



**NATIONAL COMPANY LAW TRIBUNAL
GUWAHATI BENCH
GUWAHATI**

ORDER SHEET OF THE HEARING ON 13th DECEMBER, 2024, 02:30 P.M.

IA(IBC)/178/GB/2024

In CP(IB)/3/GB/2024

**Present: 1. Hon'ble Member (Judicial), Shri Deep Chandra Joshi
2. Hon'ble Member (Technical), Shri Balraj Joshi**

In the Matter of	Viraj Profiles Pvt. Ltd. Vs Qubik Infra Pvt. Ltd.
Under Section	U/s 9 of IBC, 2016

Appearances (via video conferencing/physically)

For Petitioner (s) : Mr. P. Gaggar, CA

ORDER

Order Pronounced through VC *vide* separate sheets.

Sd/-
Balraj Joshi
Member (Technical)

Sd/-
Deep Chandra Joshi
Member (Judicial)

**NATIONAL COMPANY LAW TRIBUNAL
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IA (IBC)/178/GB/2024

**In
CP(IB)/3/GB/2024**

*An Application under Section 12 A of the Insolvency and Bankruptcy Code 2016 read with Regulation
30A of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016*

In the matter of:

Viraj Profiles Private Limited, having registered office at Shop-223, Exult Developers, Nr Vesu SS, Vesu, Surat, Gujarat- 395007, and office at Viraj Tower, 1st Floor, Western Express Highway, Gundavali, Andheri East, Mumbai, Maharashtra- 400069;

...Operational Creditor

-Versus-

Qubik Infra Private Limited, having its registered Office at MTC Building, Opposite UCO Bank, Thangal Bazaar, West Imphal, Imphal, Manipur-795001;

...Corporate Debtor

-AND-

In the matter of:

Purshotam Gaggar, Interim Resolution Professional (IRP) for Qubik Infra Pvt. Ltd., having Registration No. IBBI/IPA-001/IP-P00487/2017-18/10875 and address at Advika, 3rd Floor, M.G. Road, Opp. Sukreshwar Ghat Garden, Panbazar, Guwahati- 781001, Assam

...Applicant

Sd -

Sd -

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IA (IBC)/178/GB/2024
In CP(IB)/3/GB/2024

Coram:

Shri Deep Chandra Joshi : Member (Judicial)
Shri Balraj Joshi : Member (Technical)

Appearances (through video conferencing):

For Applicant : Mr. P. Gaggar, RP.
For Respondent(s) : Nil

Order pronounced on: 13.12.2024

Per: Deep Chandra Joshi, Member (Judicial)

ORDER

1. This Interlocutory Application i.e., IA(IBC)/178/GB/2024 has been filed by **Purshotam Gaggar, Interim Resolution Professional (“IRP”/Applicant) for Qubik Infra Pvt. Ltd. (Corporate Debtor, hereinafter referred to as “CD”)** under Section 12 A of the Insolvency and Bankruptcy Code (“Code”), 2016 read with Regulation 30A of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. In **CP(IB)/3/GB/2024**, this Tribunal *vide* order dated 04.10.2024 admitted the said application and initiated Corporate Insolvency Resolution Process (“CIRP”) against the CD and appointed CA Purshotam Gaggar, as the Interim Resolution Professional (IRP). A copy of the said Order is annexed as Annexure 1. The Applicant through the present Application prays for the following reliefs to -

- a. *Allow the withdrawal of the application filed by the Operational Creditor (OC) under section 9 of the IBC, 2016 in CP IB No. 3/GB/2024;*
- b. *Pass any such further and other orders and directions as the nature and circumstances of the case may require and as this Hon'ble Tribunal may deem fit and proper.*

Sd-

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2. The relevant submissions of the Applicant made *vide* this Application is extracted hereunder:
- 2.1. Pursuant to the appointment, the IRP filed his written communication to act as IRP in Form-2 on 18.10.2024 pursuant to Rule 9(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, as the Order was communicated to the IRP on 15.10.2024.
- 2.2. Thereafter, the Public announcement regarding commencement of CIRP was made by the IRP in two newspapers published in the state of Manipur where the registered office of CD is situated namely "The Sangai Express" (English) and "Poknapham" (Manipuri) on 18.10.2024, within 3 (three) days of communication of the CIRP Order. A copy of the Public Announcement is annexed as Annexure 2.
- 2.3. Applicant further stated that, Mr. Vikas Kataria, Suspended Director of CD, filed an appeal before the Hon'ble National Company Law Appellate Tribunal (NCLAT). In its interim order dated 21.10.2024 in Comp. App. (AT) (Ins) No. 1960 of 2024, the Hon'ble NCLAT observed that the Appellant is attempting to reach a settlement in the matter and further directed that the Committee of Creditors (CoC) shall not be constituted until the next hearing date, i.e., 28.10.2024. A copy of the Order is attached as Annexure 3.
- 2.4. Subsequently, the CD and the OC executed a Settlement Agreement dated 22.10.2024, wherein they mutually agreed to resolve the debt for a total sum of Rs. 4,01,71,426.00 (Rupees Four Crore One Lakh Seventy-One Thousand Four Hundred Twenty-Six Only). An amount of Rs. 1,00,00,000 (Rupees One Crore Only) was to be paid upon the signing of the agreement, with the balance to be paid in six instalments as specified in the Settlement Agreement subject to revival of CIRP process in the event of a default by the CD. A copy of the Settlement Agreement is annexed as Annexure 4.
- 2.5. On 28.10.2024, the Hon'ble NCLAT directed that since settlement has been entered between the parties, the OC may file an application and approach the IRP for filing

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an application under section 12A of the Code, for withdrawal of the application filed under Section 9 of the Code before this Tribunal. A copy of the order is annexed as Annexure 5.

- 2.6. Subsequently, the IRP filed Form INC-28 on 19.10.2024 with the Registrar of Companies (**RoC**) to give intimation regarding the initiation of CIRP against the CD. A copy of the Challan is annexed as Annexure 6.
- 2.7. It is noteworthy that, in light of the interim Order dated 21.10.2024 passed by the Hon'ble NCLAT, the IRP refrained from constituting the CoC till date, and consequently, the provision of Section 12 A regarding the approval of 90% of the voting share of the CoC for withdrawal of the application admitted under Section 9 is not applicable in this matter.
- 2.8. In view of the above facts and upon receipt of Form FA dated 09.11.2024 from the OC, the IRP seeks to withdraw the application filed by the OC under Section 9 of the IBC (CP IB No. 3/GB/2024), pursuant to Section 12A read with Regulation 30A of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. A copy of Form FA is annexed as Annexure 7. Additionally, the IRP received an email from the CD on 28.10.2024 confirming the execution of the settlement agreement with the OC. A copy of the email is annexed as Annexure 8.
- 2.9. It is in furtherance stated that the CIRP cost till the disposal of present appeal is estimated by the IRP to be Rs. 4,82,160/-. The OC i.e. M/s Viraj Profiles Private Limited has made payment of the entire amount to the IRP. Hence, the bank guarantee as per Regulation 30A(2)(a) of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 towards estimated expenses incurred on or by the IRP is not required in the present matter.
3. Heard the Counsel for the Applicant and perused the material available on record.
4. It is observed that *vide* order dated 28.10.2024, the Hon'ble NCLAT directed the OC to approach the IRP for filing an application under section 12A of the Code, for withdrawal

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of the application filed under Section 9 of the Code before this Tribunal, since settlement had been entered between the parties.

5. It is further observed that the IRP refrained from constituting the CoC till date, in furtherance of the Hon'ble NCLAT's Order dated 21.10.2024 and consequently, the provision of Section 12 A regarding the approval of 90% of the voting share of the CoC for withdrawal of the application admitted under Section 9 is not applicable in this matter. Furthermore, it the IRP has duly annexed Form FA along with the application.
6. Before analysing the facts, it becomes pertinent to refer to the Supreme Court ruling in ***Kamal K. Singh vs. Dinesh Gupta, Civil Appeal No. 4993 of 2021***, which held that :
"A question arises as to what is to happen before a Committee of Creditors is constituted (as per the timelines that are specified, a Committee of Creditors can be appointed at any time within 30 days from the date of appointment of the interim resolution professional). We make it clear that at any stage where the Committee of Creditors is not yet constituted, a party can approach NCLT directly, which Tribunal may, in exercise of its inherent powers under Rule 11 of NCLT Rules, 2016 allow or disallow an application for withdrawal of settlement."
7. Further, it is pertinent to refer to the Supreme Court judgment in the matter of ***"Swiss Ribbons Private Limited and Anr. vs Union of India and others (2019) 4 SCC Online SC 17"***, wherein it was held that, *"at any stage, before a committee of Creditors is constituted, a party can approach National Company Law Tribunal (NCLT) directly and that the Tribunal may, in exercise of its inherent powers under Rule 11 of NCLT Rules, allow or disallow the Application for withdrawal"*.
8. In light of the above observations, findings and judicial precedents, the Corporate Debtor is released from all rigours of IBC, 2016. The IRP is discharged from all his responsibilities. Accordingly, **IA (IBC)/178/GB/2024** stands **allowed** and **CP IB No. 3/GB/2024** filed by the OC under section 9 of the IBC, 2016 stands **dismissed as withdrawn**.
9. The Registry is directed to send e-mail copies of the order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps.

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10. Certified Copy of this order may be issued, if applied for, upon compliance of all requisite formalities.
11. File be consigned to records.

Sd-

Balraj Joshi
Member (Technical)

Sd-

Deep Chandra Joshi
Member (Judicial)

Signed this on 13th day of December, 2024.

Nabanita S. (LRA)