



**NATIONAL COMPANY LAW TRIBUNAL
GUWAHATI BENCH
GUWAHATI**

ORDER SHEET OF THE HEARING ON 4th OCTOBER, 2024, 03:00 P.M.

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)

ORDER

None appeared. Order pronounced in the open court *vide* separate sheets.

Sd/-
Balraj Joshi
Member (Technical)

Sd/-
Deep Chandra Joshi
Member (Judicial)

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CP (IB)/3/GB/2024

An Application under Section 9 of the Insolvency and Bankruptcy Code, 2016 (“IBC”) read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (“Rules”), to initiate Corporate Insolvency Resolution Process;

In the matter of:

Viraj Profiles Private Limited, (formerly Viraj Profiles Limited), Registered Office at, G-34, MIDC Tarapur Industrial Area, Boisar, Taluka- Palghar, Dist: Thane, Tarapur, Maharashtra- 401506 and Viraj Towers. Ground and First Floor, Junction of Andheri-Kurla Road, Western Express Highway, Near Landmark Building, Andheri(E), Mumbai- 400069.

... Operational Creditor

-Versus-

Qubik Infra Pvt. Ltd., MTC Building, Opposite UCO Bank, Thangal Bazar, Imphal, Manipur- 795001 and Third Floor, B-18, Panchsheel Enclave, New Delhi, South Delhi, Delhi- 110017.

... Corporate Debtor

Coram:

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

Appearances (through video conferencing):

For the Petitioners : Mr. A. Guha, Ms. A. Dutta (Advs.)
For the Respondent : Mr. A. Pareek, CS.

**Order reserved on: 23.08.2024
Order pronounced on: 04.10.2024**

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ORDER

Per: Balraj Joshi, Member (Technical)

1. This Application has been filed under Section 9 of the Insolvency and Bankruptcy Code, 2016, by the Operational Creditor (OC) or Petitioner, namely Viraj Profiles Private Limited, seeking initiation of Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor (CD) or Respondent, namely Qubik Infra Pvt. Ltd.
2. Viraj Profiles Private Limited /Operational Creditor is a private limited company (CIN: U28113MH1996PTC096835) having its registered office at (*formerly Viraj Profiles Limited*), Registered Office at, G-34, MIDC Tarapur Industrial Area, Boisar, Taluka-Palghar, Dist: Thane, Tarapur, Maharashtra- 401506 and Viraj Towers, Ground and First Roor, Junction of Andheri-Kurla Road, Western Express Highway, Near Landmark Building, Andheri(E), Mumbai- 400069. The Company was incorporated on 02.02.1996.
3. **Submissions by the Petitioner:** The Petitioner *vide* their Petition and Written notes of arguments dated 15.01.2024 and 28.02.2024 respectively submits that:
 - 3.1 The OC is the leading manufacturer as well as exporter of Stainless-Steel long products like wire rods, wires, flanges etc. which are used in diverse industries and projects. The Corporate Debtor approached the Operation Creditor for supply/purchase of stainless-steel products being stainless steel wires, wire rods and wire materials which were provided by the Operational Creditor and several invoices were raised from time to time.
 - 3.2 The said materials were delivered to the Corporate Debtor in good faith as per the Corporate Debtor's instructions to Kundan Industries Limited and same was accepted by them without any dispute, having office at Hari Siddhi Industrial Estate, Achole, Gorajpada, District-Thane, Mumbai- 400003 and the said invoices were duly received by the Corporate Debtor. However, out of those invoices, few invoices were left unpaid. The unpaid invoices together sum up to

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an outstanding amount of Rs. 4,01,71,427.24/- (Rupees Four Crores One Lakh Seventy-One Thousand Four Hundred Twenty-Seven and Twenty-Four Paise Only) for the supply/purchase of the materials by the Corporate Debtor. The following seven invoices in respect of which the debt fell due are as follows: -

- a) Invoice bearing No. 920005080 dated 27/12/2022 for Rs. 45,99,767/-
- b) Invoice bearing No. 920005116 dated 29/12/2022 for Rs. 53, 31, 334/-
- c) Invoice bearing No. 920005123 dated 29/12/2022 for Rs. 58,60,966/-
- d) Invoice bearing No. 920005155 dated 31/12/2022 for Rs. 48,65,553/-
- e) Invoice bearing No. 920005244 dated 05/01/2023 for Rs. 52,81,697 /-
- f) Invoice bearing No. 920005292 dated 08/01/2023 for Rs. 72,00,041/-
- g) Invoice bearing No. 9200055 dated 23/01/2023 for Rs. 70,32,068/-.

3.3 The Operational Creditor has also paid GST for the aforesaid invoices. It has also come to the knowledge of the Operational Creditor that the Corporate Debtor has not only taken the GST benefit but has also deposited TDS in favour of the Operational Creditor @0.1% as per Section 194 Q of the Income Tax authorities would be evident from a 26AS statement downloaded by the Operational Creditor from the Official website of the Income Tax Department. Therefore, it can be deducted that the Operational Creditor has shown that these invoices for which payment is due as has been paid by the Corporate Debtor and for such purpose they have deposited the TDS. This shows there is a clear admission and/or acknowledgement of the debt and that there cannot be any dispute against the claim raised by the OC. A excel/chart showing the aggregating dues excluding the Goods and Service Tax as claimed by the Operational Creditor are tallying with the amount paid/credited column of the TDS statement downloaded from the Official website of the Income Tax Department is annexed and marked as **Annexure- "E"**.

3.4 As per the terms and conditions of the aforementioned invoices, the following invoices had to be paid within 60 days from the date of each \invoice raised by the Operational Creditor and for invoice bearing No. 920005155 dated

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31.12.2022, wherein the terms of the payments were specified in the form of Letter of Credit for 90 days from the date of such invoice. The said invoices further stipulate that if the payment arising out of such invoices are not paid by the Corporate Debtor within the stipulated time as specified in each invoice, then interest @18% will be charged over the principal amount.

- 3.5 The Operational Creditor had given several reminders to the Corporate Debtor to pay the outstanding amount of Rs. 4,01,71,427.24/- but no payment was made by the Corporate Debtor despite several reminders. The Operational Creditor and the Corporate Debtor have also held meetings wherein the Corporate Debtor had assured the Operational Creditor to provide payment schedule within 4 days' time but despite repeated assurances and innumerable follow ups no payment schedule was provided nor any payments were made by the Corporate Debtor.
- 3.6 Several e-mails were exchanged between the Operational Creditor and the Corporate Debtor wherein the Operational Creditor has reminded the Corporate Debtor to make payments otherwise it would attract interest. *Vide* an e-mail dated 29.06.2023 the Operational Creditor reiterated that the Corporate Debtor had failed to clear payment of the total outstanding amount inclusive of interest and to make the payment in order to avoid the consequences that would follow.
- 3.7 When the CD failed to make payments of the outstanding dues (Rs.4,01,71,427.24/- alongwith with interests of Rs. 52,55,000/-), to the OC, issued a legal demand notice dated 21.08.2023 within 15 days from the date of notice, the CD failed to pay again. Finally, on non-compliance of the CD to make payments despite several attempts of the OC, OC issued a Form-3 Demand Notice under IBC, 2016 dated 03.10.2023 calling upon CD to pay a sum of Rs. 4,49,23,938.615/- inclusive of interest @18% per annum calculated from due date of invoices till 02.10.2023.
- 3.8 In response to the Form 3 Demand Notice issued on 03.10.2024, the CD *vide* Letter dated 14.10.2023 replied to the OC. In this letter, the CD among many other allegations also alleged that the materials were not supplied to them whereas

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all the materials were duly delivered to the CD as per their instructions. A copy of this reply letter dated 14.10.2023 has been annexed and marked as **Annexure-H**.

3.9 The Corporate Debtor contends that interest component is not payable in absence of any agreement or contract. In this regard, the Operational Creditor states that the invoices raised by Corporate Debtor to Kundan Industries, interest clause on account of delayed payment @18% beyond the stipulated time period from the date of such invoices. To substantiate this argument, the Operational Creditor relies on *Vatech Global Co. Ltd. V. Unicorn Denmart Ltd. and Others 2022 SCC OnLine Del 2349 : 2022 AIR CC 2648* to show that invoices raised after duly supplying goods will constitute as a binding Contract. As such, the claim on account of interest of OC is justified and the present petition is maintainable as the principal amount crosses the threshold limit of Rs 1 Crore and thus the petition is maintainable under Section 4 of the Code.

3.10 The Corporate Debtor has further argued that this application is liable to be dismissed in absence of an Affidavit under Section 9(3)(b) of the Code. The Operational Creditor has duly filed the Affidavit under Section 9(3)(b) of the Code which is annexed to the Company Petition. However, due to some inadvertence the second page of such affidavit filed under Section 9(3)(b) of the IB Code, 2016 was missed out while scanning the document. To cure such defect, the affidavit has been uploaded in the e-filing portal of NCLT, Guwahati separately. A copy of the affidavit under Section 9(3)(b) which has again been uploaded is also annexed herewith for convenience. The hard copy of the same was all along already there in the Company Petition. Also, the said Company Petition could not have been numbered with filing such Affidavit under Section 9(3)(b) of the IB Code, 2016.

4. **Submissions by the respondents:** The Corporate Debtor vide their reply and Written notes of arguments dated 25.02.2024 respectively taken the following defence:

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4.1 **Maintainability:**

- 4.1.1 **No authority of the advocate-** With regards to the maintainability of the Petition, Demand Notice dated 03-10-2023 issued by the Advocate was without any record of position with or in relation to the OC and without any authorization through Board Resolution and or instruction from the Applicant. Hence, the demand notice is neither as per the format as prescribed under Rule 5 of the Insolvency and bankruptcy (Application to Adjudicating Authority) Rules, 2016 read with Section 8 of IBC 2016 nor as per the statutory requirement of the Code. In this Regard, it is settled law that the lawyer notice is distinct from the demand notice as issued under Section 8 of IBC 2016. In the absence of any authority and position with or in relation to the Operational Creditor an advocate cannot issue any notice under Section 8 of the I&B Code, 2016.
- 4.1.2 **Absence of date of default in the demand notice-** Demand Notice dated 03.10.2023 served by the Applicant did not mention the date of default, which is a *sine qua non* for Section 8 demand notice and hence, the notice fails to have any legal sanctity in the eyes of law. However, while filing the instant Application the applicant has arbitrarily taken 60 days as payment terms and accordingly mentioned date of default is 24-03-2023 on Page no. 11 of the Application and 30 days payment term on Page no. 99 & 106. It is evident that Applicant submission is contradictory in regards to the date of default. The Respondent further submits that a default can only occur if the payment is not within the time prescribed of the agreement and or contract. In absence of any contractual binding on the Respondent to make payment of any debt by a particular date, no "default" has been established by the material on record. Since no default had occurred in the present case, the issuance of unauthorized demand notice and thereafter filing of instant application by the Applicant is invalid and *non-est*.

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- 4.1.3 Initiation of insolvency proceedings against a **solvent entity** like the Respondent Company which has always been an on-going and flourishing concern always regularly discharging its financial obligations, is against scope and intent of the Insolvency and Bankruptcy Code, 2016. In this regard, reliance has been placed on *M/s S.S. Engineers v. Hindustan Petroleum Corporation Ltd. & Ors. Civil Appeal No. 4583 of 2022* wherein the Hon'ble Supreme Court observed that while exercising powers under Section 7 and 9 NCLT does not act as a debt collection forum.
- 4.1.4 It is submitted that in the instant application there is neither due nor default even on the date of filing of the present application, or even till date, the two important ingredients of filing application under Section 8 & Section 9 of IBC, 2016 of debt and default under Section 3(11) and 3(12) are missing and hence, liable to be dismissed.
- 4.1.5 **Pre-existing dispute-** There was no contract subsisting between the parties nor there was a purchase order by the Respondent. In absence of any agreed quantity, quality, rates, and terms of payment, these were and remain undetermined and disputed. The applicant in the instant matter suppressed an email dated 08-11-2022 to the applicant which states that "*We reference our PO dated 07.10.2022, kindly arrange to further dispatch of material up to Rs. 2 Cr.*" Copy of email dated 08-11-2022 annexed. The Respondent in its email instructed the applicant on 08-11-2022 that further dispatch of material up to Rs. 2 Cr. only, thereafter the Applicant has supplied the material to Kundan Industries Ltd. since 08-11-2022 till 27-12-2022 within the limit of Rs. 2 Cr. Accordingly, the Respondent has made the payment to the applicant. It is pertinent to mention here that after 27.12.2022, the Applicant has started supply of material to Kundan Industries Ltd. without the instruction of the Applicant and also non-adherence of the instruction as mentioned in the email dated 08-11-2022, hence the dispute regarding the transaction between the applicant and the respondent started in the year

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2022 since the applicant has kept continue the supply of material to Kundan Industries Ltd beyond the limit of Rs. 2 Cr. as instructed in the email dated 08-11-2022 by the Respondent. It is pertinent to mention that the applicant issued invoices to the respondent CD only for the goods shipped to Kundan Industries Ltd. hence the instruction issued by the respondent CD through email dated 08-11-2022 relates to the supply of materials to Kundan Industries Ltd within the limit of Rs. 2 Cr. only for which the Respondent has already made the payment to the applicant. Copy of Ledger account of the Respondent CD annexed. It is further submitted that the applicant and Kundan Industries Ltd has a very old business relation since decades and till date applicant is supplying the material to Kundan Industries Ltd invoiced to third party, for ready reference the applicant submits herewith few Invoices which are issued by the applicant to other party and the material were shipped to Kundan Industries Ltd. Copy of Invoice issued by the applicant to other party and goods shipped to Kundan Industries annexed. Further, as per Section 9(3)(b) Of IBC, "*The Operational Creditor along with the application shall furnish an affidavit to the effect that there is no notice given by the corporate debtor related to the dispute to the corporate debtor*". Since this is one of the essential ingredients for filing of application u/S.9 of IBC is also not on record hence, the application is liable to be dismissed. Reliance has been placed on *M/s. SFO Technologies Pvt. Ltd. v. M/s. Vanu India Pvt. Ltd. bearing IA No.1106 / 2022 in Comp. App (AT) (CH) (INS) No. 436 / 2022*, order by NCLT, Chandigarh Bench.

- 4.1.6 There is neither any underlying contract/agreement under which levy of interest on any such alleged delayed payment was agreed between the parties. Further, the invoices do not have any provision for payment of interest and the Respondent has never agreed to pay interest to the Petitioner. *Wanbury Ltd. v. Panacea Biotech Ltd (2017), the National Company Law Tribunal (NCLT) Chandigarh Bench, Swastika Enterprises v.*

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Gammon India Limited (2018) and S.S. Polymers v. Kanodia Technoplast Limited (2019) have been relied on to assert the stance that interest cannot be claimed as matter of right when there is no agreement between the Parties for the same. Under the said circumstances, it is pointed out that the purported interest @18% claimed by operational creditor is usurious since the debt as claimed is neither due nor default and furthermore it is disputed.

4.2 Save and except what is the matter of record, the Respondent Company denies all the averments, submissions and statements made in the brief synopsis of the Application filed the Petitioner except those that are specifically admitted herein. Reliance has also been placed by the Respondents on the judgment of *Mobilox Innovations Pvi. Ltd. Vs. Kinisa Software Pvt. Ltd. Civil Appeal No. 9405 of 2017* wherein certain guidelines were provided by the Hon'ble Supreme Court to be taken into consideration by the Adjudicating Authority while examining an application under Section 9.

5. **Submissions by the Operational Creditor in rejoinder:**

- 5.1 It is neither fatal nor bad in law if an Advocate on behalf of the company issues a demand notice under Form-3 which is a mandatory requirement before filing of an application under Section 9 of IBC. Such issue has already been settled by NCLAT order, *Agarwal Veneers v. Fundtonic Service Pvt. Ltd. CA (AT) (Ins) No. 968 of 2020*.
- 5.2 It is also not fatal if the date of default is not mentioned in the demand notice. In support of submission, the Petitioner relies on *M/s. Geocon Infra Private Limited v. M/s. Brij Gopal Construction Company Private Limited IB-514 (ND)/2022 NCLT- ND, Court III* wherein it has been held that non-mentioning of the date of default in the demand notice would not affect the merits of the case if there is an existence of a debt and default.
- 5.3 Defence that mere existence of debt does not give rise to initiate action under IB Code, 2016 as the goods were supplied to a third party and that this leads to a pre-

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existing dispute between the parties is completely a sham defence as the corresponding transaction between the parties and the invoices and the delivery challans and the TDS deduction receipts and the ledger of the Corporate Debtor went on to show that there was all along a jural relationship between the parties.

- 5.4 Existence of a jural relationship between the Operational Creditor and the Corporate Debtor is clearly established from perusal of the invoices raised by the Operational Creditor in favour of the Corporate Debtor wherein it can be clearly seen that the Corporate Debtor has been mentioned as receiver of the goods and Kundan Industries Limited has been mentioned as the Consignee as per understanding arrived between the parties. Further, perusal of the lorry receipts along with delivery challans attached to each invoice also shows delivery of the goods by one, "Jai Ambay Roadlines" to Kundan Industries Limited at Gorai Pada, Maharashtra on account of the Corporate Debtor wherein the delivery address at Gorai Pada, Maharashtra also matches with the tax invoices raised by the Corporate Debtor to Kundan Industries Limited, being the consignee. The Corporate Debtor has also admitted in his reply to the demand notice sent by the Operational Creditor that there was an existing business relationship between the Operational Creditor and the Corporate Debtor. The Operational Creditor further relies on a judgement of Andhra Pradesh High Court at Hyderabad reported in *M/s Electro Flame Ltd., Hyd. v M/s. Mittal Iron Foundry Pvt. Ltd. 1998(2)A.P.L.J 6(HC)* to show that existence of a jural relationship need not be expressed in words but can also be implied by nature of an admission.
- 5.5 The e-way bills clearly indicate that the Corporate Debtor in this case, is identified as the buyer. The relevant e-way bills, which substantiate this claim, have been annexed. The absence of any objection from the corporate debtor regarding these e-way bills further corroborates their acknowledgment and acceptance of the transactions reflected therein.

6. Heard both the Ld. Counsel present and perused the material available on record.

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7. **Analysis of Averments and Conclusion**

7.1 The admission or rejection of a Section 9 of the IBC is dependent on 3 Ds i.e. Debt, default and Dispute. It is not in dispute that the material was supplied by the Operational Creditor, but to whom it was supplied is the bone of contention. Therefore, we have to first examine whether the material was supplied to the Corporate Debtor or to some other entity.

7.2 In order to prove that the material was supplied to the Corporate Debtor and not to any other entity would require us to examine the invoices which form the backbone of the claim of the Operational Creditor. These invoices have been enumerated at pages 36 to 79 of the Petition in form of **Annexure D** and are reproduced hereunder:

- a) Invoice bearing No. 920005080 dated 27/12/2022 for Rs. 45,99,767/-
- b) Invoice bearing No. 920005116 dated 29/12/2022 for Rs. 53,31,334/-
- c) Invoice bearing No. 920005123 dated 29/12/2022 for Rs. 58,60,966/-
- d) Invoice bearing No. 920005155 dated 31/12/2022 for Rs. 48,65,553/-
- e) Invoice bearing No. 920005244 dated 05/01/2023 for Rs. 52,81,697 /-
- f) Invoice bearing No. 920005292 dated 08/01/2023 for Rs. 72,00,041/-
- g) Invoice bearing No. 9200055 dated 23/01/2023 for Rs. 70,32,068/-.

These invoices total up to Rs 4,01,71,456/- which matches the figure that is shown as the amount claimed in Part IV of Form -5 of the petition. In order to examine the contention of the Corporate Debtor that it had never instructed the Operational Creditor to supply the material to Kundan Industries we examine the documents placed in the Petition. One test sample is reproduced herewith.

- i. Facsimile of the Invoice raised by Viraj Profiles bears the invoice no. 920005080.

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- ii. This invoice no. i.e. 920005080 finds mention on the E-way bill reproduced hereunder and is mentioned as document number.

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e-Way Bill



E-Way Bill No. 2515 2697 1062
E-Way Bill Date 27/12/2022 07:05 PM
Generated By 27AAAE CV174 09124 - VIBRAJ PROFILES PRIVATE LIMITED
Valid From 27/12/2022 07:05 PM (1246000)
Valid Until 28/12/2022

Part - A

GSTIN of Supplier 27AAAEV1740N124,VIBRAJ PROFILES PRIVATE LIMITED
Place of Dispatch Tarapur Industrial Area,MAHARASHTRA-401506
GSTIN of Receiver 07AAAACQ438 6C1791,Outok Infa Private Limited
Place of Delivery THANE,MAHARASHTRA-400005
Document No 920005080
Document Date 27/12/2022
Transaction Type Bill To - B2B To
Value of Goods 450952.54
HSN Code 72230993 - SS WIRE
Reason for Transportation Outward - Supply
Transporter 27AMNP927781123 & JALAMBAY ROAD LINES

Part - B

Mode	Vehicle / Trains Hac No. & Dt.	From	Entered Date	Entered By	GSWT No. (If any)	Multi Vehicle (If any)
ROAD	MH-01CP3595 A 10R05 & 271227-022	Tarapur Industrial Area	27-12-2022 07:05 PM	27AAAEV1740N124		



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- iii. The Challan of the transporter M/s Jay Ambay Roadlines also have the same number mentioned as challan no. 920005080 on the Lorry receipt of Vehicle no. MH04CP3595 having a date of travel as 27/12/2022 which is same as the E-way bill.

JAI AMBAY ROADLINES
FULL LOAD DAILY SERVICE TO GUJARAT MAHARASHTRA & ALL OVER INDIA
TRANSPORTERS, CONTRACTORS & COMMISSION AGENTS
From No. 101, 1st Floor, Sector-1, Building No. 3, CVT, Somp Road Park, Opp. ICA, Hiranagar, Ahmedabad
Dist. Gandhinagar - 380 001

Mob: 9895778133
9226115253
9324912827

PAN No.: AMBPP2738B

From: Tasapur To: Vasai L. R. No.: 16805 Date: 27/12/22

Consignor: Vijay Propels Pvt. Ltd. Consignee: Kundan Industries Ltd. Vasai

Plot No. in-2 VLL Unit-II Sakhi Unit-3 Street, Amalpada

MTDC, Tasapur AK, Bubik, Jaina Pvt. Ltd. Hiranagar

SSTIN: 27AMBPP2738B123 Value Dec. Rs.

No. of Article	DESCRIPTION (AS TO CONTAIN)	Net Weight (Kilg)	Rate	Amount
<u>6</u>	<u>S.S. WIRE</u>	<u>19,020</u>		

Truck No. MH04CP3595
Challan No. 920005080

Delivered At: VASAI
Subject To: Malgaur Jurisdiction

Company Copy: White
Consignment Copy: Pink
Lorry Copy: Yellow
File Copy: Blue

For JAI AMBAY ROADLINES
Man

- iv. Finally, the tax invoice issued by the Corporate Debtor to Kundan Industries also have the registration of the vehicle carrying the material mentioned on it which is same as the Lorry receipt of Jai Ambay transport i.e. MH04CP 3595

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VLA910070

Tax Invoice e-invoice

IRN: 7c26214811014a8600ca82648bc4483a8aac92a727
252e60268164481e59926
Ack No: 172312140279198
Ack Date: 29-Dec-22



<p>Qubik Infra Private Limited Third Floor, B-15, Panchsheel Enclave Delhi - 110017, India GSTIN/UIN: 07AAACQ43986C1DH State Name: Delhi, Code: 07 CIN: LH5201MN2019PTC008465 Contact: 011-47665062, 971,861118 E-Mail: accounts@qubikinfra.com</p> <p>Comptone (India) Ltd KUNDAN INDUSTRIES LTD KUNDAN HOUSE, HARSHEDHI INDUSTRIAL ESTATE GAURIPADA, NEAR TELEPHONE EXCHANGE VASAI (EAST) Maharashtra - 401208, India GSTIN/UIN: 27AAACK6311G1ZP</p> <p>Buyer (Bill To) KUNDAN INDUSTRIES LTD KUNDAN HOUSE, HARSHEDHI INDUSTRIAL ESTATE GAURIPADA, NEAR TELEPHONE EXCHANGE VASAI (EAST) Maharashtra - 401208, India GSTIN/UIN: 27AAACK6311G1ZP Place of Supply: Maharashtra</p>	<p>Invoice No: CPL/IB/179/2223 Date: 29-Dec-22 Delivery Note: Mode/Term of Payment DEL/176/22-23 L/C FOR 90 DAYS Reference No. & Date: Other Reference Buyer's Order No: Date Dispatch Date: Delivery Note Date 29-Dec-22 Dispatched through: Destination Tempo Gorakpada, Maharashtra Bill of Lading/R Bill No: Motor Vehicle No MH04CP3595</p> <p>Terms of Delivery: INSURANCE TO BE COVERED BY APPLICANT L/C No. 2789L080101082C Dated 19-12-2022</p>
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Sl. No.	Description of Goods	HSN/SAC	QST Rate	Quantity	Rate	Net	Amount
1	SS WIRE HRAP - 72230091 FT 204CCK 4 To SAMP IDIA	72230091	15%	3.836 MTS	17,246.14	MTS	6,19,868.15
2	SS WIRE HRAP - 72230091 FT 204CCK 4 To SAMP IDIA	72230091	15%	6.250 MTS	1,94,366.00	MTS	56,911.43
3	SS WIRE HRAP - 72230091 FT 204CCK 4 To SAMP IDIA	72230091	15%	2.750 MTS	1,06,669.27	MTS	5,49,771.94
4	SS WIRE HRAP - 72230091 FT 304CCK 4 To SAMP IDIA	72230091	15%	6.720 MTS	2,98,899.22	MTS	20,83,656.21
5	SS WIRE HRAP - 72230091 FT 304CCK 7 To SAMP IDIA	72230091	15%	0.889 MTS	1,08,869.22	MTS	21,289.55
6	SS WIRE HRAP - 72230091 FT 304CCK 3 To SAMP IDIA	72230091	15%	0.289 MTS	2,17,915.78	MTS	65,166.82
7	SS WIRE HRAP - 72230091 FT 204CCK 5 To SAMP IDIA	72230091	15%	2.780 MTS	2,17,915.78	MTS	6,06,898.45
8	SS WIRE HRAP - 72230091 FT 1 4013A To SAMP IDIA	72230091	15%	2.642 MTS	1,44,576.74	MTS	32,819.59
Total							73,51,998.69
IGST							7,35,199.86
SS WIRE AND WIRE RODS AS PER BILL NO. CPL/IB/179/223 DATED 20/12/2022							0.00



10/31
Rajendra Gill
Notary Public
Gorakpada, Vasai (East), Maharashtra

7.3 Thus there is a clear correlation between various documents attached in the Petition and as such it is clear that by the conduct of the parties as depicted by the documents above, there was a jural relationship between the parties and that the supply chain model was that Viraj was to supply the material billed to

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Corporate Debtor while the consignee was Kundan Industries, which was duly accepted by the Corporate Debtor herein. Thus, the contention of the Operational Creditor that the material was not ordered by it and further that no material was supplied does not have feet to stand on.

- 7.4 Other defenses taken by the Corporate Debtor are hyper technical in nature and these have been anyway ruled against in a catena of judgements. To elucidate, the allegation of the Corporate Debtor that the demand notice dated 03.10.2023 has been issued by an advocate on behalf of the OC without any Board Resolution/Instructions is not sustainable in light of the judgment of Hon'ble NCLAT in *Agarwal Veneers v Fundtonic Service Pvt Ltd (2022 SCC OnLine NCLAT 3355)* which further cited the judgement Hon'ble Supreme Court in *Macquarie Bank Ltd v Shilpi Cable Technologies Ltd (2018) 2 SCC 674*. The above mentioned rulings establish that an advocate can send a Section 8 demand notice on behalf a Company and no evidence signifying 'association' or 'period of association' with the Company on whose behalf the notice was sent is required.
- 7.5 It has also been argued by the CD that date of default in not mentioned in the Form-3 demand notice dated 03.10.2023. To this effect, it is pertinent to note at this juncture that mere non-mentioning of date of default in the demand notice would not make the same bad in law if there is existence of debt and the *factum* of default exists. On the same line of reasoning, nothing on record has rendered immobility in ascertaining the date of default. In the present case, the date of default can be calculated on the basis of last issued unpaid invoice which were legally due and payable.
- 7.6 Another point of contention raised by the Corporate Debtor is the absence of an Affidavit under Section 9(3)(b) of the Code. However, the said Affidavit is found at Pages 24-A and 24-B annexed to the Petition. It is to be noted that one page was inadvertently missed out by the Petitioner while uploading, but

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- the same has been separated uploaded on the e-filing portal irrespective the fact that it was on the record in form of the hard copy all along.
- 7.7 Further, the CD contended that the interest component is not payable in absence of any agreement or contract. However, on inquiry, it is evident that the invoices under consideration had interest clauses and the same is legally enforceable as binding contract, if raised after duly supplying goods. This proposition is also bolstered by Hon'ble Delhi High Court in *Vatech Global Co Ltd v Unicorn Denmart Ltd (2022 SCC OnLine Del 2349)*.
- 7.8 The stand of the Operational Creditor is also fortified by the fact that Annexure F contains a number of e-mails sent by the Operational Creditor to the Corporate Debtor for which there is no response or even a denial by the Corporate Debtor. Further the submission of the Operational Creditor that TDS deduction have been made and even tax deposited by the Corporate Debtor is also credible proof of the jural relationship that existed. These details have been enclosed at Annexure E.
- 7.9 In view of the above, we hold that there was an operational debt which as per the unpaid invoices is more than the prescribed threshold value. The very fact that a meeting was also held between the parties for sorting out the issues, which were primarily on the non-payment of the dues and resulting interest liability as contended by the Operational Creditor. In light of *Mobilox Innovations Private Limited v Kirusa Software Private Limited (2018) 1 SCC 353*, it is also pertinent to mention here that the defenses put forth by the Corporate Debtor appears to be nothing but short of moonshine defenses and hence cannot be relied upon in this present case.
- 7.10 We also note that the notice as required under section -8 was duly issued and received by the Corporate Debtor and no communication has been put forward by the Corporate Debtor which could throw some light on the purported "Pre-existing dispute".

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8. In view of the above, we find that the petition is completed in all respect and there's no impediment in admitting the same, there we **ALLOW** the instant Petition and direct the following:
- 8.1 The application bearing **CP (IB)/3/GB/2024** filed by **Viraj Profiles Private Limited** (*Operational Creditor*) under Section 9 of the Code read with rule 6 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating CIRP against **Qubik Infra Pvt. Ltd** (*Corporate Debtor*), is **admitted**.
- 8.2 There shall be a moratorium under section 14 of the IBC.
- 8.3 The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 of the IBC or passes an order for liquidation of Corporate Debtor under section 33 of the IBC, as the case may be.
- 8.4 Public announcement of the CIRP shall be made immediately as specified under section 13 of the Code read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- 8.5 Mr. Purshotam Gaggar, having registration number IBBI/IPA- 001/IP-P00487/ 2017- 18/10875, email: purshotamgaggar@hotmail.com is hereby appointed as Interim Resolution Professional (IRP) of the Corporate Debtor to carry out the functions as per the Code subject to submission of a valid Authorisation of Assignment in terms of regulation 7A of the Insolvency and Bankruptcy Board of India (Insolvency Professional) Regulations, 2016.
- 8.6 The fee payable to IRP or the RP, as the case may be, shall be compliant with such Regulations, Circulars and Directions as may be issued by the Insolvency & Bankruptcy Board of India (IBBI). The IRP shall carry out his functions as contemplated by sections 15, 17, 18, 19, 20 and 21 of the Code.
- 8.7 During the CIRP period, the management of the Corporate Debtor shall vest in the IRP or the RP, as the case may be, in terms of section 17 of the IBC.

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- The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within one week from the date of receipt of this Order, in default of which coercive steps will follow.
- 8.8 The IRP/RP shall submit to this Adjudicating Authority periodical reports with regard to the progress of the CIRP in respect of the Corporate Debtor.
- 8.9 The Operational Creditor shall initially deposit a sum of ₹200000/- (Rupees two lakh only) with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to approval by the Committee of Creditors (CoC). Further, the Fees of the IRP will be subject to the approval of the COC in accordance with Notification No. IBBI/2022-23/GN/REG091 dated 13.09.2022, issued by the Insolvency and Bankruptcy Board of India, as published in the in the Official Gazette.
- 8.10 In terms of section 7(5)(a) of the Code, Registry is hereby directed to communicate this Order to the Operational Creditor, the Corporate Debtor and the IRP by Speed Post, email and WhatsApp immediately, and in any case, not later than two days from the date of this Order.
- 8.11 Additionally, the Operational Creditor shall serve a copy of this Order on the IRP and on the Registrar of Companies, Guwahati by all available means for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Court within seven days from the date of receipt of a copy of this order.
9. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.
10. Accordingly, CP (IB)/3/GB/2024 is allowed and admitted with the above-mentioned directions.

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Balraj Joshi
Member (Technical)



Deep Chandra Joshi
Member (Judicial)

Signed this on 4th day of October, 2024.