. Subsequently, respondent no.1 issued a letter dated 20.12.2016 to the bank of the petitioner for forfeiture of the EMD-BG. On 22.12.2016 the EMD-BG was released in favour of respondent no.1 by the concerned bank.
6. In the meantime, *vide* an email dated 21.12.2016, the respondent no.2, also intimated the petitioner that the competent authority of respondent no.2 has decided to put the petitioner on "holiday list of the EIL Construction Contractor" for a period of 3 years w.e.f. 14.12.2016.
7. Against said decision dated 21.12.2016, the petitioner preferred a representation dated 11.01.2017 before the Appellate Authority of respondent no.2. *Vide* an order dated 26.05.2017, the aforementioned decision dated 21.12.2016 came to be revoked by the Appellate Authority with immediate effect. The said order dated 26.05.2017 reads as under:



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इंजीनियर्स इंडिया लिमिटेड  **ENGINEERS INDIA LIMITED**
(एनएच सरकार का उपक्रम) (A Govt. of India Undertaking) 60

पंजीकृत कार्यालय : इंडीयन इंडिया भवन, 1, श्रीरंगम बाजार रोड, नई दिल्ली-110088
Regd. Office : Engineers India Bhavan, 1, Shikaraj Cema Place, New Delhi-110088

REF. NO.: 1844/8018/16-17/RK/PCT Date: 26th May, 2017

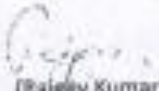
M/s Paharpur Cooling Towers Limited
Paharpur House, 8-1/B,
Diamond Harbour Road,
Kolkata- 700027 (West Bengal)

Phone No. : 011-40133000
Email : pctsui@paharpur.com
Kind Attn. : Mr. Vikram Swarup
Subject : Revocation of Banning of M/s Paharpur Cooling Towers Limited

Ref. :
- EIL Show Cause Notice dated 14.10.2016
- EIL Intimation regarding Banning dated 21.12.2016
- Appeal dated 11.1.2017 to Appellate Authority for reconsideration of decision & various hearings for Appellate Process

Dear Sir,

Please note that Appellate Authority in EIL has considered your appeal and has decided to revoke the banning of M/s Paharpur Cooling Towers Pvt Ltd (Contractor Code P005) with immediate effect.

Yours faithfully,

(Rajeev Kumar)
Dy. General Manager

8. In the circumstances, considering that the ban imposed upon the petitioner has been revoked by the Appellate Authority of the



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respondent no.2 *vide* an order dated 26.05.2017, the petitioner between 2017 and 2020 made various representations to the respondents seeking refund of EMD-BG retained by respondent no.1. However, it is submitted that the respondents failed to respond/act upon the said representations.

9. Consequently, the petitioner issued a legal notice dated 10.02.2021 to respondent no.1 seeking for refund of the EMD-BG retained by them. However, again, the respondent no.1 failed to respond.

10. In the aforesaid background, aggrieved, the petitioner preferred the present petition seeking to direct the respondents to return/refund the forfeited EMD-BG to the petitioner.

SUBMISSIONS ON BEHALF OF THE PETITIONER

11. Learned senior counsel on behalf of the petitioner submitted that even before a reply was submitted by the petitioner to the Show Cause Notice dated 14.10.2016, a communication dated 17.10.2016 came to be issued by the respondent no.2 to respondent no.1 alleging submission of forged document by the petitioner. Further, the respondent no.1 issued a letter dated 20.12.2016 to the bank of the petitioner for forfeiture of the EMD-BG without issuing any Show Cause Notice or an independent enquiry into the said matter.

12. It is further contended that the petitioner is entitled to a refund of the EMD-BG encashed by respondent no.1 inasmuch as the letter dated 20.12.2016 issued by respondent no.1 to the petitioner's bank for forfeiture of the furnished security, was premised upon a



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communication dated 17.10.2016 from respondent no.2, alleging submission of a forged document/certificate by the petitioner. However, the unconditional revocation of the banning order dated 21.12.2016 by the Appellate Authority of respondent no.2 *vide* order dated 26.05.2017, effectively nullified the allegations of forgery which constituted the very foundation of the aforesaid communication dated 17.10.2016, consequent ban by respondent no.2 and encashment of the EMD-BG by respondent no.1.

13. It is further submitted that the allegation pertaining to the forgery of documents emanated from an inadvertent error made by the petitioner. It is stated that during the bidding process, the petitioner furnished an experience certificate dated 14.12.2015 bearing ref: GGEL/HR/Mech./2015-16 (hereinafter referred as “Exhibit 1”) issued by one of its previous employers i.e., Godavari Green Energy Pvt. Ltd, (hereinafter referred as “GGEL”). Due to certain procedural requirement, the said certificate dated 14.12.2015 was revised and again submitted in the desired format. However, inadvertently, the petitioner submitted draft version dated 18.04.2016 bearing ref: GGEL/HR/ Mech/2015-16 (hereinafter referred as “Exhibit 2”) of the revised certificate instead of the certificate dated 18.04.2016 bearing ref: GGEL/HR/Mech/2016/02 (hereinafter referred as “Exhibit 3”) approved by GGEL. The said inadvertent error was subsequently clarified and rectified and is evident from an email dated 20.10.2016 received from GGEL.

14. It is further brought out that the tender dated 09.11.2015, for which the EMD-BG deposited by the petitioner was forfeited by the



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respondent no.1 was cancelled/withdrawn/not acted upon by the respondents. Subsequently, a fresh tender for the same work was re-issued on 12.06.2017 by the respondent no.2, which ultimately came to be awarded *vide* a Letter of Award dated 08.08.2017 in favour of the petitioner and duly executed. It is contended that had the petitioner's action been void of bonafide intentions, the aforesaid award would have not been awarded in its favour.

15. It is submitted that till date, there is no material/order/finding on record that would justify forfeiture of EMD-BG by the respondent no.1. Further, mere existence of an alternative remedy does not oust the jurisdiction of this Court under Article 226 of the Constitution of India inasmuch as the conduct of respondent no.1 is clearly in contravention of the principles of natural justice, arbitrary in nature and void of any cogent rationale. In this regard, reliance has been placed upon catena of judgments rendered by the Supreme Court¹.

16. It is further submitted that it is a settled law that the period of limitation does not apply to writ jurisdiction and instead the concept of laches is applicable. An entity under Article 12 of the Constitution of India cannot justify unjust enrichment by resorting to a mere technical plea of limitation, especially considering that the petitioner was continuously pursuing the said matter with the officials of respondents

¹ *Union of India & Ors. vs. Tania Constructions (P) Ltd.*, (2011) 5 SCC 697; *Harbanslal Sahnia v. Indian Oil Corporation Ltd.*, (2003) 2 SCC 107; *Whirlpool Corporation v. Registrar of Trade Marks*, (1998) 8 SCC 1; *National Sample Survey Organization and Anr. v. Champa Properties Limited and Anr.*, (2009) 14 SCC 451; *Hindustan Petroleum Corporation Limited and Ors. v. Super Highway Services and Anr.*, (2010) 3 SCC 321; *ABL International Ltd. and Ors. vs. Export Credit Guarantee Corporation of India Ltd. and Ors.*, (2004) 3 SCC 553 and *UP Power Transmission Corporation Ltd. and Ors. vs. CG Power and Industrial Solutions Limited and Ors.*, (2021) 6 SCC 15.



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for resolution since 2017 and never abandoned the same. Thus, the cause of action finally arose when the respondent no.1 failed to respond to the legal notice dated 10.02.2021. Even otherwise, without prejudice to the aforesaid, assuming that the cause of action arose on 26.05.2017, the period of limitation which would have expired on 25.05.2020 ought to have been relaxed in line with the directions rendered by the Supreme Court in *Suo Moto Writ Petition No. 3/2020*.

SUBMISSIONS ON BEHALF OF THE RESPONDENT

17. Learned counsel on behalf of the respondent no.1 submitted that in view of the violation of contractual obligation by the petitioner, under clause 36.8.1 of General Conditions of Contract (GCC) EMD-BG was forfeited. Further, the petitioner never approached the Appellate Authority of respondent no.2 against the forfeiture of EMD-BG by the respondent no.1 and instead directly invoked the jurisdiction of this Court.

18. It is further contended that the present petition is not maintainable inasmuch as (i) the dispute between the parties to the present petition are private in nature and there is no violation of statutory duty (ii) the petitioner has approached this Court without exhausting an alternative remedy (arbitration) available to the petitioner in terms of clause 35.2.2 of the GCC. Reliance in this regard is placed upon judgment rendered by the Supreme Court in ***Joshi Technologies International Inc vs Union of India and Ors***, (2015) 7 SCC 728 and ***K.K Saxena vs International Commission on Irrigation and Drainage***, (2015) 4 SCC 670 (iii) the EMD-BG was forfeited by



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the respondent no.1 in 2016 and the present petition has been filed after a delay of 5 years without any cogent rationale thereof.

19. It is submitted that the during the scrutiny and verification of documents, it came to the knowledge of respondent no.2, that the experience certificate dated 18.04.2016 purportedly issued by GGEL was false and fabricated. The said allegation has been supported by an email dated 10.10.2016, wherein, GGEL categorically denied issuance of the aforesaid certificate.

20. Further, attention is drawn to a letter dated 21.01.2019 along with inter-office Memorandum dated 09.01.2019, issued by the respondent no.2, justifying the forfeiture of EMD-BG by the respondent no.1 and categorically observing that the document/certificate purportedly issued by GGEL, submitted by the petitioner along with the bid was not genuine and tantamount to fraud on part of the petitioner. The letter dated 21.01.2019 and inter-office Memorandum dated 09.01.2019 reads as under:-



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**ANNEXURE - F****इंजीनियर्स
इंडिया लिमिटेड****ENGINEERS
INDIA LIMITED**A Govt. of India Undertaking
Regd. Office : Engineers India Bhawan, 1, Bhikaji Cama Place, New Delhi - 110066

A747/EIL/RFCL/LTRR/0843

21st January, 2019

To,

M/s Ramagundam Fertilizers and Chemicals Ltd.,
Mohta Tower, 4th Floor,
Bhikaji Cama Place,
New Delhi-110066*Plan + Estimate
Quot. → Com (Part) - Mrs.
21/1/19*

Kind Attn: Sh. Nirlep Singh, CEO

Subject: Bidding document no. UKWA747-304-PB-TN-7200/1907 "Cooling Tower
Package"

Dear Sir,

This has reference to the various letters received from M/s Paharbur for the subject Tender.
Please note that same have been reviewed at our end and subsequently please find attached
herewith our advisory (copy attached) for further necessary actions at your end.

Thanking you and assuring you of our best services always.

T.R. Rangarajan

(ED-Projects)

Encl: IOM/SCM-I/RFCL/CGM/001ew. 00.01.19

Cc: Mr. Sanjay Jindal, CFO



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Inter Office Memorandum

No. : IOM/SCM-I/RFCL/CGM/001 Date : 09.01.2019
From : CGM (SCM-I)
To : ED (Projects -B) Location:
Copies : ED (SCM-I) Location:
Subject : Bidding document no. UKMA747-304-PB-TN-7200/1007

With reference to the subject, you are kindly aware that due to certain submissions from M/s Paharpur Cooling Towers Pvt. Ltd. (PCTL) violating the bidding process itself, competent authority had established fraud on the part of PCTL and decided to annul the tender and put PCTL on 'Suspension List' of EIL for three years. As a collateral, RFCL had arranged forfeiture of the Earnest Money Deposit (EMD) submitted by PCTL, required as per the extant procedure/ provisions of the bid document in this regard.

The extant EIL policy also has provision for an appeal from the aggrieved party, which, PCTL, had availed. During the process, PCTL acknowledged the infringement but submitted that the same had happened inadvertently. In view of the appeal from PCTL, the appellate authority reviewed the matter comprehensively and decided to revoke the 'banning', after noting that the submitted document was indeed not genuine amounting to fraud.

We have since received a letter ref. no. DI-15222 dated 21.11.2018 from PCTL (copy enclosed), requesting for refund of forfeited EMD. We have noted in this regard that, irrespective of the decision to revoke the ban that was earlier imposed on PCTL, the action of PCTL (inadvertent or otherwise) during the original bidding process remains a fact and resulted in the annulment of the process, as per the provisions of the bid document. As a corollary, revocation of EMD amount owing to this annulment therefore is also justified. The provisions for submission of EMDs are incorporated as per the directive of Govt precisely to avoid such infringements from the bidders, which violates a fair and transparent bidding process. The tender was actually floated jeopardizing the project schedule at the expense of RFCL/EIL.

Under the above circumstances the following may please be communicated to the client:

- Forfeited EMD cannot be refunded to PCTL.
- The above decision is independent, and in no way linked to performance in any other running contract of PCTL with RFCL; therefore such a veiled threat may be suitably responded to.

Regards,

(A Sengupta)



ANALYSIS AND FINDINGS

21. At the outset, this Court is not persuaded by the objections of the respondents as regards (non) maintainability of the present writ petition. The law is well settled that this Court has jurisdiction, even in contractual or tender matters to redress the arbitrariness and/or denial of principles of natural justice.

22. The legal position in this regard has been reiterated by the Supreme Court time and again in various judgments including that of ***Subodh Kumar Singh Rathour v. Chief Executive Officer and Others***, 2024 SCC OnLine SC 1682, by observing as under:-

57. Thereafter, this Court in its decision in M.P. Power Management Co. Ltd. v. Sky Power Southeast Solar India (P) Ltd. [M.P. Power Management Co. Ltd. v. Sky Power Southeast Solar India (P) Ltd., (2023) 2 SCC 703] exhaustively delineated the scope of judicial review of the courts in contractual disputes concerning public authorities. The aforesaid decision is in the following parts:-

Scope of judicial review in matters pertaining to contractual disputes

57.1. This Court in M.P. Power Management case [M.P. Power Management Co. Ltd. v. Sky Power Southeast Solar India (P) Ltd., (2023) 2 SCC 703] held that the earlier position of law that all rights against any action of the State in a non-statutory contract would be governed by the contract alone and thus not amenable to the writ jurisdiction of the Courts is no longer a good law in view of the subsequent rulings. Although writ jurisdiction is a public law remedy, yet a relief would still lie under it if it is sought against an arbitrary action or inaction of the State, even if they arise from a non-statutory contract. The relevant observations read as under: (M.P. Power Management case [M.P. Power Management Co. Ltd. v. Sky Power Southeast Solar India (P) Ltd., (2023) 2 SCC 703] , SCC p. 763, paras 81-82)

“81. ... when the offending party is the State. In other words, the contention is that the law in this field has witnessed an evolution and, what is more, a revolution of sorts and a transformatory change with a growing realisation of the true ambit of Article 14 of the Constitution of India. The State, he points out, cannot play the



Dr Jekyll and Hyde game anymore. Its nature is cast in stone. Its character is inflexible. This is irrespective of the activity it indulges in. It will continue to be haunted by the mandate of Article 14 to act fairly. There has been a stunning expansion of the frontiers of the Court's jurisdiction to strike at State action in matters arising out of contract, based, undoubtedly, on the facts of each case. It remains open to the Court to refuse to reject a case, involving State action, on the basis that the action is, per se, arbitrary.

82.1. It is, undoubtedly, true that the writ jurisdiction is a public law remedy. A matter, which lies entirely within a private realm of affairs of public body, may not lend itself for being dealt with under the writ jurisdiction of the Court.

82.2. The principle laid down in Bareilly Development Authority [Bareilly Development Authority v. Ajai Pal Singh, (1989) 2 SCC 116] that in the case of a non-statutory contract the rights are governed only by the terms of the contract and the decisions, which are purported to be followed, including Radhakrishna Agarwal [Radhakrishna Agarwal v. State of Bihar, (1977) 3 SCC 457], may not continue to hold good, in the light of what has been laid down in ABL [ABL International Ltd. v. Export Credit Guarantee Corpn. of India Ltd., (2004) 3 SCC 553 : (2004) 118 Comp Cas 213] and as followed in the recent judgment in Sudhir Kumar Singh [State of U.P. v. Sudhir Kumar Singh, (2021) 19 SCC 706].

82.3. The mere fact that relief is sought under a contract which is not statutory, will not entitle the respondent State in a case by itself to ward-off scrutiny of its action or inaction under the contract, if the complaining party is able to establish that the action/inaction is, per se, arbitrary.”

Exercise of writ jurisdiction in disputes at the stage prior to the award of contract

57.2. An action under a writ will lie even at the stage prior to the award of a contract by the State wherever such award of contract is imbued with procedural impropriety, arbitrariness, favouritism or without any application of mind. In doing so, the courts may set aside the decision which is found to be vitiated for the reasons stated above but cannot substitute the same with its own decision. The relevant observations read as under: (M.P. Power Management case [M.P. Power Management Co. Ltd. v. Sky Power Southeast Solar India (P) Ltd., (2023) 2 SCC 703], SCC p. 764, para 82.4)

“82.4. An action will lie, undoubtedly, when the State purports to award any largesse and, undoubtedly, this relates to the stage prior to the contract being entered into (see Ramana Dayaram Shetty [Ramana



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Dayaram Shetty v. International Airport Authority of India, (1979) 3 SCC 489 : AIR 1979 SC 1628]). This scrutiny, no doubt, would be undertaken within the nature of the judicial review, which has been declared in the decision in Tata Cellular v. Union of India [Tata Cellular v. Union of India, (1994) 6 SCC 651] .”

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Other relevant considerations for exercise of writ jurisdiction

57.5. Lastly, this Court in *M.P. Power Management case [M.P. Power Management Co. Ltd. v. Sky Power Southeast Solar India (P) Ltd., (2023) 2 SCC 703]* held that the courts may entertain a contractual dispute under its writ jurisdiction where: (I) there is any violation of natural justice, or (II) where doing so would serve the public interest, or (III) where though the facts are convoluted or disputed, but the courts have already undertaken an in-depth scrutiny of the same provided that it was pursuant to a sound exercise of its writ jurisdiction. The relevant observations read as under: (*M.P. Power Management case [M.P. Power Management Co. Ltd. v. Sky Power Southeast Solar India (P) Ltd., (2023) 2 SCC 703]* , SCC p. 766, para 82)

“82. ... 82.13. A lodestar, which may illumine the path of the Court, would be the dimension of public interest subserved by the Court interfering in the matter, rather than relegating the matter to the alternate Forum.

82.14. Another relevant criteria is, if the Court has entertained the matter, then, while it is not tabooed that the Court should not relegate the party at a later stage, ordinarily, it would be a germane consideration, which may persuade the Court to complete what it had started, provided it is otherwise a sound exercise of jurisdiction to decide the matter on merits in the writ petition itself.

*82.15. Violation of natural justice has been recognised as a ground signifying the presence of a public law element and can found a cause of action premised on breach of Article 14. (See *Sudhir Kumar Singh [State of U.P. v. Sudhir Kumar Singh, (2021) 19 SCC 706]*).”*

58. What can be discerned from the above is that there has been a considerable shift in the scope of judicial review of the court when it comes to contractual disputes where one of the parties is the State or its instrumentalities. In view of the law laid down by this Court in *ABL [ABL International Ltd. v. Export Credit Guarantee Corpn. of India Ltd., (2004) 3 SCC 553 : (2004) 118 Comp Cas 213]* , *Joshi Technologies [Joshi Technologies International Inc. v. Union of India, (2015) 7 SCC 728 : (2015) 374 ITR 322]* and in *M.P. Power [M.P. Power Management Co. Ltd. v. Sky Power Southeast Solar India (P) Ltd., (2023) 2 SCC 703]* , it is difficult to accept the contention of the respondent that the writ petition filed by the appellant before the High



Court was not maintainable and the relief prayed for was rightly declined by the High Court in exercise of its writ jurisdiction. Where State action is challenged on the ground of being arbitrary, unfair or unreasonable, the State would be under an obligation to comply with the basic requirements of Article 14 of the Constitution and not act in an arbitrary, unfair and unreasonable manner. This is the constitutional limit of their authority. There is a jural postulate of good faith in business relations and undertakings which is given effect to by preventing arbitrary exercise of powers by the public functionaries in contractual matters with private individuals. With the rise of the social service State more and more public-private partnerships continue to emerge, which makes it all the more imperative for the courts to protect the sanctity of such relations.

23. Likewise, in **Unitech Limited and Others vs Telangana State Industrial Infrastructure Corporation (TSIIC) and Ors.**, (2021) 16 SCC 35, it was held by the Supreme Court as under:-

“39. A two-Judge Bench of this Court in *ABL International Ltd. v. Export Credit Guarantee Corpn. of India Ltd.* [*ABL International Ltd. v. Export Credit Guarantee Corpn. of India Ltd.*, (2004) 3 SCC 553] [*ABL International*] analysed a long line of precedent of this Court [*K.N. Guruswamy v. State of Mysore*, (1954) 2 SCC 125 : AIR 1954 SC 592; *Gujarat State Financial Corpn. v. Lotus Hotels (P) Ltd.*, (1983) 3 SCC 379; *Gunwant Kaur v. Municipal Committee, Bhatinda*, (1969) 3 SCC 769] to conclude that writs under Article 226 are maintainable for asserting contractual rights against the State, or its instrumentalities, as defined under Article 12 of the Indian Constitution.

39.1. Speaking through N. Santosh Hegde, J. the Court held : (*ABL International case* [*ABL International Ltd. v. Export Credit Guarantee Corpn. of India Ltd.*, (2004) 3 SCC 553] , SCC p. 572, para 27)

“27. ... the following legal principles emerge as to the maintainability of a writ petition:

(a) In an appropriate case, a writ petition as against a State or an instrumentality of a State arising out of a contractual obligation is maintainable.

(b) Merely because some disputed questions of fact arise for consideration, same cannot be a ground to refuse to entertain a writ petition in all cases as a matter of rule.

(c) A writ petition involving a consequential relief of monetary claim is also maintainable.”

This exposition has been followed by this Court, and has been adopted by the three-Judge Bench decisions of this Court in *State of U.P. v. Sudhir Kumar Singh* [*State of U.P. v. Sudhir Kumar Singh*, (2021) 19 SCC 706 :



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2020 SCC OnLine SC 847] and Popatrao Vyankatrao Patil v. State of Maharashtra [Popatrao Vyankatrao Patil v. State of Maharashtra, (2020) 19 SCC 241] .

39.2. The decision in ABL International, cautions that the plenary power under Article 226 must be used with circumspection when other remedies have been provided by the contract. But as a statement of principle, the jurisdiction under Article 226 is not excluded in contractual matters.

39.3. Article 23.1 of the development agreement in the present case mandates the parties to resolve their disputes through an arbitration. However, the presence of an arbitration clause within a contract between a State instrumentality and a private party has not acted as an absolute bar to availing remedies under Article 226 [Harbanslal Sahnia v. Indian Oil Corpn. Ltd., (2003) 2 SCC 107; Ram Barai Singh & Co. v. State of Bihar, (2015) 13 SCC 592 : (2016) 1 SCC (Civ) 770] .

39.4. If the State instrumentality violates its constitutional mandate under Article 14 to act fairly and reasonably, relief under the plenary powers of Article 226 of the Constitution would lie. This principle was recognised in ABL International [ABL International Ltd. v. Export Credit Guarantee Corpn. of India Ltd., (2004) 3 SCC 553] : (ABL International case [ABL International Ltd. v. Export Credit Guarantee Corpn. of India Ltd., (2004) 3 SCC 553] , SCC p. 572, para 28)

“28. However, while entertaining an objection as to the maintainability of a writ petition under Article 226 of the Constitution of India, the court should bear in mind the fact that the power to issue prerogative writs under Article 226 of the Constitution is plenary in nature and is not limited by any other provisions of the Constitution. The High Court having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. The Court has imposed upon itself certain restrictions in the exercise of this power. (See Whirlpool Corpn. v. Registrar of Trade Marks [Whirlpool Corpn. v. Registrar of Trade Marks, (1998) 8 SCC 1] .) And this plenary right of the High Court to issue a prerogative writ will not normally be exercised by the Court to the exclusion of other available remedies unless such action of the State or its instrumentality is arbitrary and unreasonable so as to violate the constitutional mandate of Article 14 or for other valid and legitimate reasons, for which the Court thinks it necessary to exercise the said jurisdiction.”

39.5. Therefore, while exercising its jurisdiction under Article 226, the Court is entitled to enquire into whether the action of the State or its instrumentalities is arbitrary or unfair and in consequence, in violation of Article 14. The jurisdiction under Article 226 is a valuable constitutional safeguard against an arbitrary exercise of State power or a misuse of authority.

39.6. In determining as to whether the jurisdiction should be exercised in a contractual dispute, the Court must, undoubtedly eschew, disputed



questions of fact which would depend upon an evidentiary determination requiring a trial. But equally, it is well settled that the jurisdiction under Article 226 cannot be ousted only on the basis that the dispute pertains to the contractual arena. This is for the simple reason that the State and its instrumentalities are not exempt from the duty to act fairly merely because in their business dealings they have entered into the realm of contract. Similarly, the presence of an arbitration clause does (sic not) oust the jurisdiction under Article 226 in all cases though, it still needs to be decided from case to case as to whether recourse to a public law remedy can justifiably be invoked.

39.7. The jurisdiction under Article 226 was rightly invoked by the Single Judge and the Division Bench of the Andhra Pradesh High Court in this case, when the foundational representation of the contract has failed. Tsiic, a State instrumentality, has not just reneged on its contractual obligation, but hoarded the refund of the principal and interest on the consideration that was paid by Unitech over a decade ago. It does not dispute the entitlement of Unitech to the refund of its principal.

24. Similarly, in **GAIL v. Indian Petrochemicals Corpn. Ltd., (2023) 3 SCC 629**, the Supreme Court held as under:-

“21. Although the dispute arises from a commercial contract, we find that the writ petition challenging the clauses was maintainable. It is not disputed that GAIL is a public sector undertaking and thus qualifies under the definition of “State” as per Article 12 of the Constitution. At the time of entering into contract, GAIL was enjoying a monopolistic position with respect to the supply of natural gas in the country. IPCL, having incurred a significant expense in setting up the appropriate infrastructure, had no choice but to enter into agreement with GAIL. Thus, there was a clear public element involved in the dealings between the parties. Further, writ jurisdiction can be exercised when the State, even in its contractual dealings, fails to exercise a degree of fairness or practises any discrimination. We are fortified in our view by this Court's decision in ABL International [ABL International Ltd. v. Export Credit Guarantee Corpn. of India Ltd., (2004) 3 SCC 553] and Joshi Technologies [Joshi Technologies International Inc. v. Union of India, (2015) 7 SCC 728]”

25. This Court is also not inclined to accept the contention of the respondents that the present petition is “barred by limitation”.



26. In ***Sudama Devi (Smt.) vs. Commissioner and others.***, (1983) 2 SCC 1, the Supreme Court observed that period of limitation is not stipulated for filing a writ petition and maintainability of a petition on account of delay requires to be adjudged case-to-case basis after considering as to whether the concerned party is guilty of laches. The relevant portion of the said judgment reads as under: -

“We are of the view that so far as writ petition under Article 226 of the Constitution is concerned, there can be no hard and fast rule of 90 days by way of period of limitation but the general rule of laches alone can be applied and this must necessarily depend on the facts and circumstances of each case. The High Court has said in its order that “the writ petition was beyond time by 136 days. Neither the explanation of 136 days nor the explanation for filing it today, was given.” This view does not appear to be correct because the High Court has proceeded on the assumption that there is a period of limitation of 90 days and unless sufficient cause is shown as contemplated under Section 5 of the Limitation Act a writ petition filed after the expiration of 90 days is liable to be rejected. This assumption is wholly unjustified. There is no period of limitation prescribed by any law for filing a writ petition under Article 226 of the Constitution. It is in fact doubtful whether any such period of limitation can be prescribed by law. In any event one thing is clear and beyond doubt that no such period of limitation can be laid down either under rules made by the High Court or by practice. In every case it would have to be decided on the facts and circumstances whether the petitioner is guilty of laches and that would have to be done without taking into account any specific period as a period of limitation. There may be cases where even short delay may be fatal while there may be cases where even a long delay may not be evidence of laches on the part of the petitioner. We would, therefore, set aside the order of the High Court and remand the writ petition to the High Court so that the High Court may dispose it of on merits in accordance with law. We accordingly allow the appeal, set aside the judgment and order of the High Court and direct that the writ petition may be disposed of by the High Court on merits in accordance with law. There will be no order as to costs.”

27. Further, a three Judge Bench of the Supreme Court in ***VetIndia***



Pharmaceuticals Ltd vs. State of Uttar Pradesh and Anr., (2021) 1 SCC 804 categorically opined that “writ petition was not barred by unexplained delay as the appellant had been pursuing the matter with the authorities and it is they who sat over it”. The relevant portion of the said judgment reads as under: -

“15. That brings us to the question of delay. There is no doubt that the High Court in its discretionary jurisdiction may decline to exercise the discretionary writ jurisdiction on the ground of delay in approaching the court. But it is only a rule of discretion by exercise of self-restraint evolved by the court in exercise of the discretionary equitable jurisdiction and not a mandatory requirement that every delayed petition must be dismissed on the ground of delay. The Limitation Act stricto sensu does not apply to the writ jurisdiction. The discretion vested in the court under Article 226 of the Constitution therefore has to be a judicious exercise of the discretion after considering all pros and cons of the matter, including the nature of the dispute, the explanation for the delay, whether any third-party rights have intervened, etc. The jurisdiction under Article 226 being equitable in nature, questions of proportionality in considering whether the impugned order merits interference or not in exercise of the discretionary jurisdiction will also arise. This Court in *Basanti Prasad v. Bihar School Examination Board* [*Basanti Prasad v. Bihar School Examination Board*, (2009) 6 SCC 791 : (2009) 2 SCC (L&S) 252] , after referring to *Moon Mills Ltd. v. M.R. Meher* [*Moon Mills Ltd. v. M.R. Meher*, AIR 1967 SC 1450] , *Maharashtra SRTC v. Balwant Regular Motor Service* [*Maharashtra SRTC v. Balwant Regular Motor Service*, (1969) 1 SCR 808 : AIR 1969 SC 329] and *State of M.P. v. Nandlal Jaiswal* [*State of M.P. v. Nandlal Jaiswal*, (1986) 4 SCC 566] , held that if the delay is properly explained and no third-party rights are being affected, the writ court under Article 226 of the Constitution may condone the delay, holding as follows : (*Basanti Prasad case* [*Basanti Prasad v. Bihar School Examination Board*, (2009) 6 SCC 791 : (2009) 2 SCC (L&S) 252] , SCC p. 796, para 18)

“18. In the normal course, we would not have taken exception to the order passed by the High Court. They are justified in saying that a delinquent employee should not be permitted to revive the stale claim and the High Court in exercise of its discretion would not ordinarily assist the tardy and indolent



person. This is the traditional view and is well supported by a plethora of decisions of this Court. This Court also has taken the view that there is no inviolable rule, that, whenever there is delay the Court must refuse to entertain a petition. This Court has stated that the writ court in exercise of its extraordinary jurisdiction under Article 226 of the Constitution may condone the delay in filing the petition, if the delay is satisfactorily explained.”

16. *The contention of the respondents that they have acted in accordance with the provisions of the Drugs Act pursuant to the report of the analyst for misbranded product under Section 9 is devoid of substance and merits no consideration. It is not the case of the respondents that the procedure prescribed under Sections 23, 25 and 26 of the Drugs Act has been followed. The feeble attempt to show compliance with provisions of the Drugs Act by alleged purchase of the samples under Form 14-A at Annexure R-5 to the counter-affidavit dated 21-7-2008 from an unknown source and date must be rejected outright as an attempt to create evidence where none exists.*

17. *The aforesaid discussion, therefore, leads us to the conclusion that the writ petition was not barred by unexplained delay as the appellant had been pursuing the matter with the authorities and it is they who sat over it, triggering rejection of the appellant's tender by the Rajasthan Government on 5-7-2019 leading to the institution of the writ petition on 24-7-2019. The High Court therefore erred in dismissing the writ petition on grounds of delay. The illegality and the disproportionate nature of the order dated 8-9-2009, with no third-party rights affected, never engaged the attention of the High Court in judicious exercise of the discretionary equitable jurisdiction. Consequently, the impugned order [Vetindia Pharmaceuticals Ltd. v. State of U.P., 2019 SCC OnLine All 6734] of the High Court as well as the order dated 8-9-2009 of the respondents are set aside, and the appeal is allowed.”*

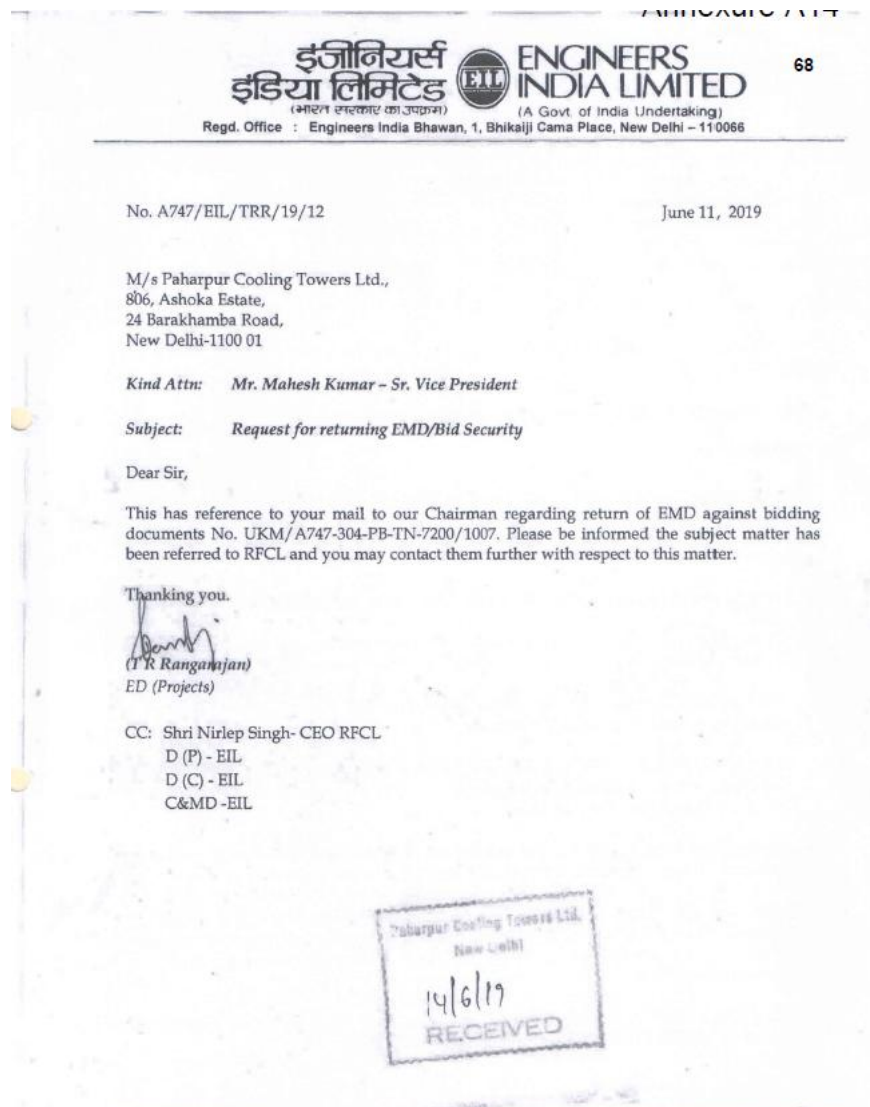
28. It is noticed that in the present petition as well the petitioner has been pursuing the matter with the respondents ever since it preferred a representation dated 11.01.2017 before the Appellate Authority of respondent no.2 against the decision of putting the petitioner on



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“Holiday List” (*vide* communication dated 21.12.2016). Even pursuant to the passing of order dated 26.05.2017 by the Appellate Authority, between 2017 and 2020, the petitioner made various representations before the respondents for redressal of the said matter. Importantly, *vide* a letter dated 11.06.2019, the respondent no.2 intimated the petitioner that the said issue has been referred to respondent no.1 and petitioner shall contact the latter thereof. The said communication dated 11.06.2019 reads as under: -





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29. Subsequently, since no action/response was received despite multiple representations, the petitioner ultimately issued a legal notice dated 10.02.2021 to the respondent no.1. However, to no avail.

30. Evidently, therefore, the petitioner had been proactively pursuing the matter with the respondents, however, the respondents were remiss in taking a suitable decision. In the peculiar factual backdrop, it cannot be said that the petition is not maintainable on account of delay or laches.

31. On merits, the primary grievance canvassed by the learned senior counsel on behalf of the petitioner is that in light of the decision dated 26.05.2017 passed by the Appellate Authority of respondent no.2, the allegations of forgery and fraudulent practice forming the very basis for forfeiture of the EMD-BG under the clause 36.8.1 of GCC by respondent no.1 ceased to exist. In such circumstances, respondent no.1 ought to have not continued to retain the said EMD-BG, particularly in the absence of any independent enquiry or cogent finding casting aspersions on the bonafides of the petitioner.

32. Evidently, the controversy between the parties arose as regard the veracity of certificate dated 18.04.2016 bearing ref: GGEL/HR/Mech./2015-16 (stated to be issued by GGEL) submitted by the petitioner during the bidding process. The respondent no.1, upon receipt of letter dated 17.10.2016 from the respondent no.2 in this regard, on account of the alleged violation, invoked clause 36.8.1 of the GCC and forfeited the EMD-BG furnished by the petitioner. Clause 36.8.1 of the GCC reads as under:-



“36.8 Corrupt and Fraudulent Practices

36.8.1 Bidders are required to furnish the complete and correct information/documents required for evaluation of their bids. If the information/documents forming basis of evaluation is found to be false/fake/forged, the same shall be considered adequate ground for rejection of the bids and forfeiture of earnest money deposit.

33. Despite the Appellate Authority of respondent no.2 discharging the petitioner from the alleged violation (as communicated *vide* letter dated 17.10.2016) *vide* order dated 26.05.2017, the rationale for continuing to retain the forfeited EMD-BG in terms of clause 36.8.1 of the GCC by respondent no.1, as canvassed on behalf of the respondent no.1, is that (i) the forfeiture of EMD-BG by respondent no.1 is independent of any action/inaction on part of respondent no.2 (which acted as the project consultant for respondent no.1) (ii) during the bidding process the petitioner with a malafide intention deliberately furnished a forged and fabricated certificate dated 18.04.2016 bearing ref: GGEL/HR/Mech/2015-16 to secure the bid. In this regard, reliance has been placed upon an email dated 10.10.2016, whereby, the GGEL in response to a query raised by the respondents as to the veracity of the aforementioned certificate furnished by the petitioner, refuted issuance of the same.

34. However, this Court is unable to uphold the aforesaid rationale advanced by the learned counsel on behalf of the respondent no.1 for retention of the forfeited EMD-BG inasmuch as:

- i. the petitioner by virtue of order dated 26.05.2017 passed by the



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Appellate Authority of respondent no.2 has been exonerated of the allegation of forgery/fraud that at the very first instance led to issuance of letter dated 17.10.2016 by respondent no.2 to respondent no.1 and consequent invocation of clause 36.8.1 of the GCC by the respondent no.1 for forfeiture of the EMD-BG furnished by the petitioner.

- ii. In view of the aforesaid, no action/ enquiry was undertaken/ made by the respondent no.1 to go into the allegation of forgery/ fraud levied against the petitioner.
- iii. The petitioner specifically apprised the respondents that the very rationale of the order dated 26.05.2017 passed by the Appellate Authority was that the allegations of forgery/fraud against the petitioner were unfounded. As a consequence, thereof, pursuant to the decision of the Appellate Authority, rationale for forfeiture of EMD-BG also stood dissipated/ extinguished.
- iv. The reliance by respondent no.1 upon an email dated 10.10.2016 issued by the GGEL to justify the allegation of fraud/forgery is misplaced inasmuch as it disregards subsequent emails dated 20.10.2016 and 23.11.2016 sent by GGEL itself, clarifying the matter. All the certificates that found their way to the respondent no.2, were dealt with and explained in the aforementioned emails by the GGEL. It is pointed out that the certificate enclosed as Exhibit no.2 in email dated 20.10.2016 (dated 18.04.2016 bearing ref: GGEL/HR/Mech/2015-16), issuance of which was earlier refuted by the GGEL, was a draft certificate. The actual certificate that came to be issued by the



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GGEL i.e., certificate dated 18.04.2016 bearing ref: GGEL/HR/Mech/2016/02, was enclosed as Exhibit no.3 to the email dated 20.10.2016 and the contents of the same are not at variance with the said draft certificate.

It clearly transpires that it was only on account of an erroneously sent “draft certificate”, that a confusion arose as to whether the same was fabricated. The correct position, having been explained by the author of the concerned certificates, the matter clearly stood explained in terms of the said emails dated 20.10.2016 and 23.11.2016.

Evidently, it was for this reason that the order dated 21.12.2016 whereby the petitioner had been sought to be “holiday listed” was revoked by the Appellate Authority. After the controversy stood resolved in this manner, there was no occasion for respondent no.1 to retain the amount released by way of encashment of EMD-BG of Rs.47,50,000/-

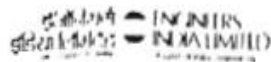
- v. The aforesaid clarification/s were also brought to the attention of the Chairman and Managing Director of respondent no.2 by the petitioner *vide* a letter dated 09.12.2016. The same was not refuted/ replied.
- vi. Undisputedly, a tender dated 12.06.2017 re-floated by respondent no.2 for the same work (as tender dated 09.11.2015) was awarded in favour of the petitioner by the respondent no.2 *vide* an award dated 08.08.2017. Not only was the said work completed by the petitioner but for the same Pre-Commissioning Certificate came to be issued by the respondent



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no.1 as under: -



PAHARPUR COOLING TOWERS LTD

COOLING TOWER & CWTP PACKAGE

FORMAT - III

READY FOR PRE-COMMISSIONING CERTIFICATE

PROJECT: COOLING TOWER CUSTOMER: RECL UNIT: COOLING TOWER - AMMONIA
 SYSTEMS/SUB-SYSTEM: PARANE PCL/INSTRID/CIVIL/001

This is to certify that the following plant/system/sub-system as detailed below is completely installed and all the Checklist points are carried out except for minor details as given in the attached list.

DESCRIPTION ON PLANT/SECTION/SUB-SECTION: COOLING TOWER SUPER STRUCTURE
WITH HOT WATER DISTRIBUTION SYSTEM WITH ALL RESPECT

CONTRACTOR'S CONSTRUCTION
CO-ORDINATOR:

SIGNATURE

DATE

31-07-2019

CONTRACTOR'S COMMISSIONING
CO-ORDINATOR:

31/07/19

The system is ☒ ready / ☐ not ready for pre-commissioning

EIL :

OWNER:

25.11.2019
 G. Prichy

30/11/19
 RECL (PRODUCTION)

RECL (Mech)
 30/11/19



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ENGINEERS
INDIA LIMITED

PAHARI COOLING TOWERS LTD

COOLING TOWER & CWTP PACKAGE

FORMAT - III

READY FOR PRE-COMMISSIONING CERTIFICATE

PROJECT: COOLING TOWER CUSTOMER: RFCL UNIT: UREA COOLING TOWER
 SYSTEM/SUB-SYSTEM: PACKAGE PCTE/ NPTD/ CIVIL/002

This is to certify that the following plant/system/sub-system as detailed below is completely installed and all the Checklist points are carried out except for minor details as given in the attached list.

DESCRIPTION ON PLANT/SECTION/SUB-SECTION UREA COOLING TOWER SUPERSTRUCTURE
WITH HOT WATER DISTRIBUTION SYSTEM WITH ALL RESPECT.

Except: cleaning work. ✓

	SIGNATURE	DATE
CONTRACTOR'S CONSTRUCTION CO-ORDINATOR:	<u>[Signature]</u> C.A. Mathur	31-07-19
CONTRACTOR'S COMMISSIONING CO-ORDINATOR	<u>[Signature]</u> R. K. Singh	31/07/19

The system is ready ~~not ready~~ for pre-commissioning

EIL :

OWNER:

[Signature] R. K. Singh
 5/12/2019
 (Subject to open conditions)

On behalf
 RFCL (Mech)
 30/11/19



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- vii. Moreover, attention has also been brought to a letter dated 10.02.2022 issued by the General Manager of respondent no.2 to respondent no.1 (handed over during the course of proceedings), whereby, respondent no.2 opined that “in view of the fact that PCTL (petitioner herein) is already exonerated fully of charges of forgery of documents, retaining EMD is not recommended” and advised respondent no.1 to return the forfeited EMD-BG to the petitioner by way of amicable settlement. The said letter reads as under:-

इंजीनियर्स इंडिया लिमिटेड
(भारत सरकार का उपक्रम)
भारत सरकार का उपक्रम

ENGINEERS INDIA LIMITED
(A Govt. of India Undertaking)
Navalva Company

पंजीकृत कार्यालय: इन्जीनियर्स इंडिया भवन, 1, भीकजी कामा प्लेस, नई दिल्ली-110 066 भारत
Regd. Office: Engineers India Bhawan, 1, Bhikaji Cama Place, New Delhi-110 066 INDIA

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A747/EIL/RFCL/L/SRK/27 10th Feb'22

M/s Ramagundam Fertilizers and Chemicals Ltd.
4th Floor, Wing-A,
Kribhco Bhawan, Sector-1,
Noida, UP-201301

Kind Attn: Mr. A K Jain- CEO, RFCL

Subject: Revival of Ramagundam Fertilizer complex at Ramagundam –
Return of EMD/Security Deposit to PCTL against bidding document No:
UKM/A747-304-PB-TN-7200/1007

Reference: PCTL's Writ petition (C) No.6570 of 2021

Dear Sir,

This refers to M/s Paharpur Cooling Tower Limited (PCTL) Writ Petition (C) No.6570 of 2021 filed in the High Court of Delhi challenging encashment of EMD BG submitted by PCTL against subject bidding document.

The issue has been reviewed by our legal who opined that in view of the fact that PCTL is already exonerated fully of the charges of forgery of document, retaining of EMD is not recommended. Accordingly, RFCL is advised to return forfeited EMD against Bidding Document No:UKM/A747-304-PB-TN-7200/1007 to PCTL. Furthermore, RFCL may negotiate with PCTL for amicable settlement of return of EMD amount only (without interest).

Thanking you and assuring you of the best service always.

With Best of Regards,


(S.R. Kashkari) 10/2/22
General Manager (Projects)

cc: Mr S K Handa, D(P)-EIL
Mr A K Kalra, D(HR)- EIL
Mr Inder K Chawla, CFO, RFCL-Noida
Mr A. K. Maheshwari, CGM(P), RFCL-Noida

bcc: ED-P, EIB-V
ED-HR, EIB-VI
CGM P/CM/HR/File

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35. In the circumstances, since the very premise for forfeiture of the EMD-BG stood dissipated, therefore, there is no justification for respondent no.1 in retaining the said amount. The action taken by the respondent no.1 in retaining the said amount is inconsistent with the decision of the Appellate Authority whereby the petitioner was exonerated of the very same allegation which was the very basis for forfeiture of EMD-BG.

36. In the circumstances, the respondent no. 1 is directed to refund the EMD-BG amount of Rs. 47,50,000/- to the petitioner within a period of 4 weeks from today.

37. The petition is disposed of in the above terms.

SACHIN DATTA, J

FEBRUARY 2, 2026/sl