NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH COURT III

Item No. 201
C.P. (IB)/808(MB)2024

CORAM:
SH. HARIHARAN NEELAKANTA IYER
Member (Technical)

Ms. LAKSHMI GURUNG
Member (Judicial)

ORDER SHEET OF THE HEARING ON **06.11.2026**
(HEARING THROUGH: HYBRID MODE)

NAME OF THE PARTIES: Alphard Bulkers Pte. Ltd.

Vs

PRH Resources Private Limited

Appearance

For Applicant : Adv. Dhruva Gandhi a/w Adv. Arpeeta Panvalkar i/b Adv. Shivkumar Iyer.

For Respondent: None

SECTION 9 OF THE IBC, 2016.

ORDER

This Petition is listed for pronouncement of order. The same is pronounced in open court, vide a separate order.

Sd/-
HARIHARAN NEELAKANTA IYER
Member (Technical)

Sd/-
LAKSHMI GURUNG
Member (Judicial)

---Nidhi---

IN THE NATIONAL COMPANY LAW TRIBUNAL

MUMBAI BENCH COURT III

C.P. No. (IB) 808/MB/C-III/2024

[Under Section 9 of the Insolvency and Bankruptcy Code, 2016]

In the matter of

Alphard Bulkers Pte. Ltd.
(Formerly known as Athena Shipping Pte. Ltd.)
160 Robinson Road, # 16-10 Singapore
Business Federation Center,
Singapore 068914

Through Pranjeev Jadhav, POA holder
Residing at:
202, Matruchhaya Apartment,
Veer Savarkar Road, Paranjape Colony
Virar East, Thane,
Maharashtra - 201305

...Operational Creditor/Petitioner

Versus

PRH Resources Private Limited
A-601, Cello Triumph,
IB Patel Road, Opp. Laghu Udyog,
Goregaon (East), Mumbai, 400063

...Corporate Debtor/Respondent

Order pronounced on: 06.11.2026

Coram:
Shri Hariharan Neelakanta Iyer, Member (Technical)
Ms. Lakshmi Gurung, Member (Judicial)

Appearances:
For the Petitioner: Adv. Dhruva Gandhi a/w Aarpeeta Paanvalkar i/b Adv. Shiv Kumar Iyer (PH)

For the Corporate Debtor — Adv. Yadunath Bhargavan a/w Adv. Sanjana Muttath, Adv. Suhas Huddar i/b Rox Legalis (PH)

Per: Ms. Lakshmi Gurung, Member (Judicial)

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1. This Petition has been filed by **Alphard Bulkers Pte. Ltd** (**'Petitioner/ Operational Creditor'**) through Pranjeev Jadhav POA Holder, to initiate Corporate Insolvency Resolution Process **('CIRP')** against **PRH Resources Private Limited** (**'Respondent/Corporate Debtor'**) under **Section 9** of the Insolvency and Bankruptcy Code, 2016 (**'the Code'**) read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

2. This Tribunal vide order dated 05.08.2026 disposed of IA(IBC)/3101(MB)/2026 permitting the change in name of the Operation Creditor from Athena Shipping Pte. Ltd. to Alphard Bulkers Pte. Ltd.

3. **Brief Facts**

3.1 The Operational Creditor, being Owner of the Vessel, Great Progress **('Vessel')** and the Corporate Debtor also referred as **'Charterers'** entered into a Charter party agreement for carriage of about 55,000 MT of Coal **('Cargo')** from Meulaboh, Indonesia **('Load Port')** to Magdalla, India **('Discharge Port')** on board the Vessel. Copy of Charter party agreement dated 27.09.2022 is annexed to the petition as *Exhibit A*.

3.2 Pursuant to said arrangement between the parties, the Vessel reached the Load Port on 07.10.2022 and commenced loading operations on 14.10.2022. The time taken by Charterers to load the cargo exceeded the lay time allowed in the Charter party resulting into delay at load port.

3.3 Vide email dated 28.10.2022, the Charterers intimated that the discharge port is Magdalla and disport agents is Overseas and requested for arrangement for tendering of ETA (Estimated Time of Arrival) notices.

3.4 The Vessel reached the Discharge Port on 05.11.2022. The discharge operations could not be completed within the lay time stipulated in the Charter party agreement.

4. **Submissions by the Petitioner**

4.1 It is submitted that with discussions and mutual agreement between the Owners and the Charterers, the demurrage rate was fixed as USD 24,000 pdpr which was also communicated to the Corporate Debtor vide email dated 28.09.2022.

4.2 Further, vide email dated 28.10.2022, the owner provided Charterers a copy of Load Port lay time calculation for their confirmation and the load port calculation sheet mentioned an amount of USD 188,400 payable by Charterers to owners as Demurrage.

4.3 It is submitted that the Vessel reached the Discharge Port on 05.11.2022. The discharge operations could not be completed within the laytime stipulated in the Charter party and accordingly, demurrage accrued at the Discharge Port as well.

4.4 It is submitted that in period between 08.11.2022 and 21.11.2022, owners followed up with Charterers to obtain their confirmation on the laytime calculation and requesting them to pay the demurrage due. On 21.11.2022, Charterers agreed the Discharge Rate to be USD 8,000 MT.

4.5 On 21.11.2022, Charterers requested owners to provide a revised laytime calculation for the Load Port and laytime calculation at the

Discharge Port. Owner provided Charterers with the laytime calculation for the Discharge Port.

4.6 Owner provided the revised calculations of laytime for the Load Port and Discharge Port on 22.11.2022.

4.7 On 28.11.2022 the Charterers confirmed the laytime calculation at the Discharge Port showing USD 3,667 towards Demurrage due from Charterers to owners.

4.8 Further on 12.01.2023 Charterers provided their laytime calculations for the Load Port showing a USD 171,238 as demurrage and requested owners for their confirmation.

4.9 Owners addressed email dated 12.01.2023 to Charterers rejecting charterer's calculation and maintaining owners stand.

4.10 Further Charterers addressed an email dated 13.01.2023 to owners providing their laytime calculation, showing demurrage at USD 171,405. Owners responded to the same and maintained their stand regarding the laytime calculation.

4.11 Owners sent various emails to Charterers following up on their confirmation. Finally, charterers addressed an email dated 06.02.2023 agreeing with a figure of demurrage at Load Port in lieu of USD 188,400 (which was as per Owners laytime calculation), post splitting the difference in Owners and Charterers figures in a 50:50 ratio.

4.12 Further the Owners on 11.04.2023 issued an invoice of USD 175,404.50 (Post Deduction of 2.5% Add com) which included a Demurrage payable at the Load Port.

4.13 Subsequently the Owners addressed several reminder emails to seek an update on the status of the payments towards the agreed sum in between 13.04.2023 to 15.06.2023.

4.14 It is submitted that Operational Creditor issued Notice dated 10.07.2023 under Section 8 of the Code to the Corporate Debtor.

4.15 It is submitted that on 18.07.2023, Corporate Debtor responded to the said Demand Notice. However, the Corporate Debtor failed to bring to the notice of the Operational Creditor the existence of any pre-existing dispute, record of pendency of the suit or arbitration proceedings filed before the receipt of such notice. Hence, the petitioner seeks admission of the Corporate Debtor into CIRP.

5. **Affidavit in reply on behalf of the Corporate Debtor:**

The Corporate Debtor filed Affidavit in reply dated 24.03.2025 seeking rejection of the Company Petition on following grounds:

5.1 The signature in Exhibit A of the Petition does not bear the signatures of the Authorised Representative and therefore, there is no contractual obligation between the parties.

5.2 It is further submitted that there is no contractual obligation between the parties as there is no signed fixture note between the Operational Creditor and the Corporate Debtor, and therefore no liability on the part of the Corporate Debtor.

5.3 It is submitted that the Corporate Debtor had previously received an email from Mr. David Morris, Partner at LCI Law, claiming demurrage and there has been suppression of facts in the notice issued by Mr. David Morris to the Corporate Debtor. It is further submitted that upon instance of Corporate Debtor, replied to the email on 13.07.2023 stating that there was a pre-existing dispute regarding the alleged demurrage and that Corporate Debtor was not contractually liable. The Corporate Debtor has subsequently

received no response from Mr David Morris. A copy of the email received from Mr David Morris, claiming demurrage and a reply to the email dated 13.11.2023 have been annexed as "Exhibit-B".

5.4 It is stated that there exists a pre-existing dispute in relation to this outstanding amount, which has already been raised by the Corporate Debtor in the email dated 13.11.2023 to Mr David Morris, Partner at LCI Law.

5.5 Prayers:

a. I say that, hence, in view of my aforesaid respectful submission/reply. the Company Petition filed by the Operational Creditor is devoid of merits and is filed only for the purpose of pressurising the Corporate Debtor/Respondent to fulfil the unnecessary demands of the Operational Creditor.

b. Hence, the present Company Petition filed by the Operational Creditor is liable to be dismissed with the exemplary costs.

6. **Affidavit in Rejoinder by the Applicant:**

The Applicant has filed Affidavit in Rejoinder dated 25.06.2025 to the Reply filed by the Respondent, making following submissions:

6.1 The Charterpartv was operative and binding despite not being signed:

a. It is submitted that the absence of a signature on a contract does not, in itself, negate the validity or enforceability of the contract, provided there is sufficient evidence of consensus ad idem and the intention of the parties to be bound by its terms. Therefore, an unsigned agreements can be valid and enforceable if the conduct of the parties demonstrates acting in accordance with the contract.

b. In the present case, despite being aware that the Charterparty was not signed, the Corporate Debtor has unequivocally acted

upon the said Charterparty. This is evident from the parties' course of exchanges, *inter alia*, such as a series of email correspondences relating to laytime calculations and other communications, *inter alia*, admitting their claim and directly linked to the terms of the Charterparty. Further, Corporate Debtor has also made payment towards freight in accordance with the contract (i.e., the Charterparty). These acts clearly indicate that the parties treated the Charterparty as operative and binding, thereby satisfying the essential elements of a contract. A copy of remittance slip evidencing payment towards freight being paid to the Applicant to the Corporate Debtor is annexed hereto as Exhibit-"A".

c. it is submitted that the said Charterparty was duly shared by the Applicant with the Corporate Debtor by way of an email dated 27.09.2022. This communication was not met with any objection, by the Corporate Debtor. The Corporate Debtor proceeded on the basis of the said Charterparty, thereby further evidencing its acceptance and intent to be bound.

6.2 The Petitioner asserts that there is no pre-existing dispute between the Applicant and the Corporate Debtor:

a. It is submitted that the Corporate Debtor has failed to demonstrate the existence of any genuine pre-existing dispute. A mere denial of liability does not satisfy the requirement of a "dispute" under the Code.

b. It is further submitted that the purported dispute is based solely on a bald and general denial of liability, devoid of any explanation or supporting documentation. There is no correspondence or documentary evidence that would suggest that the Corporate Debtor, at any point prior to the initiation of

the insolvency proceedings, genuinely contested the claim or raised any issues pertaining to the Charter party.

FINDINGS AND OBSERVATIONS

7. Heard Ld. Counsel for the parties and perused the material on record.

8. The Petitioner, being the Owners of the Vessel, signed Fixture Note dated 27.09.2022, which records the terms of the fixture concluded between the Owners (**Petitioner/Operational Creditor**) and the Charterers (**Respondent/ Corporate Debtor**) and forms part of the fixture recap under the Charter party.

9. There is no dispute on the factual matrix that the Corporate Debtor engaged the services of the Operational Creditor for providing vessel for its cargo. The Vessel arrived at the Load Port on 07.10.2022, commenced loading operations on 14.10.2022 which was completed on 26.10.2022. There is also no dispute with respect to any outstanding claims for the payment of any freight charges. The claim of the Petitioner pertains to outstanding demurrage.

10. The Petitioner sent communications to the Corporate Debtor seeking confirmation on the laytime calculation and requested them to pay the demurrage due. Since no payment came forth from the Corporate Debtor despite serving invoices and sending reminders, the Petitioner issued demand notice dated 10.07.2023 under section 8 of the Code. The Corporate Debtor replied on 18.07.2023 raising existence of pre-existing dispute. Subsequently, the present Petition has been filed.

11. The Corporate Debtor has challenged the maintainability of the petition primarily on the ground of pre-existing dispute. Further, during the course of arguments, Learned Counsel of the Respondent has opposed the admission of the present petition also on the following grounds:
    a. The alleged demurrage is not a crystallised debt.
    b. Demurrage under admiralty law requires proof.

c. The nature of the IBC jurisdiction is summary
d. A debit note does not amount to an admission of liability
e. The Operational Creditor cannot use section 9 as a recovery proceeding

12. Per contra, Learned Counsel appearing of the Petitioner has advanced the following submissions in support of the petition:

a. The liability to pay demurrage is admitted vide email 28.11.2022 whereby the Corporate Debtors expressly confirmed the Discharge Port laytime calculation and acknowledged USD 3,667 as demurrage due to the Owners. This is a clear acknowledgment by the Corporate Debtor of its liability towards demurrage under the Charterparty.

b. Further, after discussions on the competing calculations, the Corporate Debtor, by email dated 06.02.2023, agreed to a figure of approximately USD 179,500 towards Load Port demurrage, midway mark between the Owners' calculation of USD 188,400 and the Charterers' calculation of USD 171,405. The corresponding mathematical figure was USD 179,902.50. It was only thereafter that the Petitioner issued invoices including invoice dated 11.04.2023 for USD 175,404.50 after deducting the applicable commission of 2.5% under the contract.

c. Even if it were to be presumed that there was any difference/dispute with reference to the quantum of the outstanding amount, it is submitted that as long as the admitted debt is in excess of the prescribed threshold of rupees 1 crore, then the petition has to be admitted. Reliance is placed on ***Surendra Sancheti v. Gospell Digital Technologies Co. Ltd., 2024 SCC OnLine NCLAT 1265*** and ***Leena Salot v. Ridham Synthetics (P) Ltd., 2025 SCC OnLine NCLAT 1121***.

d. Respondent's defense of a purported "pre-existing dispute" based on the communication dated 13.06.2023 is misconceived. There is no correspondence on record to demonstrate that prior to the issuance of the demand notice, the corporate debtor has disputed either the existence or the quantum of liability.

e. The claim is rising from the provision of services and the performance of contractual obligations under the Charterparty and squarely constitutes an operational debt under the Code.

13. It is noticed that the preliminary ground raised by the Corporate Debtor for dismissal of the Company Petition is existence of pre-existing dispute. Reliance has been placed on the judgment in **Mobilox Innovations Private Limited v. Kirusa Software Private Limited [2018 (1) SCC 353]**. The Corporate Debtor has also contended that alleged demurrage is not a crystallised debt and claim of demurrage under admiralty law requires proof which cannot be decided in summary jurisdiction under the Code.

14. Though at the first blush, the argument of the Corporate Debtor may be impressive that demurrages are disputed. However, upon deeper examination of all material on record, we note that there is definite agreement between the Operational Creditor and Corporate Debtor with respect to the demurrages amount.

15. It is relevant to refer to the trail of emails annexed by both the parties, relevant portions of which are reproduced below:

i. The Petitioner sent **email dated 28.09.2022** addressed to the Corporate Debtor, wherein the applicable demurrage rate for the subject fixture was stated to be USD 24,000 per day, pro rata (PDPR). The relevant part of the said email is reproduced below:

"Dear Sir,

Ref to out discussion and mutual agreement, the demurrage rate for subject fixture is to be considered to be USD 24000 pdpr.

Thanks & Regards
Athena Shipping Pte Ltd."

ii. Another **email dated 28.10.2022** was addressed by the Petitioner to the Corporate Debtor, whereby a copy of the laytime calculation in respect of the Load Port was forwarded to the Charterers for their review and confirmation. Details of the laytime calculation sheet is provided as follows:

USED LAYTIME:	*16d11 :50*
ALLOWED LAYTIME:	*08d15:26*
MINIMUM ALLOWED LAYTIME:	*00d00:00*
GRACE TIME:	*00d00:00*
DEMURRAGE TIME:	*07d20:24*
DEMURRAGE DUE:	*USD 188,400.00*

iii. The Petitioner also sent forwarded the calculation in respect of the Discharge Port to the Corporate Debtor on **21.11.2022**. The relevant extract of the laytime calculation report is reproduced below:

USED LAYTIME:	*07d17:10*
ALLOWED LAYTIME:	*07d13:30*
MINIMUM ALLOWED LAYTIME:	*OOd00:00*
GRACE TIME:	*OOd00:00*
DEMURRAGE TIME:	*00d03:40*
DEMURRAGE DUE:	*3,666.67*

iv. Vide **email dated 28.11.2022**, the Corporate Debtor confirmed the laytime calculation in respect of the Discharge Port, reflecting demurrage of USD 3,667. The relevant part of the said email is reproduced below:

"Dear Sir,

We confirm your laytime working showing demurrage of USD 3,667/-. *Our laytime working also attached for reference.*

Regards
Aalok Upadhyaya"

v. Further, vide **email dated 12.01.2023**, the Corporate requested confirmation by the Petitioner on the laytime calculation for the Load Port, reflecting demurrage of USD 171,238. The relevant part of the said email is reproduced below:

"Enclosed please find herewith our working for Load port laytime showing demurrage of USD 171,238
Same for your checking and confirmation.

Regards
Manish"

vi. In response, the Petitioner sent email on the same date i.e. **12.01.2023**, insisting for their calculation which was already provided. The relevant part of the said email is reproduced below:

"Dear Sir,

Kindly note that chrtrs Laytime calculations is rejected respectfully as Owner's had already provided all substantiating does along Laytime calculation & we stand by the same.

Thanks & Regards
Athena Shipping Pte. Ltd."

vii. The Corporate Debtor also responded on the same date i.e. **12.01.2023**, to the aforesaid email by stating that *"we too maintain our stand on laytime"*. Further, the Corporate Debtor stated that in the Laytime calculations exchanged by the parties, there is some difference in respect to bad weather timings.

viii. The Petitioner thereafter called upon the Corporate Debtor to substantiate the deductions made by them. Subsequently, the Petitioner, vide **email dated 13.01.2023**, requested the Corporate Debtor to incorporate the following corrections in the laytime calculation: (i) Wrong time period mentioned as 18.10.2022 03:20-05:15 instead of 18.10.2022 03:20-05:25 Hrs, (ii) period of Demurrage commencement.

ix. Subsequently, vide **email dated 13.02.2023**, the Corporate Debtor forwarded a revised laytime calculation with demurrage charges amounting to USD 1,71,405/- and sought confirmation from the Petitioner.

x. The Petitioner vide **email dated 13.01.2023** addressed to the Corporate Debtor, replied as reproduced below:

> *"Dear Sir,*
>
> *Owner's have already provided the actual timings of the differential timings as per Master's delay detention timings which is an integral part of SOF. Owner's had already intimated & kept Chrtrs in Notice regarding the manipulation in daily report timings & hereby attaching the differential timings for chrtrs easy ref.*
>
> *Accordingly, Owner's Laytime calculation holds right. If Chrtrs need to stretch the confirmation without any solid reason. Owner's arent's going to entertain the same.*
>
> *Charters prompt reply with confirmation on laytime will save time & cost of both parties.*
>
> *Thanks & Regards*
> *Athena Shipping Pte Ltd.*

xi. Finally, after various emails back and forth on calculations, the Corporate Debtor vide **email dated 06.02.2023**, admitted and confirmed demurrage amount of USD 179,500, calculated as the

average of USD 171,405 and USD 188,400 being the claim by the two sides. The relevant part of the said email is reproduced below:

> *"Dear Rajatji*
>
> *We have discussed in length and for sake of closing of files,* ***we propose to split the difference on 50:50 basis.***
> ***Appr 171k as per us / 188 k as per you.. so appr USD 179.5k***
> ***Number can be fine tuned per actual difference amount/2****.*
>
> *Regards,*
> *Manish"*

16. Acting upon such admission of the Corporate Debtor, the Operational Creditor sent an email dated 11.04.2023, attaching therewith a demurrage invoice dated 14.11.2022 for all ports combined (*MEULABOH)*, amounting to USD 175,404.94, along with a separate demurrage invoice dated 21.11.2022 in respect of the Discharge Port, amounting to USD 3,575, aggregating to a total amount of USD 178,979.94.

17. Subsequently, the Operational Creditor served a Demand notice dated 10.07.2023 in Form 3 read with Rule 5(1)(a) under section 8 of the Code, for payment of amount of demurrage incurred at the Load Port and Discharge Port i.e. USD 178,980.26, to be paid within 10 days of receipt of the said notice.

18. The Corporate Debtor has contended that it had replied to the demand notice and referred to letter dated 13.06.2023 wherein it was stated that there was a pre-existing dispute regarding the alleged demurrage and that corporate debtor was not contractually liable to pay.

19. We have perused the reply letter of the Corporate Debtor dated 17.07.2023 to the Demand Notice/ Invoices dated 10.07.2023. The relevant part of the said Reply is reproduced below:

"2. At the outset, Our Client wishes to place the following on record:

a) With reference to point 1 sub- point (a) of particulars of the Operational Debt in the subject notice, Our Client states that the contents of point are factually incorrect and hence denied. It is pertinent to note that Annexure 1 ,2 or 3 does not bear the signatures of Our Client and therefore there is no contractual obligation between the parties and therefore no liability. Our Client states that an unsigned document is inadmissible as evidence.

b) With reference to point 1 sub- point (b) - (s) of particulars of the Operational Debt in the subject notice, Our Client states that the alleged demurrage claimed by your Client is false, vexatious and malafide. It is pertinent to note that the word 'Debt' has been defined to mean a liability or obligation in respect of the claim, which is due from any person and includes a financial debt and operational debt. That in the present matter there is no contractual obligation between the parties and therefore no liability on the part of our client as there is no signed Fixture Note between your client and Our Client. Therefore, the debt in question is spurious, hypothetical and illusory.

Xxx

4. Our Client states that Our Client had previously received an email from Mr David Morris, Partner at LCI Law, claiming demurrage. Further, it is pertinent to note that there has been suppression of facts in the notice issued by Mr. David Morris to Our Client. We upon instance of Our Client, through us, ***replied to the email on 13rd June 2023 stating that there was a pre-existing dispute in respect of the alleged demurrage*** *and that Our Client was not contractually liable. Furthe, the analogy used by Mr David Morris is based on an English High Court Judgement and has not been answered on the facts. That Our Client has subsequently received no response from Mr David Morris /Your Client. A copy of the email received from Mr David Morris, Partner at LCI Law, claiming demurrage and a reply to the email dated 13th June 2023 have been annexed at Annexure- 1.*

5. Our Client states that ***there exist a pre-exist dispute in relation to this outstanding amount which has already been raised by Our Client in the email to Mr David Morris, Partner at LCI Law****."*

20. It is noted that in its reply to the Demand Notice, the Corporate Debtor has failed to disclose how there is an existence of pre-existing dispute in

respect of the demurrage charges claimed by the Operational Creditor. The Corporate Debtor has merely sought to deny its liability without providing any explanation to prove the existence of a genuine dispute.

21. Further, the Corporate Debtor's reply dated 13.06.2023 to the Petitioner's email dated 11.05.2023 which was heavily relied upon by the Corporate Debtor in its reply to the demand notice, states that:

> *"The purported claim of US$179,071 .61 as demurrage has been in dispute under the charter party and Bills of Lading. Your client's position that **AT Trade** have admitted any liability to pay the alleged demurrage to Athena is false, vexatious and mala fide. There has been no admission of liability on email or any other modes of communication by our clients at any juncture."*

22. The Corporate Debtor in the present case is PRH Resources Private Limited and not AT Trade. Accordingly, the Corporate Debtor's reliance on the email dated 13.07.2023 to contend that a pre-existing dispute existed in relation to the alleged demurrage charges is meritless.

23. The Hon'ble Supreme Court in the **Mobilox Innovations Private Limited v. Kirusa Software Private Limited [2018 (1) SCC 353]** has observed:

> *"**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 Provided)

24. It is settled law that agreement between the parties need not be only by a former written document. From series of exchange of communication, if intent of parties can be discerned, it amounts to agreement between the parties. The email dated 06.02.2023 by the Corporate Debtor to the Operational Creditor proposing the demurrage charges on a 50:50 basis, amounting to approximately USD 179.5K is clear admission of the demurrage charges. Accordingly, the exchange of correspondence and the claim of Operational Creditor, establishes that a mutual agreement had been arrived at between the parties.

25. Having made such a proposal, the Corporate Debtor cannot subsequently go back from its own position and seek to deny the liability. There is no plausible explanation given by the Corporate Debtor in denying such contractually admitted demurrages charges by it. Such a belated denial, unsupported by any substantive grounds, is merely an afterthought and constitutes a moonshine, and spurious defence, raised with the sole intent of evading from its obligations. Accordingly, the existence of any pre-existing dispute in respect of the demurrage charges is wholly untenable.

26. We also note that the Corporate Debtor has contended that the alleged demurrage charges do not constitute a crystallised debt and placed reliance on the judgment of the Hon'ble NCLAT in ***Navin Madhavji Mehta v. Jaldhi Overseas Pte. Ltd. & Ors., Company Appeal (AT) (Insolvency) No. 792 of 2024***. However, the said judgment is distinguishable on facts from the present case, as we have already held that the parties herein had mutually agreed to the payment of demurrage charges. Accordingly, the liability towards demurrage charges in the present case cannot be equated with an uncrystallised or disputed claim.

27. We refer to the judgement of Hon'ble Supreme Court in ***Srinivasa Reddy Velagala vs. Sravanthi Infratech Pvt. Ltd. [Civil Appeal No. 876 of 2021]***, decided on 12.08.2026 wherein it has been observed that Demurrage Charges claimed by Operational Creditor constitute an Operational Debt within the meaning of Section 5(21) of the Code when the same arises out of the contractual agreement between the parties. The relevant observations are as follows:

> *"53. Therefore,* ***disputes that arise from breach of the contract cannot give rise to an operational debt till the time the debt becomes crystallized and legally enforceable****. In the present matter, it was argued that the suspension, idling and demobilization charges accrued to the respondent due to the appellant's alleged breach of contract by failure to pay in terms of the EPC contract. Since, there is no record of a suit or arbitration that assessed, adjudicated and crystallized these claims, the amounts claimed under these heads cannot be treated as operational debt."*

28. In the present case, the liability towards demurrage was not unliquidated. The Corporate Debtor had expressly agreed to the demurrage charges amounting to approximately USD 179,500, which has been accepted by the Operational Creditor, thereby confirming contractual demurrages arising out of services provided by the Operational Creditor. We note the default amount in Part IV of the present petition which is USD 178,980.26. Thus, claim of the Operational Creditor is result of the contractual demurrages agreed by the parties [after giving credit to commission payable to the Corporate Debtor]. Accordingly, the liability stood mutually agreed upon and crystallised between the parties. Consequently and since the claim is directly related to services provided by the Operational Creditor, the demurrage charges constitute an acknowledged operational debt.

29. The Corporate Debtor has further contended that claims towards demurrage under admiralty law require proof and that the jurisdiction under the Code is summary in nature. However, in the present case,

there exists an express agreement between the parties, where the Corporate Debtor itself proposed that the demurrage charges be USD 179.5k. Acting upon the said proposal, the Petitioner sent invoices in respect of the agreed demurrage charges. Operational Creditor claim is based on the said amount agreed/admitted by the Corporate Debtor In view of the express contractual understanding between the parties, the liability towards demurrage charges is neither disputed nor dependent upon adjudication under admiralty law. Accordingly, the Corporate Debtor's contention in this regard is misconceived and untenable.

30. The Corporate Debtor has further contended that the demurrage under admiralty law requires proof and the nature of the Code jurisdiction is summary. In the Present case there is a express contract between the parties wherein the Corporate Debtor has proposed to the demurrage charges at 50:50 basis and the Petitioner has accordingly issued the invoices for the same proposed charges. Therefore, there is no question of dispute arising in the present case that needs to be adjudicated by the Admiralty laws.

31. The Operational Creditor sent email dated 11.04.2023 attaching the invoices dated 14.11.2022 and 21.11.2022. Though the demurrage charges were agreed vide email dated 06.02.2023 but invoice appears to be of November 2022. However, as the invoice amount tallies with the amount demitted and agreed by the Corporate Debtor, this information in our view is not fatal. The present company petition was filed on 01.09.2023. Thus, the Petition is within limitation.

32. Considering the entirety of the facts, the defence by the Corporate Debtor appears to be after thought, spurious and cannot be accepted in the teeth of the admitted demurrages by Corporate Debtor itself by email dated 06.02.2023.

33. We note that, the application filed by the Operational Creditor is complete in all respects as mandated under the Code; (i) the Petition is filed within

the limitation period; (ii) the default amount is above the threshold limit of Rs. 1 Crore mandated under Section 4(1) of the Code; (iii) there is no pre-existing dispute.

34. Therefore, we are satisfied that the present petition is maintainable and deserves to be admitted and ordered as follows:

ORDER

i. The above Company Petition (IB) 808/(MB)/C-III/2024 is **admitted** and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against **M/s PRH Resources Private Limited.**

ii. The Petitioner/Operational Creditor has not proposed the name of Insolvency Professional. Accordingly this bench hereby appoints **Mr. ManojKumar Babulal Agarwal** (Registration No: IBBI/IPA-001/IP-P00980/2017-2018/11613 having AFA valid upto 30.06.2027, as the Interim Resolution Professional (IRP) from the panel of RP maintained by IBBI, having e-mail id: manojagarwal20@gmail.com ; Contact No.: 9371021378, to carry out the functions as mentioned under the Insolvency and Bankruptcy Code, 2016.

iii. The Operational Creditor shall deposit a sum of **Rs. 5,00,000/-** (Rupees Five Lakhs Only/-) towards the initial CIRP cost by way of a Demand Draft drawn in favour of the Interim Resolution Professional appointed herein, immediately upon communication of this Order. The expenses, incurred by IRP out of this fund are subject to approval by the Committee of Creditors (CoC).

iv. There shall be a moratorium under section 14 of the IBC, in regard to the following:

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 Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, 2002;

d. The recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor

v. The supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period;

vi. That the provisions of Sub-Section (1) of Section 14 of the Code shall not apply to such transactions as may be notified by the Central Government in consultation with any operational sector regulator and to a surety in a contract of guarantee to a Corporate Debtor.

vii. The order of moratorium shall have effect from the date of pronouncement of this order till the completion of the Corporate Insolvency Resolution Process or until this Bench approves the Resolution Plan under sub-section (1) of section 31 or passes an order for Liquidation of Corporate Debtor under section 33, as the case may be.

viii. The public announcement of the Corporate Insolvency Resolution Process shall be made immediately as specified under section 13 of the Code.

ix. During the CIRP period, the management of the corporate debtor will vest in the IRP/RP in terms of Section 17 of the Code. The suspended directors and employees of the corporate debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP/RP.

x. The Registry shall send a copy of this order to the Registrar of Companies, Mumbai, for updating the Master Data of the Corporate Debtor.

xi. The Registry is further directed to communicate this order to the Operational Creditor, the Corporate Debtor and the IRP immediately.

xii. The Registry is also directed to send a copy of this order to the Insolvency and Bankruptcy Board of India (IBBI) for their record.

xiii. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

35. In result, this Company Petition is **Admitted.**

Sd/-	Sd/-
Hariharan Neelakanta Iyer	**Lakshmi Gurung**
Member (Technical)	**Member (Judicial)**

/Saloni/