IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH
(Exercising powers of Adjudicating Authority under the Insolvency and Bankruptcy Code, 2016)
(Through web-based video conferencing platform)

CP (IB) No.339/BB/2019
U/s 9 of the IBC, 2016
R/w Rule 6 of the IBC (AAA) Rules, 2016

IN THE MATTER OF:

M/s. Airen International Limited
Through its Authorised Representative
Mr. Abhishek Airen
Regd. Off: Airen Corporate,
401, Fourth Floor 15/2,
Old Palasia, Near Ambedkar Bridge,
Indore,
Madhya Pradesh – 452 001. ... Petitioner / Operational Creditor

VERSUS

M/s. Expert Industries Pvt. Ltd.
CIN No.: U02102KA1988PTC009338
Regd. Off: 274-C, KIDAB Industrial Area,
Bommasandra, Anekal Taluk,
Bengaluru – 560 099. ... Respondent / Corporate Debtor

Order delivered on: 02nd December, 2021

CORAM: 1. Hon'ble Shri Ajay Kumar Vatsavayi, Member (Judicial)
2. Hon'ble Shri Manoj Kumar Dubey, Member (Technical)

PRESENT:

For the Petitioner : Shri Jatin Sehgal, Adv.

For the Respondent : Shri Varun Joshi, Adv.

ORDER

Per: Ajay Kumar Vatsavayi, Member (Judicial)

1. The present Petition is filed, under Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as 'IBC/Code') by M/s. Airen International

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Limited through its Authorised Representative, Mr. Abhishek Airen (hereinafter referred to as 'Petitioner/Operational Creditor') to initiate the Corporate Insolvency Resolution Process ('CIRP') against M/s. Expert Industries Private Limited (hereinafter referred to as 'Respondent/Corporate Debtor).

2. The Corporate Debtor, namely, M/s. Expert Industries Private Limited, is a Company incorporated on 04.08.1988 under the provisions of the Companies Act, 1956 with CIN: U02102KA1988PTC009338 having its registered office at 274-C, KIADB Industrial Area, Bommasandra, Anekal Taluk, Bengaluru-560099, which falls within the territorial jurisdiction of this Adjudicating Authority. The Authorised Share Capital of the Respondent/Corporate Debtor is Rs.2,00,00,000/- and the Paid-Up Share Capital is Rs.1,84,78,000/- as per the Company Master Data attached at Exhibit-9 of this application.

3. The present application has been filed by the Operational Creditor against the Corporate Debtor in respect of the default amount of Rs.25,00,000/- (Rupees Twenty Five Lakhs only) along with interest @ 21% from the date from which the debt fell due till the date of realization of the debt.

4. It is stated that the Operational Creditor is engaged in the business of manufacturing, distribution and selling of HDPE/PP Woven Sacks & Bags. The Operational Creditor had placed a purchase order with the Corporate Debtor for a laminating machine, required for its business purposes. On 31.03.2017, the Corporate Debtor has sent an initial quotation to the Operational Creditor with respect to the said laminating machine, however, the said quotation was not accepted by the Operational Creditor. Thereafter, a revised offer was given vide quotation dated 19.05.2017.

5. It is stated that the Operational Creditor accepted the revised quotation dated 19.05.2017 and placed a Purchase Order with the Corporate Debtor and also made an advance payment of Rs.25,00,000/- through Cheque No.006773 towards the purchase of the laminating machine. It was also agreed in the Purchase Order that the machine would be manufactured and delivered within five months by the

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Corporate Debtor. However, the Corporate Debtor has miserably failed to abide by the terms of the Purchase Order.

6. As time being the essence of contract and due to the failure on the part of the Corporate Debtor in supplying the said machine on time, the Operational Creditor wrote an email dated 31.07.2018 to the Corporate Debtor for the refund of the undisputed amount of the advance of Rs.25,00,000/- along with the interest and amount of opportunity loss to the Operational Creditor.

7. It is further stated that the Operational Creditor has also issued the Demand Notice dated 24.06.2019 in Form 3 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, under section 8 of the I&B Code, 2016 demanding the amount. A copy of the said Demand Notice has been placed on record as Exhibit-1. In response to the aforesaid Demand Notice, the Corporate Debtor has sent a Holding Reply dated 01.07.2019 to the Operational Creditor and the same has been annexed at Exhibit 8.

8. In light of the aforesaid and the default continued on the part of the Corporate Debtor, the Operational Creditor has filed the instant application for initiating CIRP of the Corporate Debtor under the Code.

9. The instant Petition is opposed by the Corporate Debtor by filing its objections dated 14.02.2020, by *inter alia* contending as under:

   i) It is contended that the application filed by the Operational Creditor is completely false, baseless, devoid of merits and ought to be dismissed in limine. The Operational Creditor through the present application has classified 'refund of monies' paid as 'advance' under the agreement entered into between the parties as an 'Operational Debt' due by the Corporate Debtor.

   ii) It is submitted that 'Advance amount' does not fall within the definition of 'Operational Debt' under section 5(21) of the Code. In the present case, there was no provision of goods or services rendered by the Operational Creditor to the Corporate Debtor. The dispute herein pertains to monies advanced

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partially by the Operational Creditor amounting to Rs.25,00,000/- as 'Advance payment' as against the agreed advance amount of Rs.46,40,000/- for manufacturing Special Purpose Custom-built Laminating Machine ordered by the Operational Creditor. Due to the failure of the Operational Creditor in fulfilling his contractual obligation towards payment of full 'advance amount' as per terms of the Contract, the Corporate Debtor cannot be held liable towards non-delivery of the machinery ordered by the Operational Creditor.

iii) Considering the above, the sums paid as advance to the Corporate Debtor prior to the start of designing and manufacturing of machine does not qualify as 'Operational Debt'. In light of above, the refund of the 'advance' cannot be considered as 'Operational Debt' under the provisions of the Code. It is further submitted that even the advance monies paid is highly disputed by the Corporate Debtor.

iv) It is submitted that the Corporate Debtor has the reputation of being in the forefront of the manufacturing industry producing custom-built machinery for clients around the world. The Operational Creditor approached the Corporate Debtor seeking design, manufacture, supply, installation and commissioning of custom-built Special Purpose Lamination Machine ('Laminating Machine') as per their specification. In pursuance to the same, the Corporate Debtor issued a Quotation-1 dated 31.03.2017 as under:

Sr. No.	*Particulars of the Machines*	*Quote Price (Rs.)*
1.	1300 mm Solventless Laminating Machine – experLAM SL2000	80,00,000
2.	1300 mm Solventbase Laminating Machine – experLAM SL2000	68,00,000
3.	1300 mm Combi (SL+SB) Laminating Machine – experLAM SL2000	1,16,00,000

v) Upon receiving Quotation-1, the Operational Creditor sought another Quotation specifically for the 1300 mm Combi (SL+SB) model of the Laminating Machine from the Corporate Debtor requesting to incorporate certain additional technical details and specifically to mention the

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manufacturers of certain components. In response to the said requirement, the Corporate Debtor issued a second Quotation dated 19.05.2017 amounting to Rs.116 Lakhs (Rupees One Hundred and Sixteen Lakhs only) plus applicable excise duty and taxes. The Quotation-2 also detailed the technical aspects of the above-mentioned machine along with the terms and conditions of payment wherein the Operational Creditor was required to pay an advance of 40% of the total sale consideration amounting to Rs.46,40,000/- (Rupees Forty-Six Lakhs Forty Thousand only) and the balance payment was required to be made against the Proforma Invoice before delivery of the Laminating Machine. The relevant extract of Quotation-2 is as under:

Finalized Price	Rs.116.00 Lakhs Plus applicable excise duty and taxes
Payment Terms	40% advance along with confirmed order and balance against Proforma Invoice before delivery

vi) It is submitted that the Quotation dated 19.05.2017 relied upon by the Operational Creditor at page no.35 of the Application stating that the total consideration of the Laminating Machinery amounting to Rs.87,50,000/- is denied by the Corporate Debtor as false, concocted and fabricated. The Corporate Debtor herein denies having entered into the said agreement with the Operational Creditor. On the other hand, the Corporate Debtor has throughout relied upon Quotation-2 entered into between the parties and based on the said quotation monies have been demanded from the Operational Creditor. Such a reduced sale price claimed by Operational Creditor is not commercially feasible towards designing and manufacturing of Custom Built Laminating Machine and the Corporate Debtor wishes to place on record the invoices for sale of Laminating Machines to other customers of the Corporate Debtor during the same period as the Operational Creditor, which clearly indicates that the minimum cost of designing and manufacturing the Laminating Machine is substantially

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higher than the price claimed by the Operational Creditor. It is submitted that, the Corporate Debtor having throughout disputed the Quotation referred by the Operational Creditor, the genuineness of the Quotations relied upon the parties ought to be decided by the Trial Court in a full-fledged trial after leading evidence in detail.

vii) Pursuant to the Operational Creditor having accepted Quotation-2, it was required to make an advance payment of 40% amounting to Rs.46,40,000/- out of the total sale consideration towards the Laminating Machine, however, it made only a part payment of Rs.25,00,000/- towards advance payment. Based on the prior business relationship shared between the parties and believing the assurances provided by the Operational Creditor that the balance payment would be released within a short duration of time, the Corporate Debtor made substantial investments of its own to start the process of designing and manufacturing the Laminating Machine as per the specifications sought by Operational Creditor. Despite several reminders, the Operational Creditor has failed to pay the balance advance amount.

viii) It is further submitted that the Operational Creditor as part of the Demand Notice dated 24.06.2019 claimed that the Corporate Debtor had failed miserably to manufacture the machine which is in complete contrast to the email dated 31.07.2018 of the Operational Creditor where it was acknowledged by the Operational Creditor that the Corporate Debtor had informed the Operational Creditor that the Laminating Machine was in fact ready and could be assembled within 4-5 weeks.

ix) The Corporate Debtor vide email dated 07.08.2018 refuted the claims of Operational Creditor stating that the Corporate Debtor having progressed on the manufacture of the machine have been awaiting the release of balance Advance Payment from Operational Creditor to complete the Laminating Machine. Inspite of the said mail, the Operational Creditor failed to make the balance payment and continued to seek for refund of Rs.25,00,000/- being part payment of advance to the Corporate Debtor.

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However, the Corporate Debtor after having already invested huge amounts of monies out of its own pocket towards manufacturing of the Lamination Machine refused to refund the advance monies and the same was communicated to the Operational Creditor vide email dated 25.02.2019.

x) It is stated that the Corporate Debtor vide email dated 21.06.2019 reiterated the terms and conditions stipulated in Quotation-2 stating that the agreed price between the parties was Rs.116 Lakhs for the Special Purpose Custom Built Laminating Machine and that the Operational Creditor had agreed to the same with payment of 40% of the sale price as Advance. When the Operational Creditor visited the Corporate Debtor's office on 21.07.2018 and claimed that the machine was ordered at a much lesser price than the offer price which was never agreed between the parties and denied that no such document was given to the Operational Creditor.

xi) It is further submitted that the Corporate Debtor vide email dated 21.06.2019 informed the Operational Creditor that the manufacturing of the machine is completed and had been lying ready on the shop floor in fully assembled condition for considerable period of time occupying the limited and valuable assembly space and if the Operational Creditors fails to honour his commitment as stipulated under Quotation-2 and lift the machine, the Corporate Debtor was left with no option but to dismantle the entire assembled machine.

xii) The Operational Creditor issued the Demand Notice on 24.06.2019 seeking refund of the advance payment made to the Corporate Debtor. The Corporate Debtor issued a holding reply on 01.07.2019 and subsequently a detailed reply to the demand notice on 06.07.2019, wherein it detailed all the claims of the Operational Creditor emphasizing that it was in fact the Operational Creditor who failed to repay the entire sum of the advance payment promised to the Corporate Debtor and that the Operational Creditor had failed to keep up its obligations under the Terms and Conditions of the Quotation-2 and therefore the Corporate Debtor was not

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liable to refund the advance payment for the unjust enrichment of the Operational Creditor. The Corporate Debtor reiterated to the Operational Creditor that its claims of lower quoted price for the Laminating Machine was fabricated, concocted and tailored to suit the Operational Creditor's dubious claims. The Corporate Debtor as part of the reply attached the Debit Note detailing the loss caused due to Operational Creditor's failure to take delivery of the Laminating Machine.

xiii) The Corporate Debtor also submitted that it is ready and willing to perform its obligations as specified under the disputed Quotation-2 and that the contract between the parties has never been terminated by either party. It is ready to perform and deliver even as per the terms and conditions stipulated in the disputed quote as the Laminating Machine manufactured herein was tailored as per the specific requirement of the Operational Creditor and prepared exhaustive designs and procured components towards the manufacturing of the machine investing large sums of monies which cannot be sold to other customers and thus there cannot be any question of refund of the advance monies paid to the Operational Creditor by the Corporate Debtor.

xiv) Further, the Operational Creditor has failed to show any intention towards keeping up its end of the obligations and has not made regular payments towards the Laminating Machine. The Corporate Debtor continues to suffer heavy losses due to the space occupied by the laminating machine on the shop floor preventing it from utilizing the space for other orders.

xv) Accordingly, the alleged operational debt as claimed by the Operational Creditor is highly disputed by the Corporate Debtor. The Operational Creditor has made the present application without honouring the terms and conditions agreed between the parties and thus is liable to be dismissed.

10. The Corporate Debtor has also relied upon the following judgments with a proposition of law stating when there exists 'pre-existing dispute' between Parties, application under section 9 of the I&B Code, 2016 is liable to be rejected:

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i) *Mobilox Innovations Pvt. Ltd. Vs. Kirusa Software Pvt. Ltd. (2018) 1 SCC 353;*

ii) *Innoventive Industries Vs. ICICI Bank and others (2018) 1 SCC 407;*

iii) *Transmission Corporation of Andhra Pradesh Ltd. Vs. Equipment Conductors and Cables Limited (2019) 12 SCC 697;*

iv) *Sumilon Polyester Pvt. Ltd. Vs. Parikh Packaging Pvt. Ltd. (2020) SCCOnline NCLAT 834;*

v) *Gajendra Parihar Vs. Devi Industrial Engineers (2020) SCCOnline NCLAT 274.*

11. In response to the aforesaid objections, the Operational Creditor has also filed its rejoinder dated 24.02.2020, by *inter alia* stating as under:

i) With respect to the preliminary objection raised by the Respondent towards the maintainability of the present petition on the ground that advance amount does not fall within the definition of operational debt, it is stated that the amount was paid for the purchase of the machine for which the Corporate Debtor has provided the services to the effect that the drawings so made and supplied by the Corporate Debtor also reflects the specific number of the machine so designed which is an admitted fact and hence, the said amount has been given for provision of goods and services, therefore, it falls within the definition of Operational Debt. This is also supported by the decisions passed by the Hon'ble NCLAT wherein the advance given by the Operational Creditor is treated as Operational Debt.

ii) In addition to the above, the Respondent has raised a frivolous objection with respect to the non-payment of full advance amount by the Operational Creditor as per the disputed revised Quotation-2. The Operational Creditor submits that no such quotation was ever executed between the parties and the same is a fabricated document for which the Respondent is put to strict proof to prove the genuineness of the same.

iii) The Respondent has raised a sham and faux dispute to get away from the clutches of the Code. The Respondent has not placed a single

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document on record to show that the alleged demand for the balance advance amount was ever made by the Corporate Debtor. It was only after the Operational Creditor sought refund of the amount after lapse of almost one year from the date of the Purchase Order and the revised Quotation and after the failure of the Corporate Debtor to meet its obligation as per the terms of the contract.

iv) It is stated that the Respondents' Quotation-2 as annexed with the reply and the one sent to the Petitioner along with the detailed reply dated 06.07.2019 to the demand notice which is marked as Document-1 are two different quotations prepared belatedly and having different font style and different signature. The Respondent with intention to mislead this Tribunal has prepared a new Quotation which is marked as Annexure-B and it can be presumed that the same is an after-thought and created only to support the sham defence of the Corporate Debtor.

v) It is stated that the question of determining the genuineness of the Quotation does not arise before this Tribunal as the one referred by the Operational Creditor is duly executed on the original letter head of the Respondent Company and hence cannot be denied. Also, the Corporate Debtor has no where denied that the said quotation so annexed with this application by the Operational Creditor has not been signed by the authorized person of the Corporate Debtor.

12. It is stated in Part-IV of Form No.5 that the total amount claimed to be in default is Rs.25,00,000/- along with interest @ 21% from the date the debt fell due till the date of realization. The date on which default occurred is 19.10.2017. In Part-V of Form No.5, a copy of Quotation dated 31.03.2017 and 19.05.2017 sent by the Corporate Debtor is annexed as Exhinit-2, and a copy of the Purchase Order issued by the Operational Creditor along with copy of the Cheque for the advance payment of Rs.25,00,000/- is annexed as Exhibit-3. Further, a copy of bank statement of the Operational Creditor depicting that the amount of Rs.25,00,000/- was paid to the Corporate Debtor is annexed as Exhibit-4.

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13. Notice was issued to the Corporate Debtor as to why this Petition not be admitted on 25.10.2019. In response thereto, a statement of objections has been filed by the Corporate Debtor, as stated supra.

14. We have heard the learned Counsel for the Petitioner and learned Counsel for the Respondent and have also perused the records carefully.

15. Section 9(5) of the I&B Code, 2016 *inter alia* reads as under:

> *"(5) The Adjudicating Authority shall, within fourteen days of the receipt of the application under sub-section (2), by an order–*
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> ***(i) admit** the application and communicate such decision to the operational creditor and the corporate debtor if, - (a) the application made under sub-section (2) is complete; (b) there is no payment of the unpaid operational debt; (c) the invoice or notice for payment to the corporate debtor has been delivered by the operational creditor; (d) no notice of dispute has been received by the operational creditor or there is no record of dispute in the information utility; and (e) there is no disciplinary proceeding pending against any resolution professional proposed under sub-section (4), if any.*
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> ***(ii) reject** the application and communicate such decision to the operational creditor and the corporate debtor, if - (a) the application made under sub-section (2) is incomplete; (b) there has been payment of the unpaid operational debt; (c) the creditor has not delivered the invoice or notice for payment to the corporate debtor; (d) notice of dispute has been received by the operational creditor or there is a record of dispute in the information utility; or (e) any disciplinary proceeding is pending against any proposed resolution professional."*

16. The first issue to consider is that whether the Demand Notice issued by the Petitioner/Operational Creditor was duly delivered on the Respondent/ Corporate Debtor or not. In view of the averments made on behalf of both the sides and in view of the documents placed on record and in view of the reply dated 01.07.2019 issued on behalf of the Respondent/Corporate Debtor to the

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Demand Notice dated 24.06.2019 got issued by the Petitioner/Operational Creditor, this issue held in favour of the Petitioner.

17. The other issue for consideration is whether the present application is filed within the period of limitation. The transaction involving the defaulted amount dates back to 19.10.2017 (as shown in Part-IV of Form No.5) and the instant application was filed on 06.08.2019. Therefore, the Petition has been filed within the period of limitation.

18. The other issue to be decided is that whether there was any pre-existing dispute between the parties. The Respondent/Corporate Debtor mainly contends that the revised quotation No. EIPL/17/137(R) dated 19.05.2017 filed at page no. 34 to 46 of the Company Petition and relied on by the Petitioner was never issued by the Respondent/Corporate Debtor. Hence, the contention of the Petitioner that the price finalised for the machines was Rs.87.50 Lakhs and in terms of the payment terms an advance amount of Rs.25.0 Lakhs was paid to the Respondent/Corporate Debtor is denied. On the other hand it was contended that as per the revised quotation No. EIPL/17/137(R) dated 19.05.2017 filed at Annexure No. B to the objections filed on behalf of the Respondent/Corporate Debtor from page no. 38 to 51 was the actual revised quotation issued by the Respondent/Corporate Debtor and as per the said revised quotation the price finalised was Rs.116.0 Lakhs and the advance amount required to be paid was 40% of the total finalised price and as the Petitioner failed to pay the total advance amount, the contract itself not consummated and hence, the Company Petition is liable to be dismissed. In support of the said submission our attention was drawn to the email dated 21.06.2019 (Annexure-G) issued by Respondent/ Corporate Debtor to the Petitioner mentioning the dispute about the revised quotation and payments thereof and it is relevant to note down the same which is as under:

"Dear Mr. Abhishek Airen,
We refer our various meetings and discussions are extremely disappointed by your unreasonable and unpractical approach. To set the record straight we would like to recapitulate the sequence of events.

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Based on your request an offer was sent to you on 31st March, 2017 with prices and terms as under

- *Solventless lamination machine @ Rs.80.0 lacs.*
- *Solventbased lamination machine @ Rs.68.0 lacs.*
- *Combi lamination machine @ Rs.116.0 lacs.*
- *Payment terms: 40% advance along with confirmed order and balance against proforma invoice before delivery.*
- *Deliver: Machine will be ready at our works for your inspection in 4-5 months.*
- *Packing: Extra*
- *Freight and insurance to be borne by you.*

Further on your request on 19 May 2017 a separate offer for the Combi laminating machine was resent specifying certain scope of supply.

Based on the above, you had ordered the Combi machine on 19th May 2017 and issued a cheque of Rs.25.0 lacs asking us to proceed with the production and assuring us that balance advance would be released shortly. Based on your order and part advance, we started designing and manufacturing this special purpose, custom built machine as per your specific requirement based on your specifications.

All this while we have been regularly following you up for the release of balance committed advance. You had repeatedly assured us that the balance advance would be released shortly and requested us to keep the machine manufacturing work in progress. Based on your assurances we continued with the manufacturing of the machine and kept waiting for the balance committed advance.

You finally visited us on July 21st 2018. During this visit we were taken aback and shocked when your claimed that the machine we had manufactured for your has been ordered by you at a much lesser price than the offered price. We strongly objected to this contention and for obvious reasons did not accept this. We asked you to produce any document showing our acceptance of this reduced price. You are unable to show us any such document.

In view of the fact that you were already an existing customer and the fact that we had already built the special purpose, custom built machine specifically manufactured for you as per your specifications, we had even offered a compromise and were ready to try and arrive at a mutually acceptable price. But to our disappointment you were not willing to consider such a proposal and you kept insisting that the order be cancelled and asked us to return the part advance paid by you. We repeatedly expressed our inability to accept the cancellation of the order as we were already very heavily invested in this special purpose custom built machine manufactured for you as per your specifications against your specific order. In fact during one of your visit to our plant we have shown you the completely assembles machine manufactured for you inspite of receiving inadequate advance only based on your assurances and our past association.

But you continued to be unreasonable and kept sticking to your unreasonable and unpractical stance.

All this while you have been also threatening of legal action inspite of the fact the entire fault lies with you.

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You are aware that the machine manufactured for you was lying ready on our floor in fully assembled condition for considerable period of time occupying our limited and valuable assembly space. The machine was not lifted by you since you raised a very unreasonable point and unnecessarily created a dispute. You neither honour your commitment of paying the balance committed advance nor did you pay the balance payment and lift the machine. We were left with no other option but to dismantle the entire assembled machine to free up our limited production space so that we can take up manufacturing of other machines.

We have now been incurring huge losses on account of interest cost incurred on the machine, dismantling cost, storage cost etc. and our losses continuously mounting. The components are getting deteriorated gradually and warranties of the brought out components are expiring. We are in deep trouble because of you.

We once again call upon you to release the balance committed advance so that the machine can be reassembled and made ready for dispatch.

Please do not unnecessarily complicate the matter by creating meaningless disagreement on price and other commercial terms.

We have been incurring huge losses and have been patiently waiting for you to realise the difficult situation you have put us into. But nothing seems to work.

Under these circumstances, we will be left with no other option but to seek legal remedy to the mess you have put us through.

Regards,
Prashanth Shetty."

The Respondent contended that the Petitioner failed to give any reply to the said email dated 21.06.2019.

19. The Petitioner on the other hand through his rejoinder submitted that the contentions made by the Respondent/Corporate Debtor with regard to the revised quotation and the different payment terms thereof were created with malafide intentions and to deprive the Petitioner from its legitimate rights. However, it is to be seen that, the Petitioner filed instant CP on 06.08.2019 that means after the email dated 21.06.2019 and also after various other correspondence exchanged between the Parties, but the Petitioner not stated anything about those issues in the CP. Therefore, after careful perusal of the documents on record, we came to the considered view that there was a pre-existing dispute between the parties even before the date of issue of the Demand Notice by the Petitioner. In view of the provisions of the Code and the settled law on the issue of pre-existing dispute, the instant CP is liable to be dismissed.

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20. Further, the pre-existing dispute between the parties pertaining to the genuineness of the revised quotation and the acceptance thereof also and this Adjudicating Authority in its summary jurisdiction under the Code and regulations made there under, cannot go into the said issue, which requires a detailed examination after adducing evidence by the parties. On this ground also the instant Company Petition is liable to be dismissed.

21. Accordingly, in the circumstances and for the aforesaid reasons, the instant C.P. is dismissed. However, this order shall not preclude the Petitioner from availing any other legal remedy, against the Respondent, in accordance with law.

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(MANOJ KUMAR DUBEY)
MEMBER (TECHNICAL)

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(AJAY KUMAR VATSAVAYI)
MEMBER (JUDICIAL)

Krishna