



**IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH, BENGALURU**
(Through Physical Hearing / VC Mode (Hybrid))

ITEM No.01
C.P.(IB)No.172/BB/2024

IN THE MATTER OF:

M/s. Smartpaddle Technology Pvt. Ltd.	...	Petitioner
Vs.		
M/s. Essential Logistics Pvt. Ltd.	...	Respondent

Order under Section 9 of IBC, 2016

Order delivered on: 12.06.2025

CORAM:

SHRI SUNIL KUMAR AGGARWAL
HON'BLE MEMBER (JUDICIAL)

SHRI RADHAKRISHNA SREEPADA
HON'BLE MEMBER (TECHNICAL)

PRESENT:

For the Petitioner : Appeared
For the Respondent : Appeared

ORDER

1. Heard the Ld. Counsels appearing for the parties.
2. List the matter for further proceedings and for awaiting the report of the IRP on **05.08.2025**.

-Sd-

RADHAKRISHNA SREEPADA
MEMBER (TECHNICAL)

-Sd-

SUNIL KUMAR AGGARWAL
MEMBER (JUDICIAL)

Shruthi



IN THE NATIONAL COMPANY LAW TRIBUNAL, BENGALURU BENCH

**(Exercising powers of Adjudicating Authority under Section 5(1) of
The Insolvency and Bankruptcy Code, 2016)**

(Through Physical hearing/VC Mode (Hybrid))

CP (IB) No. 172/BB/2024

U/s. 9 of the IBC, 2016 r/w

Rule 6 of the IBC (AAA) Rules, 2016

IN THE MATTER OF:

SMARTPADDLE TECHNOLOGY PRIVATE LIMITED

Having registered office at:

701, 7th Floor, E Wing, Times Square,
Marol Andheri – Kurla Road Andheri East,
Mumbai – 400059

Also at:

Survey No. 6, Huskur Road,
Makali Post, Dasanapura Hobli,
Bangalore – 562123

.... Petitioner/Operational Creditor

Versus

ESSENTIAL LOGISTICS PRIVATE LIMITED

Having registered office at:

No. 68, Opposite KBD, Nelamangala Taluk,
Bommanahalli Village,
Bengaluru Rural, Karnataka- 562123

Also at:

Sy. No. 150 and 151, Mylanahalli Village,
Kasaba Hobli, Nelamangala Taluk,
Bangalore Rural, Karnataka- 562123

... Respondent / Corporate Debtor

Order delivered on: 12.06.2025

CORAM: Hon'ble Shri Sunil Kumar Aggarwal, Member (Judicial)
Hon'ble Shri Radhakrishna Sreepada, Member (Technical)

Parties/Counsels Present:

For the Petitioner : Shri Jespreeth Ranji
For the Respondent : Mr. Suresh

ORDER

1. The present Petition was filed on 10.07.2024 under section 9 of the Insolvency and Bankruptcy Code, 2016 ("IBC/Code"), read with Rule 6 of the Insolvency and



Bankruptcy (Application to Adjudicating Authority) Rules 2016, by **SMARTPADDLE TECHNOLOGY PRIVATE LIMITED** (“Operational Creditor/Petitioner”) inter alia seeking to initiate Corporate Insolvency Resolution Process (“CIRP”) against **ESSENTIAL LOGISTICS PRIVATE LIMITED** (hereinafter referred as “Corporate Debtor/Respondent”) on the ground that the Corporate Debtor has committed a default in payment of **Rs.2,49,41,840.57/-** (Rupees Two Crores Forty-Nine Lakh Forty-One Thousand Eight Hundred Forty and Fifty-Seven Paise Only) . The Date of Default as mentioned in the Part IV of Form 5 for the outstanding amount is **21.06.2022** and the Record of Default in Form D, issued by NeSL is attached as **Annexure G2** to the Petition.

2. It is submitted that Affidavit regarding there being no pre-existing Dispute U/s 9(3) (b) has been filed while the Demand Notice under Section 8(1), Form 3 is attached at **Annexure- K**.
3. Relevant brief facts of the case are as follows:
 - a) The Petitioner/Operational Creditor is a Private company incorporated on 28.03.2015 under the Companies Act, 2013 with CIN: U72300MH2015PTC263147. The company has an authorized share capital of ₹75,00,000 and a paid-up capital of ₹54,23,540, and is registered with the Registrar of Companies, Mumbai. The Operational Creditor is engaged in providing B2B solutions related to packaging, design, development, and procurement, with a focus on the packaging and material handling sectors. It also supplies packaging materials, shoe components, textiles, and other related products.
 - b) The Respondent/Corporate Debtor is a private company incorporated on 04.09.2018 with the Registrar of Companies, Bangalore under the Companies Act, 2013 with CIN: U63030KA2018PTC115981. The company has an authorized and paid-up share capital of ₹10,00,000 and is engaged in the business of transport and logistics.
 - c) The Corporate Debtor approached the Petitioner in January 2022 for the procurement and movement of logistics and other products through multiple purchase orders. The Petitioner duly supplied the goods and raised



corresponding invoices, which were received and acknowledged without dispute by the Corporate Debtor, as evidenced by the goods receipt notes. However, despite the agreed terms, the Corporate Debtor failed to make payment within 90 days of delivery.

Invoice date	Invoice No.	Invoice Amount
28-01-2022	GSPKA/22/0050468	75,60,000/-
28-01-2022	GSPKA/22/0050471	75,26,400/-
25-02-2022	GSPKA/22/0054132	55,55,200/-
02-03-2022	GSPKA/22/0054333	39,20,000/-
02-03-2022	GSPKA/22/0054390	68,04,000/-
02-03-2022	GSPKA/22/0054405	68,99,200/-

- d) The Operational Creditor supplied goods worth ₹10,56,33,600/- as agreed with the Corporate Debtor. Against this, the Corporate Debtor made part payment of ₹8,68,72,300/-, while the Operational Creditor raised a credit note of ₹1,31,04,000/- and a debit note of ₹61,80,540.57. After adjustments, the outstanding dues come to ₹2,49,41,840.57/-, which includes the principal unpaid amount of ₹1,87,61,300/- and interest of ₹61,80,540.57/- at 18% per annum from 05.05.2022 to 04.12.2023. Interest continues to accrue at the same rate from 05.12.2023 till payment.
- e) Despite repeated reminders through calls, emails, and other communications, the Corporate Debtor failed to clear its dues and avoided the Operational Creditor's follow-ups. A legal notice was issued on 02.09.2022, to which the Corporate Debtor replied on 10.09.2022, acknowledging the dues. However, no payment was made. As a result, the Corporate Debtor remains liable to pay ₹2,49,41,840.57/- with date of default being 21.06.2022.
- f) Despite multiple discussions wherein the Corporate Debtor repeatedly assured payment, it failed to honour its commitments, citing financial constraints. Notably, even after service of the demand notice dated 29.12.2023, no payment was made. The Corporate Debtor also failed to respond to the notice within the prescribed timeline, thereby appearing to evade accountability and conceal its true financial position.



4. On 25.11.2024, the Respondent filed its statement of objections as follows: -
- (a) The Petition by the Operational Creditor is wholly misconceived, untenable, bereft of merits and not maintainable since the Operational Creditor has suppressed material facts and filed the present application solely to support its claim, thereby causing prejudice to the Corporate Debtor. The claim for interest is not maintainable in respect of operational debt and, thus, is not a remedy available under Section 9 of the Insolvency and Bankruptcy Code, 2016. Furthermore, the Corporate Debtor is not insolvent and is willing to clear the principal dues. The present application has been filed with an ulterior motive to exert undue pressure by seeking recovery of unpaid invoices along with an unjustified and unlawful claim of interest at 18% per annum.
 - (b) It is pertinent to note that in all communications, the Corporate Debtor has consistently acknowledged its liability and expressed willingness to repay the unpaid invoices. The Operational Creditor had issued a legal notice dated 02.09.2022 under Section 138 of the Negotiable Instruments Act, 1881, to which the Corporate Debtor responded on 10.09.2022, confirming its intent to repay and requesting return of the previously issued cheques. Despite this, the Operational Creditor chose not to pursue appropriate legal remedies and instead filed the present frivolous insolvency application, seeking to misuse the process under the guise of recovery.
 - (c) The Operational Creditor lodged a police complaint on 29.12.2022 before Mahadevapura Police Station, resulting in FIR No. 0393/2022 dated 30.12.2022, registered for offences under Sections 420 and 506 of the IPC. In response, the Corporate Debtor filed Criminal Petition No. 3124 of 2024 before the Hon'ble High Court of Karnataka, which granted stay on further investigation. Despite the pendency of criminal proceedings and issuance of a legal notice under the Negotiable Instruments Act, 1881, the Operational Creditor has now invoked insolvency proceedings with a view to arm-twist the Corporate Debtor. In view of the pending parallel proceedings, the present application is not maintainable in law as per the doctrine of election.
 - (d) Further, as per Clause 15.1 of the Shortfall Undertaking Agreement dated 23.05.2022 (Annexure-L) exclusive jurisdiction lies with the courts in Mumbai, rendering this application before this Tribunal is not maintainable.



Hence, the present application is liable to be dismissed as being without authority and contrary to the terms of the agreement.

- (e) Without prejudice to the preliminary objections raised, and in view of the Plaintiff's failure to disclose the complete and accurate facts, the Corporate Debtor states that the Corporate Debtor is engaged in providing innovative, technology-driven logistics and supply chain management solutions aimed at cost efficiency and operational excellence. It caters to clients across sectors—small, medium, and large enterprises by ensuring timely delivery of goods and expanding their market reach through modernized transportation services.
- (f) That the Operational Creditor is engaged in providing B2B solutions in packaging, design, development, and procurement, primarily for the packaging and material handling industries, including supply of related goods such as shoe components and textiles. As per the understanding, the Operational Creditor offered a 90-day credit period post-supply. The Corporate Debtor utilized the goods for its logistics operations, and invoices were accordingly raised with the said credit terms. However, the Operational Creditor abruptly discontinued supplies after 35 days, citing internal management decisions against dealing with logistics businesses. This sudden cessation, despite prior assurances of continued supply for a minimum of 90 days and a potential business relationship of over two years, caused substantial operational losses to the Corporate Debtor, who had already made business expansions based on such representations. Notably, no formal written agreement was executed between the parties; the Corporate Debtor proceeded solely on the strength of oral assurances given by the Operational Creditor.
- (g) It is submitted that relying on the assurances of the Operational Creditor, the Corporate Debtor had undertaken commitments with third parties in the logistics and transportation sector. However, the abrupt discontinuation of supplies and funding by the Operational Creditor resulted in significant financial losses, which constrained the Corporate Debtor's ability to clear the balance dues under the invoices. The Corporate Debtor duly informed the Operational Creditor of these circumstances and sought time for repayment. Despite this, the Operational Creditor, without granting reasonable time or opportunity, has resorted to multiple proceedings with the intent to cause



undue hardship. It is reiterated that the Corporate Debtor has never denied its liability and remains willing to clear the outstanding invoice amounts.

- (h) The claim for interest does not arise from the supply of goods or services and therefore does not qualify as “Operational Debt” under the Code. This position has been affirmed by the Hon’ble NCLT, New Delhi in ***CBRE South Asia Pvt. Ltd. v. M/s United Concepts and Solutions Pvt. Ltd.***, (IB) 797 (ND) 2021, vide order dated 19.01.2022. Accordingly, the imposition of interest on the principal amount is without legal basis and liable to be dismissed at the threshold.
- (i) The Corporate Debtor is neither insolvent nor attempting to evade payment. A substantial portion of the dues has already been cleared, and the Corporate Debtor remains ready and willing to pay the balance outstanding under the unpaid invoices. However, the Operational Creditor has prematurely initiated proceedings before this Tribunal while also claiming interest at an exorbitant rate of 18% per annum, which was neither agreed upon nor supported by any contractual terms.
- (j) The Operational Creditor issued a legal notice dated 02.09.2022 under Section 138 of the Negotiable Instruments Act, 1881, based on cheques issued by the Corporate Debtor (Annexure-A). In response, the Corporate Debtor, vide reply dated 10.09.2022 (Annexure-B), acknowledged the liability, expressed willingness to repay the outstanding dues, and requested return of the cheques. Despite this, the Operational Creditor failed to initiate appropriate legal proceedings and instead filed the present insolvency application, which appears to be an attempt to coerce recovery of interest at an unjustified rate of 18% per annum. Notably, after the said exchange, the Corporate Debtor has already made part payments, and only a balance of ₹1,87,61,300/- remains, which the Corporate Debtor is ready and willing to discharge.

5. The Petitioner has filed Rejoinder on 03.12.2024 and contended as under:

- (a) The objections raised by the Corporate Debtor are baseless and misleading. The Corporate Debtor, despite repeated assurances, has failed to discharge its liability and continues to make vague and unsubstantiated promises of payment without specifying any timeline or mode of repayment. Such conduct appears to



be a deliberate attempt to evade the initiation of the Corporate Insolvency Resolution Process (CIRP) under the guise of repayment assurances. The failure to honour these repeated commitments is a clear indication of the Corporate Debtor's deteriorating financial condition and inability to repay its debts.

- (b) The Corporate Debtor failed to respond to the statutory demand notice dated 29.12.2023. In the objection statement, the Corporate Debtor has now falsely claimed that it is neither insolvent nor attempting to evade payment of the outstanding invoices. The objection raised regarding jurisdiction, relying on the Shortfall Undertaking Agreement dated 23.05.2022, is untenable in law. The Hon'ble NCLAT in *Excel Metal Processors Limited vs. Benteler Trading International GMBH & Anr.* has categorically held that exclusive jurisdiction clauses in agreements do not apply to proceedings under the Insolvency and Bankruptcy Code, 2016. The Corporate Debtor has raised several other erroneous and misleading contentions, which are specifically denied and traversed in detail hereafter.
- (c) The averment that the present application is misconceived, untenable, and devoid of merits is wholly denied. The contention that the application has been filed to exert undue pressure on the Corporate Debtor is baseless. On the contrary, the Corporate Debtor, while admitting the liability and assuring repayment, has simultaneously alleged that the claim is frivolous, which is self-contradictory and not tenable in law.
- (d) The allegation that the Operational Creditor has suppressed material facts and filed the present application to suit its own interest and cause injustice to the Corporate Debtor is also incorrect and denied. It is pertinent to note that the Corporate Debtor failed to respond to the statutory demand notice dated 29.12.2023, wherein it had the opportunity to present its version of facts but wilfully chose not to do so.
- (e) In the present application, the principal amount in default itself exceeds the statutory threshold of ₹1 crore as stipulated under Section 4 of the Code. Hence, the minimum requirement for initiation of CIRP under Section 9 stands satisfied. It is further submitted that the ruling relied upon by the Corporate Debtor merely clarifies that the principal and interest cannot be aggregated to meet the threshold requirement of default. However, in the instant case, since



the principal debt alone exceeds ₹1 crore, the said judgment has no bearing and is inapplicable. Therefore, the objections raised by the Corporate Debtor in this regard are devoid of merit and liable to be rejected.

- (f) The contention that the petition is not-maintainable due to the pendency of proceedings under the Indian Penal Code and the issuance of notice under the Negotiable Instruments Act, 1881, is legally unsustainable. The doctrine of election has no application in proceedings initiated under the Insolvency and Bankruptcy Code, 2016, which is a distinct and independent remedy available to operational creditors. Hence, the objection raised by the Corporate Debtor on this ground is devoid of merit and liable to be rejected.
- (g) The allegation that the Corporate Debtor is engaged in providing its clients with non-peril solutions to expand their reach in different regions is not within the knowledge of the Operational Creditor and is therefore denied. The further allegation that the Corporate Debtor is involved in offering logistics and supply chain management solutions through a cost-effective and technology-driven approach is a matter of record only for the Corporate Debtor and is subject to strict proof. Likewise, the claim that the Corporate Debtor caters to small, medium, and large businesses by offering modern logistics and transportation solutions through timely delivery of goods is also denied and put to strict proof. The Operational Creditor craves leave of this Tribunal to call upon the Corporate Debtor to produce documentary evidence substantiating the same.
- (h) The allegation that the Operational Creditor is engaged in providing solutions to the B2B segment pertaining to packaging, design, development, and procurement challenges, with technological support for the packaging and material handling industry, including the supply of packaging materials, shoe components, textiles, among others, may be true. The allegation that the Operational Creditor extended a ninety-day credit limit following the operations is admitted as true. However, it is pertinent to state that the Corporate Debtor failed to honour the invoices even after the expiry of the said 90-day credit period. Further, the allegation that the Operational Creditor failed to honour its assurances and ceased supply after 35 days, citing management policy against dealing with logistics and transportation entities, is not admitted to be true or correct. In fact, the Operational Creditor ceased supply only after learning from



the Corporate Debtor's logistics team that the goods procured were not being used in any goods-related business as initially represented. It was subsequently discovered that the Corporate Debtor is engaged primarily in transportation services, not in the sale or handling of goods. The allegation that the Corporate Debtor incurred heavy losses owing to a sudden stoppage of supplies by the Operational Creditor is denied in toto.

- (i) the allegation that the Operational Creditor failed to uphold alleged assurances of doing minimum business over 90 days or maximum business for a period extending beyond two years is false and baseless. The claim that the Corporate Debtor acted purely on oral assurances given by the Operational Creditor and operated without any formal agreement is denied. The Operational Creditor reiterates that no such oral assurances were made, and no enforceable agreement to such effect ever existed.
- (j) The allegation that the Corporate Debtor relied on the Operational Creditor's assurances to secure business from third parties and subsequently suffered losses due to stoppage of products and funds is denied and put to strict proof. The Operational Creditor denies any responsibility for the alleged losses or financial constraints of the Corporate Debtor. The further claim that the Corporate Debtor informed the Operational Creditor of such losses and sought time to repay the dues is also denied. The Operational Creditor states that sufficient time and opportunities were already afforded, and the Corporate Debtor failed to honour its obligations. The statement that the Corporate Debtor has never defaulted and is willing to pay now is false, made only as an afterthought to delay proceedings.
- (k) The allegation that the claim of interest does not arise from the supply of goods or services and, therefore, does not form part of the operational debt under the Code is denied. The judgment in *CBRE South Asia Pvt. Ltd. v. M/s United Concepts and Solutions Pvt. Ltd.*, relied upon by the Corporate Debtor, is not applicable to the present case. In the present matter, the principal amount in default itself exceeds the threshold limit of ₹1 crore. The cited judgment merely holds that interest and principal cannot be clubbed to meet the threshold, which is irrelevant here as the principal alone meets the required limit.



- (l) The allegation that the Corporate Debtor is neither insolvent nor evading payment is denied. The claim that payments have already been cleared is blatantly false. The assertion that the Corporate Debtor is ready and willing to pay the balance amount is also denied. While initiation of proceedings before this Tribunal is a matter of record, the claim that the interest rate of 18% is unacceptable or contrary to the agreement is incorrect. In fact, the invoices clearly stipulate the applicable interest rate, which the Corporate Debtor is liable to pay.
- (m) The issuance of the legal notice dated 02.09.2022 under Section 138 of the Negotiable Instruments Act and the reply notice dated 10.09.2022 from the Corporate Debtor acknowledging liability and seeking return of cheques are matters of record. However, despite this acknowledgment in 2022, the Corporate Debtor has failed to clear the dues till date. The allegation that the present application is frivolous or intended to arm-twist the Corporate Debtor into paying interest is denied. The interest claimed is contractually stipulated. The Corporate Debtor's claim that only Rs.1,87,61,300/- remains and that they are ready to pay is a matter of record, but no concrete steps have been taken to honour this commitment.
- (n) The lodging of the police complaint dated 29.12.2022 and the filing of Criminal Petition No. 3124/2024 are all matters of record. The jurisdictional Police registered First Information Report under crime No.0393/2022 dated 30.12.2022 based on the aforementioned Complaint is matter of record. The allegation that, based on the said complaint and FIR, the Corporate Debtor approached the Hon'ble High Court of Karnataka seeking to stay further investigation in Criminal Petition No. 3124 of 2024 is matter of record. The allegation that, the Hon'ble High Court of Karnataka vide its order dated 02.04.2024 had stayed all further investigation in Crime No.0393/2024 is matter of record. The allegation that, the aforementioned Criminal Petitioner is pending adjudication before the Hon'ble High Court of Karnataka is matter of record. The allegation that, having considered this aspect, the Operational Creditor has approached this Tribunal only with a malicious intention to cause injustice to the Corporate Debtor and thereby recover the unpaid invoices with interest is false. The allegation that, there is already proceedings before the criminal courts



and having issued the notice under negotiable instruments act, 1881, the present application is not maintainable as per doctrine of election is false.

- (o) The allegation that this Tribunal lacks jurisdiction in view of Clause 15.1 of the Shortfall Undertaking Agreement dated 23.05.2022 is denied. The jurisdictional clause in the said agreement, which confers exclusive jurisdiction on courts and tribunals in Mumbai, is not applicable to proceedings initiated under the Insolvency and Bankruptcy Code, 2016. The contention of lack of jurisdiction is untenable in the light of the judgment of the Hon'ble NCLAT in *Excel Metal Processors Limited vs. Benteler Trading International GMBH and Anr.*, wherein it was held that exclusive jurisdiction clauses do not override the statutory jurisdiction conferred upon NCLT under the Code.

6. We have heard the Learned Counsels for parties and carefully perused the record. The commitment of respondent for making payment to the petitioner is found to be fallacious as only a sum of Rs.5,00,000/- could be paid by it on 04.06.2025 after taking adjournments for settlement, in the last about three years. This payment does not take the case of petitioner below the prescribed threshold.
7. This Petition was filed on 10.07.2024 and the date of Default mentioned in Form No. 5 is 21.06.2022 and since this Petition has been filed on 10.07.2024, therefore, it is within the period of Limitation.
8. It is evident from the record that the Petitioner supplied goods pursuant to various purchase orders raised by the Respondent and corresponding invoices were duly raised and acknowledged without demur. As the default pertains to non-payment of invoices in respect of supply of goods, the debt squarely falls within the ambit of "operational debt" as defined under Section 5(21) of the Insolvency and Bankruptcy Code, 2016.
9. It is now well settled that claims arising from unpaid invoices pertaining to supply of goods are to be treated as 'operational debt's for the purposes of the Code. The Hon'ble Supreme Court in *Consolidated Construction Consortium Ltd. v. Hitro Energy Solutions Pvt. Ltd.*, [(2022) ibclaw.in 136 SC] affirmed that advance payments made for procurement of goods and services, and their non-refund, can



constitute operational debt. Further, in **M. Ravindranath Reddy v. G. Kishan & Ors., [(2020) ibclaw.in 95 NCLAT]**, the Hon'ble NCLAT held that the debt should arise from the provision of goods or services in a transactional context, which is satisfied when invoices are raised, supplies are accepted, and payments remain unpaid beyond agreed terms. In the present matter, not only were the goods supplied and invoices accepted, but the Corporate Debtor also made partial payments and acknowledged liability in subsequent communications, further reinforcing the transactional nature of the debt. Accordingly, this Tribunal finds that the Petitioner has duly established the existence of a valid, due, and defaulted 'operational debt' under the framework of the Code, entitling it to seek commencement of the Corporate Insolvency Resolution Process. Apart from the fact that the outstanding principal amount itself is beyond the prescribed threshold limit, the invoices carry interest clause for delayed payments and never questioned by the respondent. The same interest clause finds place shortfall undertaking dated 23.05.2022 of which document repeated reference is made by the respondent.

10. Regarding Pre-existing dispute, the Corporate Debtor has, on multiple occasions, acknowledged its liability, including by issuance of cheques and part-payments post the date of default. Notably, no dispute was raised at the time of receipt of goods or even upon issuance of the demand notice. The purported contentions raised regarding defective supplies and oral assurances surfaced for the first time only after the initiation of these proceedings. As such, these assertions are nothing but an afterthought intended to delay the process. In view thereof, this Authority finds no genuine pre-existing dispute between the parties.

11. In this regard reliance is placed on the judgment of Hon'ble Supreme Court in the case of **Mobilox Innovations Pvt Ltd v. Kirusa Software Pvt Ltd (2017) ibclaw.in 01 SC, dated 21/09/2017**

"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.”***

(Emphasis Supplied)

12. As discussed above in ***Mobilox Innovations Pvt Ltd v. Kirusa Software Pvt Ltd*** this Authority needs to only see if there is a genuine dispute existing between the parties. Moreover, the material on record including Record of Default issued by NeSL in Form D dated 01.06.2023, shows that there is no record of dispute in the information utility, nor any documents submitted to show any dispute, it cannot be held that there is a pre-existing dispute.
13. Further the Hon’ble NCLAT, in the case of ***Deepak Modi Vs. Shalfeyo Industries Pvt. Ltd, (2023) ibclaw.in 215 NCLAT*** has held the following:

“It is true that under the provisions of Code if Adjudicating Authority is satisfied with pre-existing dispute at the time of entertaining an application filed under Section 9 of the Code there is no reason to initiate the same or admit the application. However, law is settled on the point that there must be pure pre-existing dispute. Meaning thereby that genuine pre-existing dispute must exist in rejecting an application Section 9 of the Code”.
14. In view of the abovementioned judgements, it is important to note for this Authority to consider that there must be a genuine pre-existing dispute for this Tribunal to reject an application under Section 9 of the Code. However, this Tribunal is of the considered view that the Corporate Debtor has failed to make out a case of pre-existing dispute.
15. The contention of the Corporate Debtor that the present application is barred by the doctrine of election owing to the pendency of proceedings under the Indian Penal Code and the Negotiable Instruments Act is devoid of legal merit. The Insolvency and Bankruptcy Code provides a distinct statutory remedy, and the pendency of other civil, criminal, or recovery proceedings does not in any manner bar an operational creditor from seeking initiation of CIRP. The Hon’ble NCLAT and



various Benches of the Tribunal have consistently held that the doctrine of election has no application in insolvency proceedings under the Code. Also, record of default issued by NeSL in Form D dated 01.06.2023 further supports the Petitioner's case. The absence of any record of dispute in the information utility confirms that there was no communication by the Corporate Debtor raising any genuine or bona fide dispute prior to the issuance of the demand notice. As such, in terms of Section 9(3)(d) of the Code, the presumption operates in favour of the Operational Creditor.

16. No part of cause of action is reported to have accrued in Mumbai nor was contact to be performed in Mumbai. The clause in Shortfall Agreement conferring exclusive jurisdiction in Mumbai Courts/Tribunal is redundant in view of the legal proposition enunciated in **Swastik Gases Private Limited v. Indian Oil Corporation Limited, (2013) 9 SCC 32** that usage of words, “only”, “exclusively”, “alone” in jurisdiction clauses are not mandatorily required to convey intention of parties to ouster jurisdiction of courts other than courts to which jurisdiction is conferred by the parties under the agreement. The plea of respondent, therefore cannot be entertained.
17. From the above discussion, it becomes amply clear that the Petitioner has been able to establish the existence of operational debt and its default having been committed by the Corporate Debtor and further that there is no pre-existing dispute between the parties. Therefore, in our considered view, it is a fit case for admission u/s 9 of the Insolvency and Bankruptcy Code, 2016.
18. Accordingly, this Adjudicating Authority hereby **admits** the Company Petition bearing **CP (IB) No. 172/BB/2024** and direct the Corporate Debtor- **ESSENTIAL LOGISTICS PRIVATE LIMITED** to undergo Corporate Insolvency Resolution Process. This order triggers moratorium under Section 14 of the Code imposing following prohibitions for being complied with by all concerned:
 - a. The institution of suits or continuation of pending suits or proceedings against the Corporate Debtor including execution of any judgment, decree or order in any court of law, tribunal, Arbitration Panel or other Authority;



- b. Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;
 - c. Any action to foreclose, recover or enforce any security interest created by the Corporate Debtor in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;
 - d. The recovery of any property by an owner or lessor, where such property is occupied by or in the possession of the Corporate Debtor.
19. It is further directed that the supply of essential goods or services to the Corporate Debtor as may be specified, shall not be terminated, or suspended or interrupted during the moratorium period.
20. The provisions of Section 14(3) shall however, not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator and to a surety in a contract of guarantee to a Corporate Debtor.
21. The order of moratorium shall have effect from the date of this order till completion of the Corporate Insolvency Resolution Process or until this Authority approves the Resolution Plan under sub-section (1) of Section 31 or passed an order for liquidation of Corporate Debtor under Section 33 of the IBC as the case may be.
22. In Part-III of Form No.5, **Mr. Addanki Haresh**, bearing Registration No. **IBBI/IPA-001/IP-01064/2017-2018/11757** has been proposed as Interim Resolution Professional (IRP). His written consent and credentials have been given in Form No.2 attached with this Petition. In view of the above, we appoint **Mr. Addanki Haresh**, Registration No. **IBBI/IPA-001/IP-01064/2017-2018/11757** having registered address at No. 36/1, 2nd Floor, Munivenkatappa Complex, Bellary Road, Ganganagar, Bangalore - 560032, contact no.: 9886034643 and email: addanki.haresh@gmail.com as the Interim Resolution Professional of the Corporate Debtor to carry out the functions as mentioned under the IBC. The fee payable to IRP/RP shall be in accordance with the IBBI Regulations/Circulars/Directions issued in this regard The Interim Resolution



Professional is directed to take the steps as mandated under the IBC, 2016 especially under Sections 15, 17, 18, 20 and 21 of IBC, 2016.

23. The Operational Creditor shall deposit a sum of **Rs 2,00,000/- (Rupees Two Lakhs 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.
24. The Interim Resolution Professional shall after collation of all the claims received against **ESSENTIAL LOGISTICS PRIVATE LIMITED** and the determination of the financial position of the Corporate Debtor constitute a Committee of Creditors and shall file a report, certifying constitution of the Committee, to this Tribunal on or before the expiry of thirty days from the date of his appointment, and shall convene first meeting of the Committee within seven days for filing the report of Constitution of the Committee. The Interim Resolution Professional is further directed to send **monthly** progress reports to this Authority.
25. A copy of the order shall be communicated to both the parties. The learned Counsel for the Petitioner shall deliver copy of this order to the Interim Resolution Professional. The Registry is also directed to send the copy of this order to the Interim Resolution Professional at his e-mail address forthwith.

-Sd-

(RADHAKRISHNA SREEPADA)
MEMBER (TECHNICAL)

-Sd-

(SUNIL KUMAR AGGARWAL)
MEMBER (JUDICIAL)