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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	**:**	**03.11.2026**
Pronounced on	**:**	**18.11.2026**

CORAM

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

Arbitration Original Petition (COM.DIV.) No. 572 of 2026
and
A.No.3714 of 2026

CNR:{HCMA011804182026}

The State Trading Corporation of India LimitedA Government of India Enterprise, Having its Representative office at STC Trade Centre, A-29, Thiru-Vi-Ka Industrial Estate, Guindy, Chennai-600032

..Petitioner

Vs

M/s.Rajni Exports and Imports,A Partnership Firm, represented by its Partner, Having its office at No.157 and 158, Srinivasan Kumar Street, Golden George Nagar, Nerkundram, Chennai-600 107

..Respondent

Prayer: Arbitration Original Petition filed under Section 34 of the Arbitration and Conciliation Act, 1996, to set aside the Arbitral Award in Arbitration Case No.04 of 2025 dated 30.01.2026 passed by the Sole Arbitrator, Mr. Krishna Ravindran, Advocate, at Flat No.2A, 2nd Floor, 6KE Apartments, No.6, Kasthuri Estate, 2nd Street, Gopalapuram, Chennai-600 086 in its entirely,

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in the arbitral proceedings between M/s Rajni Exports and Imports Claimant and The State Trading Corporation of India Limited Respondent, arising out of O.P. No. 81 of 2021 and to direct the respondent to pay the costs.

For Petitioner	:	Ms.Akshaya Puthram for M/s.S.K.Singhi and Partners LLP,
For Respondent	:	Mr.P.V.S.Giridhar, Senior Counsel for M/s.P.V.S.Giridhar & Associates

ORDER

This original arbitration petition is filed challenging the award dated 30.01.2026 of the Sole Arbitrator in Arbitration Case No. 04 of 2025.

2. The brief facts leading to the dispute between the parties are that on 08.09.2017, the petitioner herein, viz., The State Trading Corporation of India Limited, floated an e-tender for the lifting of its stock of urad dhal on the conditions mentioned therein. The respondent participated in the tender, requesting the petitioner to adjust the amount due to it on account of an earlier transaction, to the tune of Rs.46,00,000/-, towards the earnest money deposit of Rs.45,67,330/-, being 5% of the total sum of Rs.9,13,46,600/- quoted by it. The petitioner accepted this request, and accordingly, the respondent participated in the tender.

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3. Upon being successful, as communicated on 22.09.2017, the respondent was awarded the tender for the offtake of 696 MT of urad dhal. As per the award, the respondent was required to pay the entire amount due on or before 29.09.2017. Two days before the last date, the respondent paid Rs.3,00,00,000/- and requested an extension for the balance sum of Rs.6,13,46,600/- between 03.10.2017 and 10.11.2017. The extension was granted, however, subject to payment of additional EMD of Rs.3,25,475/- and another sum of Rs.4,00,000/-, which the respondent remitted. Even up to the final extended date of 20.11.2017, the respondent did not pay the balance and lifted the stock.

4. In view thereof, on 21.11.2017, a Risk Sale Notice was issued stating that if the amount was not paid within 7 days, i.e., on or before 27.11.2017, the petitioner would proceed with the risk sale on 27.11.2017, i.e., the last date. The respondent paid Rs.50,00,000/- and sought a further extension till 08.12.2017. However, the petitioner floated a risk sale tender for the balance of 1176 MT by its tender dated 06.12.2017. On 14.12.2017, the respondent paid the balance contract amount as per the calculation, which included additional carrying costs of Rs.20,68,603/-.

5. On 05.01.2018, the respondent was permitted to lift the stock, subject to the condition that the EMD shall stand forfeited and that the carrying cost of

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Rs.20,68,603/- would be payable. The respondent also subsequently paid the additional sum sought. On 24.01.2018, the respondent lifted the entire stock of 1176 MT. Post delivery, the respondent issued letters praying for the return of cheques, etc. After verifying the statement of accounts, on 19.02.2018, it was found that, over and above the actual value and carrying cost of Rs.20,68,603/-, a sum of Rs.11,70,439/- had been paid in excess, and the petitioner refunded the said amount. Thereafter, on 01.03.2018, the respondent demanded a refund of the Security Deposit, to which the petitioner replied on 09.05.2018, confirming the forfeiture of the Security Deposit. Thereafter, a dispute was raised, and the Sole Arbitrator was appointed in O.P. No. 81 of 2021. After the extension of the mandate, the Sole Arbitrator passed an award on 30.01.2026.

6. Before the Sole Arbitrator, the respondent filed a claim statement seeking to set aside the letters dated 05.01.2018 and 09.05.2018 issued by the petitioner to forfeit the Security Deposit and to refund the said amount of Rs.45,67,330/- with interest at the rate of 12% per annum from 24.01.2018, and for a further sum of Rs.5,50,000/- towards legal and further litigation expenses, to be paid with further interest at the rate of 18% per annum. The petitioner duly resisted the claim statement.

7. The Sole Arbitrator framed the following 6 issues:

"1. Whether time was the essence of the contract as per the E-tender

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dated 08.09.2017, the Award Letter dated 22.09.2017, and whether the same stood altered due to the subsequent conduct and correspondence between the parties?

2. Whether the claimant committed a breach of the terms and conditions of the contract, and if so, the nature and extent of such breach?

3. Whether the respondent was entitled to invoke the forfeiture Clauses 7 and 14 of the E-Tender document, even after granting the extensions of time without any conditions?

4. Whether the claimant through conduct has accepted the forfeiture of EMD?

5. Whether the claimant is entitled to a refund of the Security Deposit (EMD) amount of Rs.45,67,330?

6. What other reliefs are the parties entitled to?"

8. The Learned Arbitrator answered issue No.1 that time was the essence of the contract, but by the subsequent conduct of the parties, the original time frame fixed was modified and extended by mutual understanding. With reference to issue No.2, the arbitrator concluded that, with reference to the original term, the respondent committed a breach, but the petitioner also subsequently extended, and therefore it cannot be concluded that the respondent committed a total failure to conclude the contract warranting a penalty of forfeiture of the EMD amount. With reference to issue No.3, the Arbitrator found that, in view of the subsequent extensions and the respondent's performance of the contract at additional cost, forfeiture is not warranted, justified, or proportionate, and accordingly answered.

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9. With reference to issue No.4, the Arbitrator held that the respondent did not accept the forfeiture and only paid the additional amount and concluded the contract. With reference to issue No.5, the Arbitrator held that the respondent would be entitled to a refund of the EMD amount of Rs.45,67,330/-. Though there is no further discussion under issue No.6, while passing the award, the Arbitrator directed that the EMD be refunded with interest at the rate of 12% per annum from the date of receipt of the award till payment. Aggrieved by the same, the petitioner has filed the present application.

10. *Ms Akshaya Puthran*, learned counsel appearing on behalf of the petitioner, would draw the attention of this court to the original terms of the tender. With reference to Clause No.2, relating to the product, she would point out that it is perishable. Then, she would draw the attention of this court to Clause No.6, relating to Earnest Money Deposit, and Clause No.7, relating to payment terms, including the clause relating to the forfeiture of the EMD. Thereafter, the learned counsel would draw the attention to Clause No.11 of the contract, whereby all the connected documents were treated to be part of the contract, and to Clause No.13 relating to liquidated damages and Clause No.14 relating to forfeiture of earnest money deposit (security deposit).

11. The learned counsel would submit that a combined reading of the contract as a whole, interpreted in the context of Sections 55 and 63 of the

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Indian Contract Act, 1872, enables the Petitioner to forfeit the security deposit. Simultaneously, even if the Respondent had been permitted to complete the work at an additional cost, had the Petitioner not allowed the Respondent to lift the stock, the Respondent would still have remained liable for risk purchase costs as stipulated in the tender. The Respondent, sensing a lower quote in the risk sale, paid the entire amount and lifted the stock of urad dal. It can never be argued, by way of contractual interpretation, that the Petitioner, being a State authority floating the tender, lacks the right to forfeit the EMD.

12. While the Petitioner's right and the respondent’s failure have been recognised by the Learned Arbitrator, the finding that the justification is unreasonable and not proportionate is beyond the Learned Arbitrator's jurisdiction. The Learned Arbitrator must interpret the terms of the contract and cannot determine the dispute based on reasonableness or equity. Therefore, the Learned Arbitrator's findings in the instant case are not only perverse but also patently illegal. The learned counsel would specifically point out the facts whereby the contract has been cancelled, which automatically enables the Petitioner to forfeit the EMD.

13. The learned counsel would rely upon the following judgments of the Hon’ble Supreme Court of India:

(i) *Associate Builders Vs. Delhi Development Authority [(2015) 3 SCC*

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49] more specifically paragraph No.31 of the said judgment.

(ii) Ssangyong Engineering and Construction Company Limited Vs. National Highways Authority of India (NHAI) [(2019) 15 SCC 131] more specifically relying upon paragraph Nos.33, 41 to 45.

(iii) Delhi Metro Rail Corporation Limited Vs. Delhi Airport Metro Express Private Limited [(2024) 6 SCC 357] more specifically paragraph Nos. 38 and 46.

(iv) Shreeram Builders Vs. Upendera Kantilal Thanawala and Ors. [2026 SCC Online SC 2294], more specifically paragraph Nos.47, 49, 50, 52, 56 and 58 to 61.

(v) DYNA Technologies Private Limted Vs. Crompton Greaves Limited [(2019) 20 SCC 1] more specifically paragraph No.35.

(vi) K.R.Suresh Vs. R.Pooninma and Ors. [2025 SCC Online SC 1014] more specifically paragraph Nos.51 and 51 with reference to the forfeiture of earnest money deposit.

(vii) Godrej Projects Development Limited Vs. Anil Karlekar and Ors. [(2025) 4 SCC 259] more specifically paragraph Nos. 9 to 21 and 34.

14. The learned counsel would also place reliance on certain other judgments on the same proposition to contend that the Learned Arbitrator's action in this case would amount to moving beyond its jurisdiction to interpret the terms of the contract, and, as such, the entire award is perverse and patently

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illegal, and therefore this court should interfere in exercise of its power under Section 34 of the Arbitration and Conciliation Act, 1996.

15. Per Contra, Mr P.V.S.Giridhar, the learned Senior Counsel appearing on behalf of the respondent, would submit, by pointing out the relevant clauses, that the clauses relating to forfeiture of the EMD only enable the petitioner to forfeit in the event of failure to perform the contract. In this case, the parties' subsequent conduct extended the time, and ultimately the petitioner accepted performance of the contract even after the floating of the tender for risk purchase.

16. The Learned Arbitrator has gone into the issue in detail in issue No.3 and has interpreted the terms of the contract and rendered a finding that, in the instant case, if only the forfeiture is to be sustained, it should be construed as penal in nature and in respect of penal damages, as held by the Hon'ble Supreme Court of India in the case of ***Kailash Nath Associates Vs. Delhi Development Authority and Anr. [(2015) 4 SCC 136],*** Section 74 of the Contract Act, 1872 would operate, and unless the specific damages are pleaded and proved, the respondent cannot be permitted to forfeit the deposit.

17. The Learned Arbitrator has categorically found that when the respondent had not only lifted the goods by paying the amount originally agreed

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and the subsequent carrying costs and other expenses, and the same had been accepted by the petitioner, there was no occasion for forfeiture of the EMD. Therefore, the Learned Arbitrator's findings are within the contract, within the four corners of the Arbitrator's jurisdiction, and within the manner of answering the dispute submitted to the Arbitrator.

18. The well-considered award of the arbitrator, based on the record and interpreting the terms of the contract and the attendant communications and documents between the parties, cannot be interfered with by this Court, which is not a first Appellate Court, in exercise of power under Section 34 of the Act. Therefore, the petition has to be dismissed. The learned Senior Counsel would submit that this is a fit case to impose costs.

19. I have considered the submissions made on either side and perused the material records of the case. The issue on hand relates to the forfeiture of the earnest money deposit. The petitioner herein is a public sector undertaking. I had occasion to consider the law relating to forfeiture in ***M/s. P.S.T. Engineering Construction Vs. HSCC (India) Limited (2025:MHC:981).*** It must be noted in the instant case, that the money forfeited is retained as security and does not form part of the sale price. As such, it is not ‘earnest ’, and this is not a case of non-performance of the contract. Thus, the law laid down by the Hon’ble Supreme Court of India in ***National Highways Authority of India -Vs- Ganga Enterprises and Another(2003 7 SCC 410)*** does not apply.

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20. Per contra, in respect of the belated off-take of the Urad dhal, in addition to the carrying costs and other expenses, the petitioner chose to claim its power under the contract, as a penalty, even while extending the deadline and permitting the respondent to perform the contract. Thus, from the law laid down in the various other judgments from ***Fateh Chand, Maula Bux, Kailash Nath, Shanmugavelu,*** etc., which are referred to in detail in paragraphs 10.3 to 10.16 of the above Judgment in ***PST Engineering***, it must be seen that once the forfeiture assumes a penal nature, then, as per Section 74, the amount will be the outer limit and the Courts/Tribunal will allow only what is reasonable. Thus, in the instant case, after considering the carrying costs and expenses paid by the respondent as an additional sum, when the Learned Arbitrator had decided that nothing further need be allowed, it is not on equity or outside the jurisdiction of Arbitration, but only applying Section 74 of the Contract Act, 1872 by construing the terms of the Contract and appreciating the evidence on record.

21. Thus, the award, insofar as it directs refund of the sum forfeited, cannot be said to be erroneous, much less that any ground is made out to interfere with the award as patently illegal or in violation of foundational and fundamental legal principles of India.

22. As far as the post-award interest is concerned, as per the dictum of the Constitution Bench in ***Gayatri Balasamy -Vs- ISG Novasoft Technologies Ltd***

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(2025 7 SCC 1), in every case, this cannot interfere or substitute its opinion except where the facts require. In the instant case, without any discussion of the rate of interest or the circumstances, the interest is ordered to be paid straightaway in the operative portion of the award. Secondly, this is a case where there is obvious delay on the part of the respondent; however, considering the circumstances, it was allowed to lift the stock on the understanding that the petitioner would be permitted to forfeit the security deposit. Thus, I am of the view that 12% as awarded cannot be justified and it is reduced to 9% per annum.

23. In the result, this Arbitration Original Petition is partly allowed on the following terms:

(i) The award of the arbitrator dated 30.01.2026 is not interfered with in so far as it directs refund of the sum of Rs.45,67,330/-;

(ii) However, the post-award interest awarded by the Learned Arbitrator at 12% is modified to 9% per annum from the date of award till the date of realisation.

(iii) No Costs. Consequently, the connected application stands closed.

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Neutral Citation: Yes

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D.BHARATHA CHAKRAVARTHY J.

MP

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