



2026:DHC:4545



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

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*Reserved on: 07<sup>th</sup> April, 2026*

*Pronounced on: 20 May, 2026*

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**RFA 74/2021**

**1. SHAMASHA INDIA**

12/6/1, Gurukul Ind. Area,  
Sarai Khawaja, Anangpur Road,  
PO Amar Nagar, Faridabad Haryana -121003

**2. SH. MUKESH NARAIN**

12/6/1, Gurukul Ind. Area,  
Sarai Khawaja, Anangpur Road,  
PO Amar Nagar, Faridabad Haryana -121003

**3. SH. ARVIND RAIZADA**

12/6/1, Gurukul Ind. Area,  
Sarai Khawaja, Anangpur Road,  
PO Amar Nagar, Faridabad Haryana -121003

**4. MS. SHALINI NARAIN**

12/6/1, Gurukul Ind. Area,  
Sarai Khawaja, Anangpur Road,  
PO Amar Nagar, Faridabad Haryana -121003 .....Appellant

Through: Mr. Mohd. Aman Khan Afghani,  
Advocate

Versus

**INFOPOWER TECHNOLOGIES LTD.**

Having its Regd. Office at  
Plot No. 33, Pocket-1,  
Jasola, New Delhi

Through Sh. Amrit Lal Manwani .....Respondent

Through: Mr. Varun Jain, Advocate

**CORAM:**

**HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA**



## J U D G M E N T

### NEENA BANSAL KRISHNA, J.

1. Regular First Appeal under Section 96 read with Order XLI Rule 1 & 2 of the Code of Civil Procedure, 1908 (*hereinafter referred to as 'CPC'*) has been filed against the Order and Preliminary Decree dated 11.03.2020 of the learned Additional District Judge whereby *the Suit of the Plaintiff for recovery of Rs. 4,98,500/-, was decreed, under Order XII Rule 6 CPC.*
2. The Plaintiff/Respondent, i.e. Infopower Technologies Ltd., had filed a *Civil Suit bearing No. 7483/2016 for recovery of Rs.6,60,146/- and Rs.2,50,000/- towards damages, along with pendente lite and future interest @ 24% p.a.*
3. ***The facts in brief are that*** the Defendant No. 1-Shamasha India is a partnership Firm, of which Defendants No. 2 and 3-Mukesh Narain and Arvind Raizada, are the partners. This Firm is engaged in the business of trading and manufacturing of PCB/Screen, Printing/Solar machinery, Chemicals, Consumables & Automations. The Plaintiff stated that Defendant No. 1 claimed itself to be proprietorship Firm, of which Shalini Narain, defendant No.4, is the Sole Proprietor. Apparently, Defendants No. 2 and 3 who had represented themselves as partners of Defendant No. 1, colluded and connived with each-other, to wriggle out of making a payment of the dues to the Plaintiff.
4. The Plaintiff stated that it had an Order for a Screen-Printing Machine *vide* Purchase Order dated 10.06.2015, which was to be supplied within 08 weeks of the said Purchase Order, i.e. on and before 05.08.2015.
5. The Plaintiff further acquired one *more Screen-Printing Machine and Etch & Ink Strip Machine*, the Defendants being aware of the



requirement of the Plaintiff, approached the Plaintiff and assured that he would supply the second machine also, within 08 weeks. The Plaintiff, therefore, revised the earlier Purchase Order dated 29.06.2015 and issued a *revised Purchase Order dated 03.07.2015*, for the supply of following machines:-

1. Two Post Screen Printing Machine; and
  2. One Etch & Ink Strip Machine.
6. As per the Purchase Order, the terms of the payment were as under:
- i) Rs.7,08,500/- along with Purchase Order dated 03.07.2015;
  - ii) Rs.7,08,500/- in 06 weeks thereafter from the date of Purchase Order dated 03.07.2015; and
  - iii) Balance before dispatch, on Inspection.
7. The Plaintiff claimed that Defendants failed to deliver the *Screen-Printing Machine*, in terms of Purchase Order dated 10.06.2015 within the stipulated time, i.e. 05.08.2015. Further, on various visits, it was found that there was no progress in terms of the supply of the machine fabrication.
8. The Defendants supplied the Screen-Printing Machine under Purchase Order dated 10.06.2015 on 12.09.2015, i.e., after a delay of almost 40 days. The second Screen-Printing Machine was delivered on 24.09.2015, i.e., after a delay of one month.
9. The Plaintiff thus, lost faith in the timely delivery of the machine and asked for a specific date of delivery and a Bank Guarantee for the release of further payments.



**10.** The Defendants neither confirmed the delivery date nor agreed to provide a Bank Guarantee and sought release of payment. The Plaintiff in order to break the deadlock, wrote an email dated 13.10.2015, offering to hand over the post-dated cheque to the Defendants towards the second installment, as per the committed delivery date to be given by the Defendants, which could be encashed upon delivery. However, it was clarified that in case the delivery was not made on the committed date, then the Plaintiff would stop payment against the post-dated cheque. The Defendants declined both the offers.

**11.** Thereafter, discussions were again held between the parties, but to no avail. The Defendants in the email dated 29.10.2015, stated that they would require approximately 3 to 4 weeks to complete the line before the release of second installment, which was also against the stipulated time of 2 weeks from the date of second installment.

**12.** The delivery dates of the machine were repeatedly changed from 25.08.2015 to between 21.09.2015 and 30.09.2015; thereafter to 15.10.2015 and then to 19.10.2015, due to delay on the part of the Defendants.

**13.** Despite the passage of five months from the date of the Purchase Order, the *Etch & Ink Strip Machine* was not delivered to the Plaintiff. Since there were no chances of delivery of the machine within a further period of 06 weeks, the Plaintiff was constrained to cancel the Purchase Order, *vide* email dated 03.12.2015.

**14.** The Plaintiff further called upon the Defendants to release the advance payment of Rs.5,79,076/-, paid by the Plaintiff to the Defendants. The Defendants are liable to pay interest @ 24% p.a. on the due amount.



15. The Plaintiff thus, filed the *Suit for Recovery of Rs.6,60,146/- pendente lite and future interest @ 24% p.a. and for recovery of Rs.2,50,000/- on account of damages along with interest @ 24% p.a.*, was also claimed.

16. The **Defendants in their Written Statement**, took the **preliminary objection** that the Plaintiff had not approached the Court with clean hands and has suppressed material and relevant facts. Moreover, there was no cause of action disclosed in the Suit, which is liable to be rejected.

17. The Suit is also bad for non-joinder and misjoinder of the parties. Ms. Shalini Narain, Defendant No. 4 is the Sole Proprietor of the Defendant No. 1 Firm, and is a *necessary party* for adjudication. The Plaintiff did not even bother to enquire or to know, who is the real owner of the Defendants Company and has filed the Suit against the employees, as well. Sh. Mukesh Narain-Defendant No. 2 is the Technical Advisor, while Sh. Arvind Raizada is the GM (Technical & Mktg.) of the Defendant No. 1 Company.

18. **On merits**, it was admitted that the Defendant Company was engaged in the business of trading and manufacturing of PCB/Screen Printing/Solar Machinery. It was denied that the Defendant No. 1 is a partnership Firm or that Defendants No. 2 & 3 are the partners or ever represented themselves to be so. These facts have been clarified in the Reply given to the Plaintiff, in response to their Legal Notice.

19. It was admitted that the Pay Orders for the machines had been issued by the Plaintiff, but it was denied that the period of the delivery of the machine was fixed. It was claimed that keeping the urgency, the Defendants had reduced the time of delivery/supply on their own, on the humanitarian ground. The period of 08 weeks for the supply of machines, was never



committed by the Defendants at any point of time. The original time for delivery, was 14 weeks.

**20.** The advance payment made by the Plaintiff was meant for purchase of raw materials and machine parts which was already availed by the Plaintiff, but it deferred the dates in making the payment and there were serious lapses on the part of Plaintiff which were never absolved by the Plaintiff himself. The Plaintiff is in a habit of pick and choose policy and sticks to the policy which best suits him, while ignoring the vital parts.

**21.** That Defendants denied that it had failed to deliver the machine on time. It was claimed that the delay was caused due to non-payment of the dues by the Plaintiff. After the delivery of other material, the Defendants were constantly reminding the Plaintiff for release of second part of the payment of the machine, because after deduction of the amount of other materials, the balance was so low that it was not possible for the Defendants to supply the machine, in such a low balance.

**22.** The Defendants further asserted that there was no reason for them to have furnished a bank guarantee or to accept the post-dated cheques of the Plaintiff. Such a stand of the Plaintiff was against the law and the ethics of the business world.

**23.** The Defendants stated that several rounds of talks were held between the Defendants and Plaintiff and in every round of talk, he reminded the Plaintiff to release the balance payment, but he kept it in abeyance. Because of the callous attitude of the Plaintiff, the dates of the delivery were changed. The Defendants had already told the Plaintiff that the machine was ready, and on payment of balance amount, its delivery would be undertaken.



24. The Defendants have admitted the service of Legal Notice and asserted that the same was duly replied, explaining their stand.

25. **An Application under Order XII Rule 6 CPC was filed on behalf of the Plaintiff** wherein it was stated that the Plaintiff had sought the refund of Rs.5,79,076/- paid to the Defendants, along with the interest. It was the admitted case of the parties that Rs.7,08,500/- had been paid by the Plaintiff to Defendant No. 1 for purchase of machinery. The Defendants had agreed to cancel the Order.

26. *Vide* email dated 09.12.2015, the Defendants had agreed to refund the advance, after deducting modification/conversion cost from the advance and to return the balance amount within 60 days. In the subsequent email dated 14.12.2015, Defendant No. 2 agreed that the Order stood cancelled and that the advance was to be refunded, after deducting Rs.2,10,000/- towards modification of the parts, before supplying it to the new customer.

27. It further stated that the refund would be given as soon as the Defendants gets a customer on or before the end of the financial year 2015-16. Admittedly, Defendants had agreed to pay Rs.4,98,500/-. Hence, a prayer was made that the Suit be decreed for Rs.4,98,500/- along with interest.

28. **The learned District Judge *vide* impugned judgment and decree dated 11.03.2020 observed** an unequivocal admission of the Defendants for return of Rs.4,98,500/- and thereby passed a *preliminary decree in the sum of Rs.4,98,500/- while the trial was to continue for the recovery of the balance amount.* **The Application under Order XII Rule 6 CPC was accordingly, decided in favour of the Plaintiff.**



**29.** *Aggrieved by the said judgment, the present Regular Appeal has been filed.*

**30.** *The grounds of challenge are that* the correspondence between the Respondent and the Appellants through emails, clearly shows that the Appellants had continuously wanting the Respondent to release the second instalment of advance payment, as agreed between them in the Purchase Order. However, instead of releasing the instalment, the Respondent insisted on supply of Etch and Ink Strip (ES) Machine line, despite the terms and conditions as to the payment, being specific.

**31.** The Appellant No. 2 had explained all the conditions and circumstances surrounding the Appellants with respect to the procurement of raw material and the cost to be incurred in manufacturing, etc., due to which the Appellants got short on money. Still, despite the Respondent being at fault, the Appellants cancelled the Order, which resulted in loss to the Appellants.

**32.** There were contentious issues raised from both the sides, which could have been adjudicated, only after recording of evidence.

**33.** Reliance is placed on *State Bank of India v. Midland Industries* AIR 1988 Delhi 153 wherein it was held that the discretion under Order XII Rule 6 CPC must not be exercised, where the Defendants had raised objections to go to the root of the case.

**34.** The Respondent itself was at the fault for not making payment of the second installment on time as agreed under the Purchase Order, but was till insisted on the delivery of the machine. A complete email dated dated 09.12.2015 and 14.12.2015 sent by Appellants to Respondent, has not been considered in totality. In this email, the Appellants had stated about the modification costs and other things, which required clarifications. In both the emails, the Appellants never accepted the cancellation, and the part of



the email dated 09.12.2015, cannot be considered to be containing unequivocal and unqualified admissions.

**35.** Reliance is placed on *R. K. Markan v. Rajiv Kumar Markan* 2002 (62) DRJ 241 and *Nagubai Ammal and Others v. B. Shama Rao and Others* AIR 1956 SC 593, wherein it was observed that merely because of written admission made in a different context, it would not become relevant if the party making it, has a reasonable explanation.

**36.** The learned District Judge observed that the Respondent had agreed to cancel the Order, but the perusal of email dated 09.12.2015 and 14.12.2015, would show that the cancellation was never accepted by the Appellants. In email dated 14.12.2015, the Appellant No. 2 had specifically denied that they had agreed for mutual cancellation. It was also mentioned in these two emails that the second installment of advance payment had not been made to the Appellants on time, due to which they could not deliver the machine.

**37.** It is further contended that from the entire correspondence through emails, it is evident that the Appellants were always ready to supply the machines, but as they were short of funds, they could not complete it. The Respondent itself was at fault in not releasing the second installment in time leading to cancellation of Purchase Order which got delayed on account of non-payment of second installment. The Respondent is to be blamed for delay and the Appellants cannot be held responsible for it.

**38.** It is submitted that there were no admissions made by the Appellants and no judgment under Order XII Rule 6 CPC could have been passed.



39. Reliance is placed on Himani Alloys Ltd. v. Tata Steel Ltd. (2011) 15 SCC 273. It is, therefore submissions that the impugned judgment dated 11.03.2020 on the basis of alleged admissions of the Appellants, is liable to be set aside.

40. The Appellants had filed the **Written Submissions on similar lines as the grounds of Appeal.**

41. Learned Counsel for the Respondent had re-affirmed the assertions made in the plaint and submitted that the judgment has been rightly passed for part amount of Rs.4,98,500/- in terms of the admissions, while the trial is still pending for recovery of the remaining amount.

**Submissions heard and record perused.**

42. From the pleadings of the parties, it emerges that *vide* Purchase Order dated 10.06.2015, the Respondent/Plaintiff had placed the Purchase Order for a Screen-Printing Machine. However, subsequently, this Purchase Order was revised on 03.07.2015 and the Order was placed for supply of the following machines:

- (i) Two Post Screen Printing Machines
- (ii) Etch & Ink Strip Machine.

43. According to the Plaintiff, two Screen Printing Machines were delivered though with a delay, but Etch and Ink Strip Machine, was agreed to be delivered for Rs.17,10,000/-. As per the terms of payment mentioned in the Pay Order dated 03.07.2015, Rs.7,08,500/- was given along with the Purchase Order, while the second instalment of Rs.7,08,500/- was to be paid in the 6<sup>th</sup> week from the date of Purchase Order and the balance was to be paid before dispatch, after inspection.



44. It is not denied that a sum of Rs.7,08,500/- was paid at the time of issuance of Purchase Order dated 03.09.2015. It is also not in dispute that thereafter, the machine could not be delivered in the stipulated time and the date of delivery was extended, time and again. Eventually, the Plaintiff getting disgruntled with the non-supply of the machine, wrote a Letter dated 12.12.2015 stating that since the date of delivery was not being confirmed and the Defendant had refused to provide a Bank Guarantee or any other security despite several reminders, it was mutually agreed that the Purchase Order cancelled and the Defendant shall advance Rs.5,79,076/-, due to the Plaintiff. **The Purchase Order was accordingly, cancelled on 03.12.2015.** The request was made to refund the advance by 20.12.2015.

45. Pertinently, this Letter dated 12.12.2015 is to be considered in the context of the e-mails trail, exchanged between the parties. The Plaintiff had replied by way of e-mail dated 03.12.2015 wherein it was stated that since there is no chance of delivery in the coming six weeks even if the advance was released, which would jeopardize their expansion plans, hence, a hard decision was taken and the Order was directed to be cancelled with the release of amount of Rs.5,79,076/-, as reflected in the Ledger.

46. This e-mail was responded on 09.12.2015 by the defendant, wherein it was stated in regard to the cancellation of Order, the machine had been especially made for the Plaintiff, with some added features as desired by the Plaintiff, at the time of ordering the machine. The time would be required to find a new customer, to divert this machine to him. Also, the machine would be required to be modified, to make it into a standard machine. In the process, the cost would be incurred. They would deduct the



modification conversion cost from the advances and returned the money back in 60 days or before the end of the financial year.

**47.** This e-mail was followed by e-mail dated 09.12.2015, wherein the Plaintiff stated that the conditional refund, was not acceptable.

**48.** This was replied on 10.12.2015 by the Defendant, who reiterated that lot of money had been invested in the machine, which needs to be modified to a standard model, to be sold to other customer. The request was made to release the advances as per Purchase Order and the Defendant was ready to give a schedule, as well as, the machine. It was further stated that *“if not, then we need to cover the losses we made in making this special machine for you”*.

**49.** The Plaintiff again, sought a refund of his amount *vide* e-mail dated 10.12.2015. This was followed by the e-mail of the Plaintiff dated 12.12.2015 *wherein the Plaintiff reiterated that it has been mutually agreed that the POB cancelled and Rs.5,76,076/-, be refunded to the Plaintiff.*

**50.** The next important document is the e-mail dated 14.12.2015, which reads as under:-

- “1. We have never agreed mutually on order cancellation.*
- 2. The delay in machine is due to non-release of the advances as agreed at the time of placing order. The second set was supposed to be released by 20<sup>th</sup> Aug 2015.*
- 3. We have the machine partially completed & were waiting for the advances to complete that. With your order cancellation we are in big losses.*
- 4. Since you have cancelled the order, we are searching the new customer to whom we can supply this machine after modifications.*



5. ***We will refund the advances after deducting an amount of Rs.2,10,000/- which is against the modification of the parts before supplying to new customer. Refund will be effected as soon as we get the customer or before the end of this financial year definitely, as we would not like to keep your money with us”***

51. From the aforesaid correspondence, it clearly emerges that there was clear, unambiguous admission about the refund of Rs.5,79,076/-, after reduction of Rs.2,10,000/-, which was to be deducted against the modification of the parts, before supplying it to the new customer. In fact, the Defendant had all throughout qualified the refund of the advance paid, pursuant to the cancellation of the Purchase Order, *subject to the condition that they get a customer on or before the end of the financial year.*

52. From the aforesaid e-mails, it is evident that the Plaintiff disgruntled by non-supply of the machine within the given timeframe, cancelled the Purchase Order, to which the Defendant claimed that the delivery was on account of non-payment of second advance instalment. Nevertheless, as it is evident from the e-mail dated 14.12.2015, it admitted that the refund shall be made, after deduction of Rs.2,10,000/-, towards the cost in modification of the parts to make it into a standard machine for supply to a new customer.

53. From these e-mails, it is evident that the Defendant had admitted that the instalment of Rs.7,08,500/- had been paid by the Plaintiff towards the purchase of the machine. *It is also admitted that the Purchase Order was not executed and the parties had agreed for cancellation of the Order.* It is further evident from the e-mail dated 14.12.2015, that the Defendant had



agreed to refund Rs.4,98,500/- after deducting Rs.2,10,000/-, to be utilized for modification of the machine to sell to the new customer.

**54.** The only qualification was that the money would be paid when they got the new customer, but definitely before the end of the financial year. There are clear, unequivocal admissions from the Defendant, who agreed to return the amount of Rs.4,98,500/-, while there remains a dispute about the remaining amount, which is subject to adjudication of which party was responsible for the breach of the Agreement. However, there is a clear admission for return of Rs.4,98,500/-.

**55.** The learned District Judge, therefore, rightly decreed the Suit for this amount while leaving the claim of the Plaintiff for the balance amount to be adjudicated. There are clear, unambiguous admissions of the Defendant as contained in the e-mail dated 14.12.2015.

**56.** The learned District Judge has rightly partly decreed the Suit of the Plaintiff in the sum of Rs.4,98,500/-. **There is no merit in the present Appeal, which is hereby, dismissed.**

**57.** Pending Applications are disposed of, accordingly.

**(NEENA BANSAL KRISHNA)  
JUDGE**

**MAY 20, 2026**  
N/RS