

**IN THE NATIONAL COMPANY LAW TRIBUNAL
PRINCIPAL BENCH
NEW DELHI**

IA No. 1441/ 2025,

IA No. 3393/2025,

IA No. 2728/2025

and

Company Petition (IB) No. - 725(PB)/2024

**Under Section 9 of the Insolvency and Bankruptcy Code, 2016, read with
Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating
Authority), Rules, 2016**

IN THE MATTER OF:

**M/s Cubix Control Systems Private Limited
Through its Authorised Representative
Mr. Pradeep Saxena**

... Operational Creditor / Applicant

Versus

M/s. Zazz Technology Connect Private Limited

.... Corporate Debtor / Respondent

ORDER PRONOUNCED ON: 09.07.2026

CORAM:

**JUSTICE ANUPINDER SINGH GREWAL
HON'BLE ACTING PRESIDENT**

**SHRI RAVINDRA CHATURVEDI
HON'BLE MEMBER (TECHNICAL)**

APPEARANCES:

For the Operational : Mr. Rishi Kapoor, Adv.
Creditor/Applicant

For the Corporate : Mr. Karamveer, Mr. Ajay Kumar, Adv.
Debtor/Respondent

ORDER

This petition has been filed by M/s Cubix Control Systems Private Limited (**the Applicant/Petitioner/OC**) on 19.10.2024 before this Adjudicating Authority under Section 9 of the Insolvency and Bankruptcy Code, 2016 (**IBC or Code**) r/w Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, (**Adjudicating Authority Rules**), for initiating the Corporate Insolvency Resolution Process (**CIRP**), declaring moratorium and for appointment of Interim Resolution Professional (**IRP**) for M/s Zazz Technology Connect Limited, the Corporate Debtor (**the Respondent/CD**) on the ground that the Respondent has failed to pay the outstanding amount due to the Applicant to the tune of INR 1,38,55,936/- along with interest at the rate of 12% p.a. as on 23.07.2024 totalling to INR 1,83,55,936/- (One Crore Eighty-Three Lakhs Fifty Five Thousand Nine Hundred And Thirty Six Only).

Brief details about the parties:

1. The Applicant / OC, M/s Cubix Control Systems Private Limited, bearing CIN: U74899DL1989PTC037285 is a company incorporated under the provisions of the Companies Act, 1956, having its registered office at B-314, Prashant Vihar, New Delhi, 110085.
2. The Respondent /CD, M/s Zazz Technology Connect Limited, bearing CIN: U31909DL2018PTC337097 is a company incorporated under the provisions of the Companies Act, 2013, having its registered office at 10FF, National Park, Lajpat Nagar, New Delhi, Delhi, India 110024.
Since the registered office of both the companies are in Delhi, this Adjudicating Authority has the jurisdiction to deal with this Application.

Submissions by the Applicant/Operational Creditor:

3. The Operational Creditor offers a full suite of services in avant-garde sectors such as consumer electronics, automotive, telecom, IT peripherals, lighting, home appliances, defence and many more.
4. The Director and authorised representatives of the Corporate Debtor approached the Operational Creditor for manufacturing lifestyle products (fitness watches, home and personal audio, and other IOT Products) in the Gizmore Brand.
5. Consequently, a Memorandum of Understanding (**MoU**) was signed between the Operational Creditor and Corporate Debtor on 15.06.2022. As per the agreement, the Operational Creditor was to assemble/manufacture complete product in the Zimore Brand within the timelines. As per the terms, the Corporate Debtor and its Directors were under an obligation to release the timely payment of the Operational Creditor.
6. It was also inter alia mentioned in the Agreement that it shall be the duty of the Corporate Debtor to ensure inspection of final products in the Gizmore brand before dispatch from the Operational Creditor. Although the finished products used to be inspected by the Corporate Debtor's representative, however, if any of the products were found improperly assembled, the same were returned to the Operational Creditor from time to time, and the cost/value of the said products was credited in the ledger of the Corporate Debtor.
7. That during 2022-2023, the Operational Creditor supplied the material/finished products as per the agreement from time to time and raised the respective invoices. The Corporate Debtor, however, failed to clear the dues against the invoices.

8. There is still an outstanding amount of INR 1,38,55,936/- (One crore thirty-eight lakhs fifty-five thousand nine hundred and thirty-six only) along with interest at the rate of 12% p.a. as on 23.07.2024, making a total of INR 1,83,55,936/- (One crore eighty-three lakhs fifty-five thousand nine hundred and thirty-six only) as per the books of the Operational Creditor.
9. That the Operational Creditor kept sending the reminder(s) for making the necessary payments towards the outstanding; however, the Corporate Debtor kept on delaying the same. The Corporate Debtor, on various occasions, has accepted its outstanding payments.
10. The Operational Creditor served a demand notice dated 31.07.2024 under Section 8 of the IBC, 2016. The Corporate Debtor, as an afterthought, replied to the said demand notice, inter alia, claiming a pre-existing dispute. The Corporate Debtor, during the entire period of business, did not raise a single dispute with respect to the electronic products supplied to it, and has now only pursuant to the demand notice, made an attempt to highlight the same.
11. Hence, the present Application was filed under Section 9 of the IBC on 19.10.2024. Notice was directed to be issued in the petition vide order dated 10.03.2025, and the reply was uploaded on the DMS e-portal on 04.04.2025. The objections raised by the respondent are captured as below.

SUBMISSIONS BY RESPONDENT/CORPORATE DEBTOR:

12. The Operational Creditor, who deals in manufacturing lifestyle products (fitness watches, home, and personal audio, etc) approached the Corporate Debtor, and subsequently, the Operational Creditor and Corporate Debtor entered into an agreement dated 15th June, 2022.

13. As per the agreement executed between the parties, Operational Creditor was to assemble the raw materials and manufacture the finished product in the "Gizmore" brand for supply to Corporate Debtor within timelines.
14. That the Corporate Debtor placed an order for the purchase to the Operational Creditor for the Model bearing No. "GIZFIT 923 BLAZE X (Black, silver, gold housing with Black, grey, Burgundy Silicon Strap), GIZFIT 930 PLASMA (Black, Blue and Rose Gold Housing with Black, Blue and Burgundy strap), GIZBUD 808 WAVE (Wireless Earphone), GIZBU/J 851 (Wireless Earphone), GIZFIT 908 ERA (Fitness Band), GIZFIT 914 SPARK (Smart Watch). The products supplied by the Operational Creditor had manufacturing defects, and the same was communicated by the Corporate Debtor to the Operational Creditor at regular intervals since September, 2022. Pursuant to the same, the products returned by the Corporate Debtor were not accepted by the Operational Creditor.
15. That the Corporate Debtor, vide email dated 20.02.2023, informed the Operational Creditor regarding the manufacturing defects in the product "GizFit 930 Plasma" and "maximum problem for TP sifted, Battery Discharge Problem." Further, the Corporate Debtor has raised multiple complaints and queries via phone calls, emails, and WhatsApp Chats on 20.09.2022, 27.12.2022, 22.01.2023, 23.01.2023, and 20.02.2023. Furthermore, GIZFIT 914 SPARK (Smart Watch) which was sold to a distributor/dealer namely M/s Dev marketing, got returned to the Corporate Debtor in huge quantity as defective goods worth more than Rs. 25 lakhs due to improper assembly/manufacturing defects/damages in the products and same was highlighted several times on the Whatsapp Chats, which has also been admitted by the Operational Creditor in the Whatsapp communications.
16. Therefore, the Application under section 9 is liable to be dismissed, in light of a pre-existing dispute on account of defective material and dead-on-arrival (DOA) material sent by the Operational Creditor to the Corporate Debtor. It is pertinent to state that the term "DOA warranty" refers to a

guarantee that covers any product that is found to be dead on arrival, as well as any manufacturing defects or issues reported by customers or discovered in the market, and under this warranty, the product/material will be replaced. However, the Operational Creditor has not accepted back the defective materials supplied by it to the Corporate Debtor.

17. The Corporate Debtor returned the defective material worth Rs. 91,37,987/- (in quantity, 12954) to the Operational Creditor and the same were not accepted by the Operational Creditor, and they are still lying with the Corporate Debtor. The details of the Debit Note no. through which the product was returned to the Operational Creditor are as follows:

S.No	Details Of Debit Note No.	Amount (in Rupees)
1.	SV/PRN2425/16 dated 06.08.2024	56,708.00
2.	SV/PRN2425/17 dated 06.08.2024	39,720.00
3.	SV/PRN2425/18 dated 06.08.2024	1,53,790.00
4.	SV/PRN2425/19 dated 06.08.2024	5,65,459.00
5.	SV/PRN2425/20 dated 06.08.2024	59,265.00
6.	SV/PRN2425/21 dated 07.08.2024	4,95,961.00
7.	SV/PRN2425/22 dated 07.08.2024	2,34,820.00
8.	SV/PRN2425/23 dated 07.08.2024	1,74,963.32
9.	SV/PRN2425/24 dated 07.08.2024	7864.00
10.	SV/PRN2425/25 dated 07.08.2024	6,50,326.00
11.	SV/PRN2425/26 dated 07.08.2024	3,75,948.00
12.	SV/PRN2425/27 dated 07.08.2024	1,25,316.00
13.	SV/PRN2425/28 dated 07.08.2024	85,432.00
14.	SV/PRN2425/29 dated 07.08.2024	12,903.00
15.	SV/PRN2425/30 dated 07.08.2024	37,595.00
16.	SV/PRN2425/31 dated 07.08.2024	10,15,980.00
17.	SV/PRN2425/32 dated 07.08.2024	13,49,448.00

18. The Demand Notice dated 30.07.2024 issued by the Operational Creditor has misrepresented, concealed, and suppressed material facts. The pre-existing dispute, as explained above, had already arisen between the parties much prior to the issuance of the demand notice dated 30.07.2024. The Demand Notice was replied to hereunder by the Corporate Debtor, highlighting and reminding the aforesaid pre-existing dispute viz., manufacturing defect and debit notes under Section 8(2) of the Insolvency and Bankruptcy Code 2016.
19. Further, the Operational Creditor has relied upon false invoices, and material against those invoices has not been received by the Corporate Debtor.
20. The dispute between the Operational Creditor and the Corporate Debtor is a matter of trial and cannot be adjudicated in a summary manner before this Hon'ble Tribunal without the leading of evidence and witnesses.
21. Furthermore, a reconciliation is pending between the Applicant and the Corporate Debtor due to the supply of material with manufacturing defects and subsequent debit notes not accepted by the Operational Creditor. Hence, the outstanding amount as claimed by the Applicant is fictions.
22. The rejoinder filed by the petitioner on 28.04.2025 and the written notes filed by both the parties have also been taken on record and were duly considered.
23. Moreover, on 06.10.2025, the Adjudicating Authority closed this matter till mediation talks were going on. The relevant portion of the order dated 06.10.2025 is attached below:

It would be a futile exercise to adjourn this matter time and again, unmindful of the mediation process. Hence, we close this petition for the present with liberty to the petitioner to revive if mediation fails by filing a fresh petition.

13. **Accordingly, the (IB)-725(PB)/2024 stands closed along with IA-1441/2025, IA-2728/2025, IA-3393/2025 and other pending applications, if any, with a liberty to file afresh, if mediation fails.**

However, as the mediation did not succeed the Operational Creditor filed another application bearing no IA-5582/2025 seeking revival of the present matter along with all other pending applications. The same was allowed by this Adjudicating Authority vide order dated 23.02.2026, the relevant portion of which is extracted below:

7. On the request of both sides, the matter was sent for mediation and during pendency of the mediation proceeding, this adjudicating authority passed order dated 06.10.2025 directing the applicant to file a fresh petition if the mediation does not succeed. This direction was not required to be passed. Rather the petition filed by the petitioner shall automatically restore to its original position, if the mediation process was not completed or concluded without any outcome.
8. (IB)-725(PB)/2024 is restored along with all the pending applications.
9. The order passed on 06.10.2026 is amended to that extent.

24. Accordingly, after written submissions were filed by the parties and their arguments were heard order in the matter was reserved on 10.06.2026.

ANALYSIS & FINDING:

25. We have heard Ld. Counsels for the OC and CD perused the averments and relevant documents on record.
26. Before examining the rival contentions, it is pertinent to discuss the statutory scheme under the Code.

“Section 8: Insolvency Resolution by Operational Creditor:

(1) An operational creditor may, on the occurrence of a default, deliver a demand notice of unpaid operational debt or copy of an invoice demanding payment of the amount involved in the default to the corporate debtor in such form and manner as may be prescribed.

(2) The corporate debtor shall, within a period of ten days of the receipt of the demand notice or copy of the invoice mentioned in sub-section (1) bring to the notice of the operational creditor—

(a) existence of a dispute, [if any, or] record of the pendency of the suit or arbitration proceedings filed before the receipt of such notice or invoice in relation to such dispute;

(b) the payment] of unpaid operational debt—

(i) by sending an attested copy of the record of electronic transfer of the unpaid amount from the bank account of the corporate debtor; or

(ii) by sending an attested copy of record that the operational creditor has encashed a cheque issued by the corporate debtor.

Explanation.—For the purposes of this section, a “demand notice” means a notice served by an operational creditor to the corporate debtor demanding [payment] of the operational debt in respect of which the default has occurred.”

“Section 9: Application for initiation of corporate insolvency resolution process by operational creditor.

(1) After the expiry of the period of ten days from the date of delivery of the notice or invoice demanding payment under sub-section (1) of section 8, if the operational creditor does not receive payment from the corporate debtor or notice of the dispute under sub-section (2) of section 8, the operational creditor^{J1} may file an application before the Adjudicating Authority for initiating a corporate insolvency resolution process.

(2) The application under sub-section (1) shall be filed in such form and manner and accompanied with such fee as may be prescribed.

(3) The operational creditor shall^{J2}, along with the application furnish—

(a) a copy of the invoice demanding payment or demand notice delivered by the operational creditor to the corporate debtor;

(b) an affidavit to the effect that there is no notice given by the corporate debtor relating to a dispute of the unpaid operational debt;

(c) a copy of the certificate from the financial institutions maintaining accounts of the operational creditor confirming that there is no payment of an unpaid operational debt [by the corporate debtor, if available;]

(d) a copy of any record with information utility confirming that there is no payment of an unpaid operational debt by the corporate debtor, if available; and

(e) any other proof confirming that there is no payment of any unpaid operational debt by the corporate debtor or [any other information, as may be specified].

(4) An operational creditor initiating a corporate insolvency resolution process under this section, may propose a resolution professional to act as an interim resolution professional.

(5) The Adjudicating Authority shall, within fourteen days of the receipt of the application under sub-section (2), by an order—

(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 ⁴[payment] of the unpaid operational debt^{J5};

(c) the invoice or notice for payment to the corporate debtor has been delivered by the operational creditor;

(d) no notice of dispute^{J6} 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 pending⁵ against any resolution professional proposed under sub-section (4), if any.

(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 pending⁵ against any proposed resolution professional:

Provided that Adjudicating Authority, shall before rejecting an application under sub-clause (a) of clause (ii) give a notice to the applicant to rectify

the defect in his application within seven days^{J7} of the date of receipt of such notice from the adjudicating Authority

[Provided further that if the Adjudicating Authority has not passed an order under this sub-section within a period of fourteen days from the date of receipt of application under sub-section (2), it shall record the reasons for such delay in writing.]

(6) The corporate insolvency resolution process shall commence from the date of admission of the application under sub-section (5) of this section.”

Under Section 8(2)(a) of the Code, the Corporate Debtor is entitled to bring to the notice of the Operational Creditor the existence of a dispute or the pendency of a suit or arbitration proceedings filed before the receipt of the demand notice. Consequently, while considering an application under Section 9, this Adjudicating Authority is required to satisfy itself under Section 9(5)(ii)(d) of the Code whether notice of dispute has been received by the Operational Creditor or whether there exists a genuine dispute in relation to the operational debt. The jurisdiction exercised by this Adjudicating Authority is summary in nature, and it is not expected to adjudicate disputed questions of fact or determine the merits of a contractual claim.

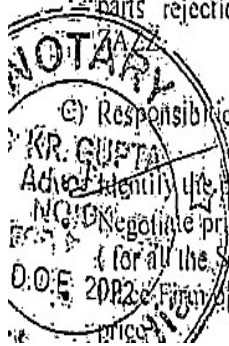
27. Moving further to the facts of this case, a MoU dated 15.06.2022 was entered into between the Applicant and the CD. The relevant portion of the MoU is extracted hereinbelow:

5) Terms:

A) The MOU shall be effective from 15th June 2022.

B) Scope of work for Cubix:

- Import/ locally Source Products (identified by Zazz from identified vendors in SKD/ CKD form from overseas/ local suppliers). Quantities to be imported/ locally procure shall be decided by ZAZZ.
- Arrange logistics and custom clearance for imported products.
- Arrange local components, where ever required, necessary for producing complete products for Zazz.
- Ensure to assemble/ manufacture complete product in Gizmore brand within agreed timelines.
- Ensure agreed quality standards for manufactured products in Gizmore brand.
- Deliver final product to ZAZZ locations as per schedule given by ZAZZ.
- Ensure to release Daily MIS to all stake holders covering status of placing orders to overseas/ local suppliers, production status at overseas/local suppliers end, logistic status, import clearance status, final assembly/ Production status at Cubix, In-process parts rejection status during assembly and dispatch status of finished products to



C) Responsibilities of ZAZZ:

- Identify the products and SKU/s to be finally assembled by Cubix.
- Negotiate price of imported/ locally sourced products with local / overseas suppliers (for all the SKU/s to be manufactured/ assembled by Cubix for Zazz)
- Provide firm order quantity to Cubix for each approved and agreed SKU/s and at agreed price.

- Provide agreed advance to Cubix along with firm order. This will be agreed between the parties time to time.
- Ensure to purchase full quantity of finally assembled / manufactured product / SKU in Gizmore brand within agreed time lines.
- Ensure to issue 30 days PDC to Cubix at end of every week (for all shipments of final product delivered by Cubix during the said week) also ensure that all issued cheques are honoured by ZAZZ on due dates.
- Ensure to arrange SOP (from overseas suppliers) for Cubix for each and every SKU to be imported.
- Since all suppliers of products (and SKU/s to be imported/ locally sourced are identified by ZAZZ. Pre-shipment inspection agency shall be identified by ZAZZ to inspect any and all shipments from overseas/ local suppliers.
- Ensure inspection of Final product in Gizmore brand (by its own product quality inspection team) before dispatch by Cubix.
- Arrange BIS for each product manufactured in cubix in Gizmore brands, where ever applicable.
- Arrange ETA/ WPC certificates wherever required for Gizmore branded products.

D) All commercial terms in details are as per Annexure 1, which is integral part of this MOU.

E) Sales Price of Each SKU to be supplied by Cubix to ZAZZ shall be arrived as per workings detailed in Annexure 2 of this MOU.

6) Entire MOU

This MOU, along with its Annexures, constitutes the entire MOU between the Parties and save as otherwise expressly provided, no modification, amendment or waiver of any of the provisions of this MOU shall be effective unless made in writing specifically referring to this MOU and duly signed by the Parties hereto.

7) Jurisdiction

All disputes shall be settled in the courts of Delhi (India) only. All disputes, differences and claims or any non-payment concerning the MOU hereby created and/or in connection with these presents, arising out of or in relation to anything contained herein shall be to the exclusive jurisdiction of the competent Courts at New Delhi. All disputes in relation to this MOU shall be governed in accordance with the laws of India.

KR. GUPTA
Advocate
Noida

Both Parties, to the extent, practicably possible, shall keep confidential all information and conditions in relation to this MOU and shall not without the prior written consent of the other, divulge such information to any other person or use such information in any manner whatsoever except as required by law or by Government regulation, requirement or order or as may be necessary to establish or assert its rights hereunder.

9) Indemnification

Notwithstanding anything contained contrary in this MOU, The parties agrees to indemnify, defend, protect each other against and from any and all damages, losses, liabilities, obligations, penalties, claims, litigation, demands, defences, judgments, suits, proceedings, costs, disbursements or expenses of any kind or of any nature whatsoever (including, without limitation, attorneys' and experts' fees and disbursements) which may at any time be imposed upon, incurred by or asserted or awarded against the other Party arising from or in connection with the failure to comply with the provisions of this MOU or any other agreement/ understanding between the Parties or the breach of any warranty or representation of the Sub-Lessor contained herein, or damage and/or loss caused by any willful action/negligence of the parties or its employees and/or agents.

To the MOU dated 15th June 2022 between Zazz Technology Connect Pvt. Ltd and Cubix Control Systems Pvt. Ltd

1. Vendors for all SKU to be imported in India (in SKD/ CKD FORMAT)/ Locally sourced for assembly in Gizmore brand shall be identified by Zazz only.
2. Prices for SKD/CKD import shall be finalized by Zazz either on FOB or on CIF terms.
3. Quantity to be ordered shall be decided by Zazz.
4. ZAZZ will pay advance for orders to Cubix. The percentage of advance shall be same as asked and agreed by overseas supplier of SKD/CKD. However parties can agree to revise / change the advance percentages time to time and same shall reflect in PO issued by Zazz to cubix
5. Purchase Order to overseas supplier/local suppliers shall be placed by Cubix and shall also provide advance to supplier.
6. Pre-shipment inspection, if required, shall be done by the agency identified by Zazz.
7. Import logistic shall be arranged by Cubix.
8. Custom clearance of the goods shall be done by Cubix and accordingly goods shall be brought into the Cubix factory.
9. Timelines for assembly of imported lot shall be agreed in advance and Cubix will have to ensure the same.
10. Packaging for retail as well as for bulk distribution shall be designed and approved by Zazz along with specs.
11. Delivery schedule for final assembled / manufactured product shall be provided by Zazz to Cubix.
12. Assembly rejection shall be agreed in advance between Zazz and Cubix and Cubix shall be responsible to maintain the agreed %.
13. Inspection of final product, before shipment from Cubix to Zazz, shall be carried out by Zazz team.
14. DOA, if any found at point of sales, shall be repaired by cubix FOC by using free spares supplied by supplier.
15. Credit period agreed between Zazz and Cubix is 30 days. This credit period shall start from the date of dispatch of each shipment of finished goods from Cubix to Zazz.
16. Zazz will issue 30 days PDC for availing credit period for FG shipment from Cubix. PDC's shall be issued on weekly basis for all the shipments made by cubix to Zazz in the week.
17. Transport arrangement from Cubix factory to Zazz warehouse shall be at the cost of Cubix.
18. All good imported by Cubix (on behalf of Zazz) for assembly into FG has to be purchased by Zazz max within 30 days of arrival of imported goods (SKD/CKD). This is important understanding as products are imported by Cubix are strictly as per order quantity decided by Zazz and all these products are always in Gizmore brand.
19. Cubix is and shall not be, in any way, connected with branding and marketing of Gizmore branded products.

28. The above MoU does not provide for an interest rate to be paid in case of belated payment. Neither invoices nor purchase orders mention any interest amount to be charged. Therefore, the case of the Applicant, so as interest amount is concerned, cannot be maintained.

29. As regards the claim on principal amount to the tune of INR 1,38,55,936/- (One Crore Thirty-Eight Lakhs Fifty-Five Thousand Nine Hundred and Thirty-Six Only) is concerned, the Operational Creditor had served demand notice under Section 8 of the IBC upon the Corporate Debtor, and the relevant portion of the same reads as follows:

PARTICULARS OF OPERATIONAL DEBT

1.	TOTAL AMOUNT OF DEBT	The total amount of operational
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462
RISHI KAPOOR & ASSOCIATES

ADVOCATE ON RECORD
 SUPREME COURT OF INDIA

New Delhi Office: Address: B-20, Nizamuddin West, New Delhi-13
 Chamber no. 86, AK SEN Block, Supreme Court of India
 Jaipur office: Chamber no. 247, Block A, Rajasthan High Court, Jaipur
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	<p>DETAILS OF TRANSACTIONS ON ACCOUNT OF WHICH DEBT FELL DUE,</p> <p>THE DATE FROM WHICH SUCH DEBT FELL DUE</p>	<p>debt along with interest is Rs. 1,83,55,936/- (one crore eighty three lakhs fifty five thousand nine hundred and thirty six only) computed up to 25.07.2024</p> <p>Principal Amount: 1,38,55,936/- (One crore thirty eight lakhs fifty five thousand nine hundred and thirty six only)</p> <p>Interest Amount @12% p.a.: Rs. 45,00,000/- (Ninety - seven thousand seven hundred seventy-seven rupees and sixty paisa) calculated up to 23.07.2024</p> <p>Date of Default: 14.06.2024</p>
2.	<p>AMOUNT CLAIMED TO BE IN DEFAULT AND THE DATE ON WHICH THE DEFAULT OCCURRED (ATTACH THE WORKINGS FOR COMPUTATION OF DEFAULT IN TABULAR FORM)</p>	<p>INR 1,83,55,936/- (one crore eighty three lakhs fifty five thousand nine hundred and thirty six only) as on 25.07.2024. Detailed bill wise record has been annexed along with the instant notice for your perusal.</p> <p>Date of default: 14.06.2024</p>

30. It is also relevant to take note of the reply dated 10.08.2024 made by the CD in response to the demand notice and the relevant portion of the Reply is extracted herein below:

5. That demand notice dated 30.07.2024 is based on wrong & false invoices which are enclosed with the demand notice as the materials

Kamru

TRUE COPY



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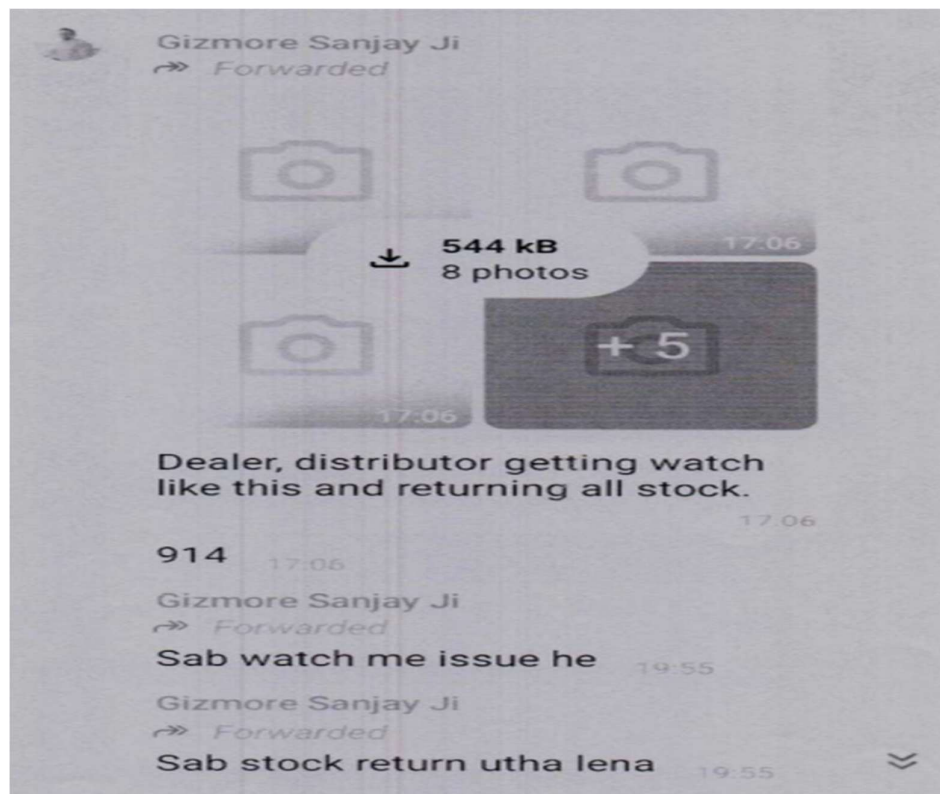
have also not been received to our client as allegedly claimed by your client. It is pertinent to state that there is a pre-existing dispute that has already arisen between both parties as your client supplied material from time to time to our client having severe manufacturing defects and instead of our client's numerous complaints, queries and reminders via phone calls, email and WhatsApp chats on 20.09.2022, 27.12.2022, 22.01.2023 23.01.2023 and 20.02.2023 etc., your client deliberately ignored and avoided to address the said issue. That our client has always raised complaints and escalated issues & concerns but your client did not bother to address the grievances of our client.

6. That after numerous complaints and reminders by our client, your client did not take back the material with manufacturing defects contrary to the terms of the Purchase Orders (PO) and neither replaced the defective goods nor gave due credits to our client. It is evident from the above that the pre-existing dispute has already arisen between both clients much prior to the issuance of the demand notice dated 30.07.2024.
7. It is pertinent to state that accounts reconciliation is pending between both parties, due to supply of materials having manufacturing defects and return of the defective materials. It is pertinent to state that the alleged claimed amount is in dispute and the amount is much lesser than rupees one crore and contrary to your client's alleged claim of Rs. 1,83,55,936/- (Rupees One Crore Eighty-Three Lakh Fifty-Five Thousand Nine Hundred Thirty-Six Only).
8. That instead of completing the mandatory process of account reconciliation, your client has sent a demand notice dated 30.07.2024 under the Insolvency and Bankruptcy Code 2016 claiming Rs. 1,83,55,936/- (Rupees One Crore Eighty-Three Lakh Fifty-Five

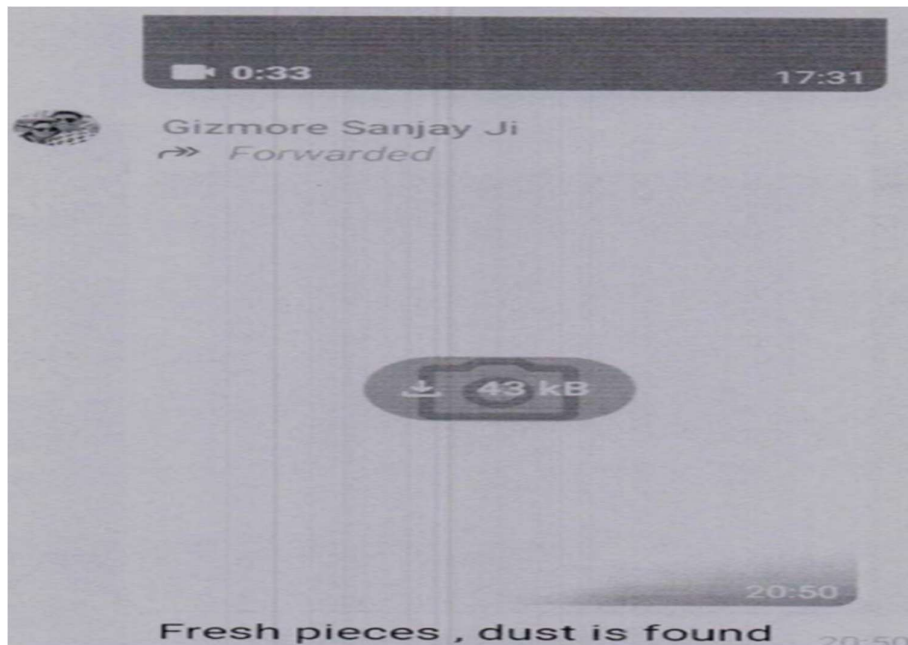
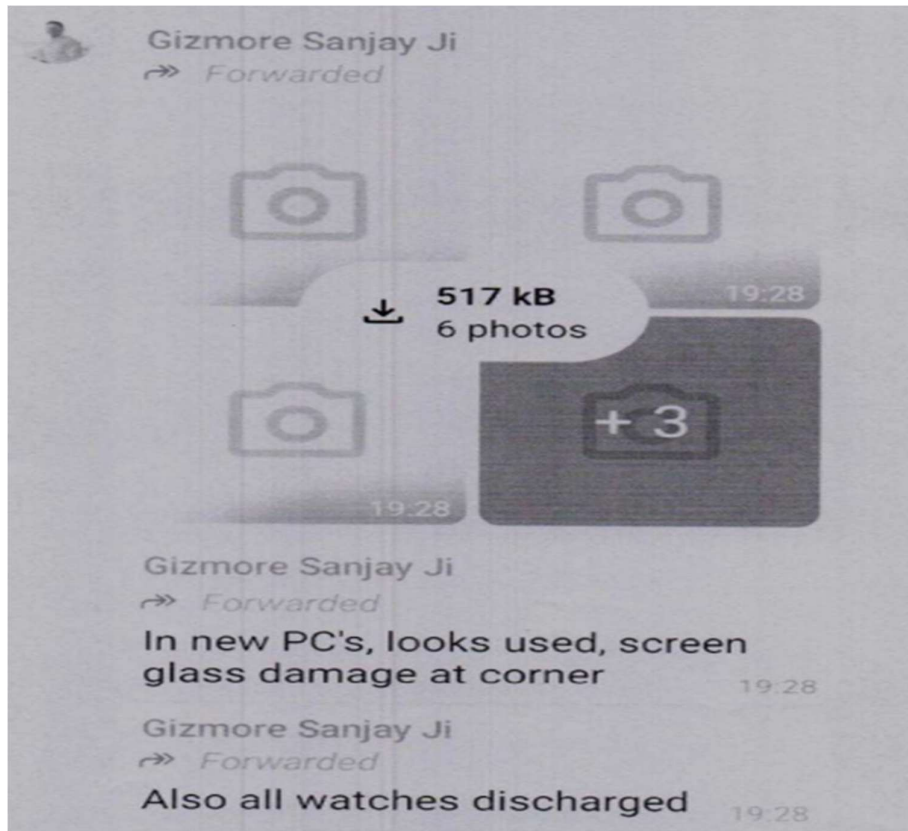
Thousand Nine Hundred Thirty-Six Only) just to harass our client with malafide intention.

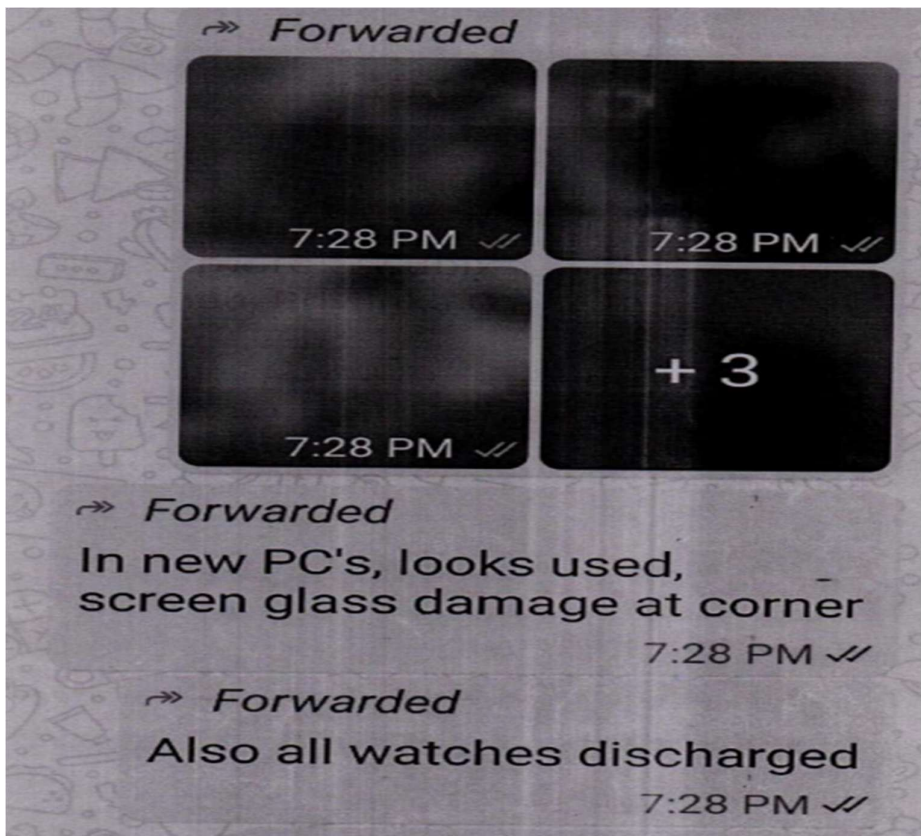
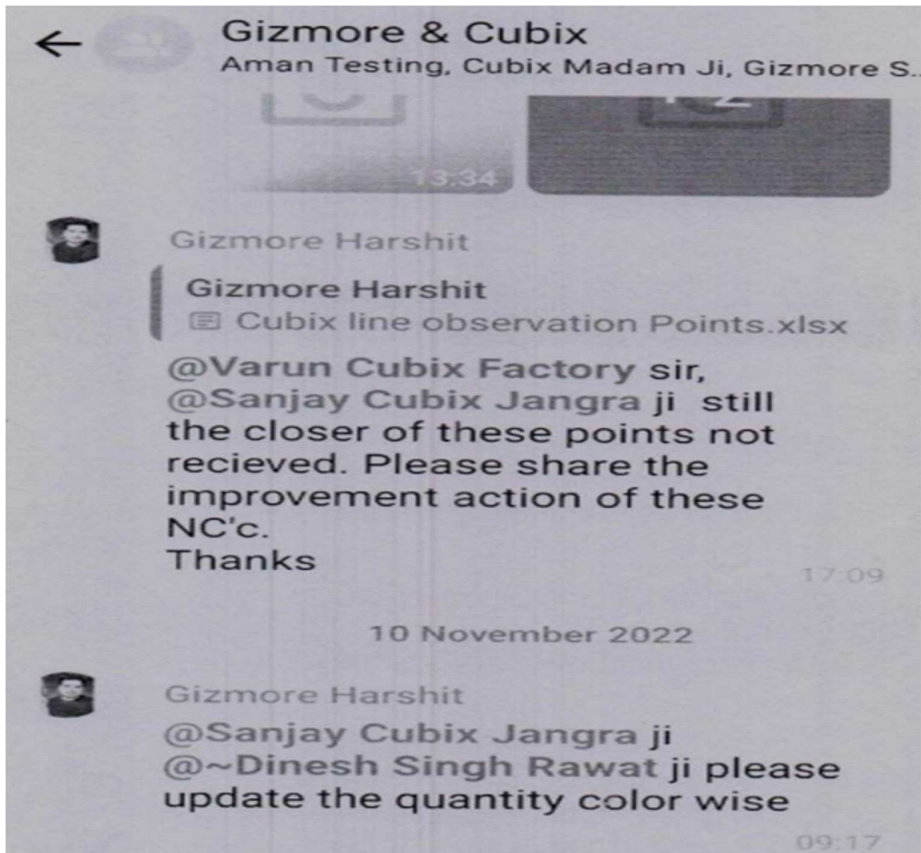
9. That your client is not entitled to charge interest of Rs. 45,00,000/- (Rupees Forty-Five Lakh) as interest at a rate of 12% per annum as the alleged claim of amount towards goods supply is completely disputed by our client and also your client has not credited accounts of our client towards defective goods return. Moreover, there is no mention of charging interest in the MOU/agreement, purchase order, or invoice. Therefore, your client is not entitled to charge said allegedly claimed amount of interest.

31. The perusal of the Reply to the demand notice shows that the same is in sync with the Reply made hereunder to the Application made under section 9. The centre point of the Corporate Debtor's reply is that there is a pre-existing dispute. The contention takes us to peruse correspondence exchanged between the parties. A conversation amongst personnel of the Parties on 22.01.2023 is extracted hereinbelow:

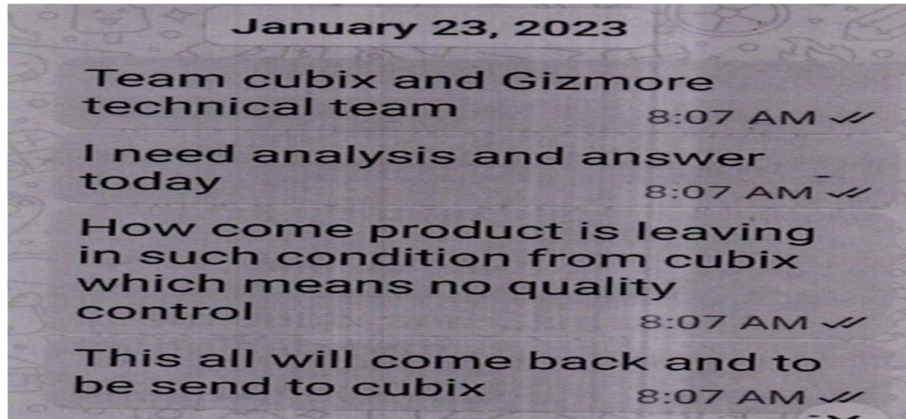


Subsequent conversation on 23.01.2023 extracted hereinbelow:





Most pertinently, the following conversation has to be noted:



Further, an email dated 20.02.2023 in this context is also relevant:

Vivek Srivastava

11/11/23 VIVEK T 177

From: Aman Kumar <aman.kumar@gizmore.co.in>
Sent: 20 February 2023 12:44
To: 'Cubix Varun'; 'Cubix Production SMT'
Cc: 'Vivek Kumar Srivastava'; suresh@tizmore.in; priyanka@gizmore.in
Subject: for 930 Fresh socket issue

Dear Sir

Please check the below images of GizFit 930 Plasma found issue in fresh socket that we received form 'Cubix and maximum problem for TP sifted , Battery Discharge problem..



32. The above correspondences make the pre-existing dispute as to the quality of products supplied by the Operational Creditor to the Corporate Debtor prima facie evident. These correspondences were made way back in 2023, while, admittedly, the demand notice under section 8 was served in July 2024. The dispute, therefore, as to the quality of products supplied by the Applicant to the CD is pre-existing. The pre-existing dispute is supported by cogent evidence and is not merely a moonshine defence of the Corporate Debtor.

33. The Applicant, in the meantime, filed an Application bearing IA No. 1441/2025 essentially seeking to place on record an email dated 24 April 2024 sent by the CD to the Applicant, which is reproduced below:

From: Priyanka Trivedi <priyanka@gizmore.in>
Sent: 24 April 2024 11:42
To: 'Rahul Gupta' <rahul.gupta@gizmore.in>
Cc: 'Vivek Srivastava' <vivek@gizmore.in>; 'Cubix Accounts' <accounts@cubixcontrolsystems.com>; Krishan@gizmore.in
Subject: Cubix Ledger required

Dear Rahul,

Please share cubix ledger.

Regards

Priyanka Trivedi


--
Regards,

Ashok Kaul

Cubix Control Systems Pvt Ltd
F-19, Sector-11,
Noida

Mobile No- 9971796422
Phone No- 0120-4335714
accounts@cubixcontrolsystems.com

8

 **Zazz_Account Ledger_Cubix Control Systems Pvt Ltd.Pdf**
237K

Cubix Varun <varun@cubixcontrolsystems.com>
To: azadbansalacldcu@gmail.com


Wed, Mar 12, 2025 at 5:14 PM

Regards,
Varun Chaudhry

Cubix Control Systems (P) Ltd.
F-19 Sector-11, Noida - 201301
Uttar Pradesh (U.P.), India

Mobile : +91-9910385067
Landline: +91-8447757077 / 78

E-mail id : varun@cubixcontrolsystems.com
Website : www.cubixcontrolsystems.com
[Quoted text hidden]

 **Zazz_Account Ledger_Cubix Control Systems Pvt Ltd.Pdf**
237K

The ledger attached shows an end balance to the tune of 1,32,29,621.40
Cr.

22

34. Subsequently, the CD has also filed an application bearing IA No. 3393/2025 seeking to place on record e-way bills, and the same is being considered. It is stated that the CD returned defective material worth Rs. 91,37,987/- (quantity: 12,954 units) to the Operational Creditor through e-Way Bills. The Operational Creditor refused to accept the returned material. The details of the e-Way Bills are as follows:

SL No.	e-Way Bill No.	Dated
1.	4914 6785 2293	06/08/2024
2.	4014 6785 2296	06/08/2024
3.	4214 6785 2304	06/08/2024
4.	4314 6785 2310	06/08/2024
5.	4514 6785 2316	06/08/2024

6.	4714 6785 2325	07/08/2024
7.	4314 6785 2336	07/08/2024
8.	4414 6785 2342	07/08/2024
9.	4314 6785 2349	07/08/2024
10.	4514 6785 2358	07/08/2024
11.	4314 6785 2365	07/08/2024
12.	4114 6785 2372	07/08/2024
13.	4914 6785 2376	07/08/2024
14.	4014 6785 2379	07/08/2024
15.	4814 6785 2386	07/08/2024
16.	4614 6785 2393	07/08/2024
17.	4814 6784 8947	07/08/2024

This shows that there have been continuous quality issue complaints by the CD, and therefore, there exists a pre-existing dispute.

35. Further, prima facie, there is a contractual dispute between the parties regarding payment, which needs to be decided by the appropriate court of jurisdiction. The Hon'ble Supreme Court in *Mobilox Innovations Private Limited v. Kirusa Software Private Limited*, (2018) 1 SCC 353, has authoritatively held that while examining an application under Section 9, the Adjudicating Authority is only required to determine whether there exists a "plausible contention" requiring further investigation and that the dispute is not a patently feeble legal argument or an assertion unsupported by evidence. The Court has categorically held that the Adjudicating Authority is not required to enter into the merits of the dispute or determine whether the defence is likely to succeed. If the dispute truly exists in fact and is not spurious, hypothetical or illusory, the application under Section 9 must be rejected. The relevant portion of the judgement is extracted below:

“40. It is clear, therefore, that once the operational creditor has filed an application, which is otherwise complete, the adjudicating authority must reject the application under Section 9(5)(2)(d) if notice of dispute has been received by the operational creditor or there is a record of dispute in the information utility. It is clear that such notice must bring to the notice of the operational creditor the “existence” of a dispute or the fact that a suit or arbitration proceeding relating to a dispute is pending between the parties. Therefore, all that the adjudicating authority is to see at this stage is whether there is a plausible contention which requires further investigation and that the “dispute” is not a patently feeble legal argument or an assertion of fact unsupported by evidence. It is important to separate the grain from the chaff and to reject a spurious defence which is mere bluster. However, in doing so, the Court does not need to be satisfied that the defence is likely to succeed. The Court does not at this stage examine the merits of the dispute except to the extent indicated above. So long as a dispute truly exists in fact and is not spurious, hypothetical or illusory, the adjudicating authority has to reject the application.”

36. Applying the aforesaid principles to the facts of the present case, the communications exchanged between the parties, including WhatsApp conversations, emails and contemporaneous complaints regarding defective products, clearly indicate that disputes relating to the quality of goods had arisen much prior to the issuance of the demand notice under Section 8 of the Code. These documents cannot be said to have been created merely as an afterthought in response to the demand notice. The material placed on record demonstrates that the dispute was alive and subsisting between the parties during the course of their commercial dealings.
37. The email also relied upon by the Operational Creditor acknowledging the ledger balance also does not advance its case to the extent contended. Even assuming that the ledger reflected certain outstanding dues, such acknowledgment cannot obliterate the contemporaneous disputes already raised by the Corporate Debtor regarding defective supplies. An acknowledgment of accounts does not ipso facto out rule the possibility of otherwise genuine contractual dispute concerning quality of goods or the corresponding liability arising therefrom.
38. Therefore, this Adjudicating Authority is of the view that the present application is liable to be dismissed on account of a pre-existing contractual dispute between the parties.
39. Further, an Application bearing IA No. 2728 of 2025 was filed on behalf of the Applicant seeking to file photocopies of the pleadings of the Present matter instead of the original files, which are now irrelevant and thus infructuous.

Order

40. In view of the above facts and circumstances and the foregoing discussion, we are satisfied that the claim of the Applicant in this Application bearing CP(IB) No. 725 of 2024 suffers from a reasonable dispute as to the quality of products supplied by the Applicant to the Corporate Debtor.

41. It is accordingly hereby ordered as follows: -

- i.** The Application bearing **CP(IB) No. 725 of 2024** filed by the Applicant under Section 9 of the Code r/w Rule 6 of the Adjudicating Authority Rules for initiating CIRP against the Respondent is hereby **dismissed**.
- ii.** The other connected applications being **IA No. 1441/ 2025, IA No. 3393/2025, and IA No. 2728 of 2025** are also **disposed of**.
- iii.** The Registry is directed to send a copy of this order to the Insolvency and Bankruptcy Board of India for their record.
No order as to costs.

Sd/-
(ANUPINDER SINGH GREWAL)
PRESIDENT

Sd/-
(RAVINDRA CHATURVEDI)
MEMBER (TECHNICAL)