

**NATIONAL COMPANY LAW TRIBUNAL**  
**MUMBAI BENCH COURT VI**

Item No. P9.

C.P. (IB)/505(MB)2025

CORAM:

**SHRI SAMEER KAKAR**  
**HON'BLE MEMBER (TECHNICAL)**

**SHRI NILESH SHARMA**  
**HON'BLE MEMBER (JUDICIAL)**

ORDER SHEET OF HEARING (HYBRID) DATED **25.08.2025**

NAME OF THE PARTIES:      **Securitrans India Private Limited**

**Vs**

**AGS Transact Technologies Limited**

**Under Section 9 of the IBC.**

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**ORDER**

The case is fixed for pronouncement of the order. The order is pronounced in the open court, *vide* separate order. Detailed order is being uploaded on the NCLT portal today.

**Sd/-**  
**SAMEER KAKAR**  
**MEMBER (TECHNICAL)**

**Sd/-**  
**NILESH SHARMA**  
**MEMBER (JUDICIAL)**

**IN THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI - BENCH-VI**

**CP (IB) No. 505/MB/2025**

*[Under Section 9 of the Insolvency and Bankruptcy Code, 2016 r/w Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016]*

IN THE MATTER OF:

**SECURITRANS INDIA PRIVATE LIMITED**

[CIN No. U74999DL1998PTC095012]

**Registered Office:** B 2, Naraina Community  
Centre, C Block, Naraina Vihar, New Delhi,  
South West Delhi- 110028.

**...Operational Creditor/(OC)**

Vs.

**AGS TRANSACT TECHNOLOGIES LIMITED**

[CIN: L72200MH2002PLC138213]

**Registered Office:** 601-602 Trade World  
B- Wingkamala Mill Compound Senapati  
Bapat Marg Lower Parel, Mumbai- 400013.

**...Corporate Debtor/(CD)**

**Pronounced On: 25.08.2025.**

**CORAM:**

**SHRI NILESH SHARMA, MEMBER (JUDICIAL).**

**SHRI SAMEER KAKAR, MEMBER (TECHNICAL).**

***Hearing: Hybrid.***

**Appearances:**

Operational Creditor: Adv. Mr. Shyam Kapadia a/w Adv. Ms. Fatema  
Kachwalla & Adv. Mr. Virgil Braganza i/b J&A

Corporate Debtor: Adv. Mr. Nausher Kohli a/w Adv. Mr. Krishna Baruah & Adv.  
Mr. Altamash Qureshi i/b Link Legal

**ORDER**

***[PER: CORAM]***

**1. BACKGROUND**

1.1 This Company Petition No. C.P. (IB) 505/MB/2025 (Application) was filed on 05.04.2025 under Section 9 of the Insolvency and Bankruptcy Code, 2016 ('IBC') read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 ('AA Rules') by Securitrans India Private Limited, the Operational Creditor (OC), for initiating Corporate Insolvency Resolution Process (CIRP) of AGS Transact Technologies Limited, the Corporate Debtor (CD).

1.2 The total amount of default alleged is Rs.2,37,39,495.20/- (Rupees Two Crore Thirty-Seven Lakh Thirty-Nine Thousand Four Hundred Ninety-Five Rupees and Twenty Paise Only), out of which the Principal Amount is Rs. 2,00,22,525.20/- and the Interest Amount is Rs. 37,16,970.00/-.

1.3 As stated in Part IV of the application, the first default under the invoices occurred on 10<sup>th</sup> July, 2023.

**2. CASE OF THE OC:**

2.1 The Corporate Debtor is a listed public company engaged in providing integrated omnichannel payment solutions across diverse sectors in India and in the manufacturing and supply of ATMs.

2.2 On 30<sup>th</sup> May 2010, the Operational Creditor entered into a Services Agreement with the Corporate Debtor under which the Operational Creditor provided cash management services, which inter alia include:

Collecting, picking-up, storing and carrying cash, deposits, captured cards and valuable documents from ATMs; and

Replenishing cash in ATM.

A copy of the Services Agreement is annexed as Annexure A with the Application.

2.3 During the subsistence of the Services Agreement, on June 3, 2010, AGS Infotech changed its name to AGS Transact Technologies ["Corporate Debtor"]. A copy of the old Certificate of Incorporation and the Fresh Certificate of Incorporation reflecting the change of name of the Corporate Debtor is annexed and marked as Annexure B with the Application.

2.4 Further, the Services Agreement was extended from time to time by mutual consent of the parties. Subsequently, by a letter dated February 5, 2024, the Operational Creditor requested the Corporate Debtor to extend the Services Agreement for a further period of one year, i.e., from January 1, 2024 to December 31, 2024. The said extension was duly agreed to and confirmed by the Corporate Debtor. A copy of the said extension letter/renewal agreement dated February 5, 2024, is annexed and marked as Annexure – C with the Application.

2.5 It is pertinent to note that, in accordance with the agreed terms under the Services Agreement (as extended from time to time), the Corporate Debtor was required to clear all payments within 10 days from the date of receipt of

the bills raised by the Operational Creditor. For ease of reference, the relevant clause from the Services Agreement is reproduced herein below:

*"II. All payments for service charges should be made after mutually discussing if any discrepancies and then cleared within 10 days of bills forwarded."*

2.6 Accordingly, pursuant to the aforementioned terms, the Operational Creditor would first submit a draft invoice to the Corporate Debtor for the purpose of verification and confirmation of the amounts and particulars contained therein. Upon receipt of such confirmation from the Corporate Debtor, the Operational Creditor would thereafter issue the final approved invoice to the Corporate Debtor.

2.7 In view of the above, the Operational Creditor raised various final invoices upon the Corporate Debtor for the services rendered, in accordance with the terms of the Services Agreement and the various extension agreements/letters entered into between the parties from time to time.

2.8 Despite acknowledging its liability under the invoices, the Corporate Debtor failed to make any payment. Consequently, an amount of INR 2,37,39,495.20/- remains outstanding as on December 3, 2024.

2.9 On December 4, 2024, the Operational Creditor issued a demand notice under Section 8 of the Code, via e-mail, calling upon the Corporate Debtor to pay the outstanding amounts under the invoices.

2.10 Thereafter, on December 5, 2024, the Operational Creditor caused the same demand notice to be served in physical form at the registered address of the Corporate Debtor at 601-602, Trade World B-Wing, Kamala Mills Compound, Senapati Bapat Marg, Lower Parel, Mumbai – 400 013, under Section 8 of the Code, demanding payment of the outstanding amounts under the invoices.

2.11 Further on December 6, 2024, the Operational Creditor once again caused the same demand notice to be served in physical form upon the Corporate Debtor under Section 8 of the Code, demanding payment of the outstanding amounts under the invoices.

2.12 It is therefore submitted that the demand notice under Section 8 of the Code has been duly served upon the Corporate Debtor. However, till date, the Corporate Debtor has failed to make payment of the amounts due and payable under the invoices to the Operational Creditor.

2.13 The Corporate Debtor, through its legal counsel, initially responded with a holding letter on December 12, 2024, and later issued a detailed reply on December 25, 2024, alleging breaches of the Services Agreement. The reply accused the Operational Creditor of failing to submit daily reports, not reconciling discrepancies before invoicing, providing poor service, and misrepresenting contractual terms.

2.14 It is stated that the Corporate Debtor's allegations do not constitute a valid pre-existing dispute under the Code. The invoices were approved after reconciliation, and no objections were raised before the demand notice. The Reply Letter appears to be an afterthought, and the Corporate Debtor has still not paid the outstanding dues.

2.15 Thereafter, on January 25, 2025, the Operational Creditor issued a Rejoinder Letter, clarifying that all invoices were raised only after the Corporate Debtor's explicit approval, confirming satisfactory performance of services. The Operational Creditor denied any contractual breach and emphasized that the Corporate Debtor's approvals negate allegations of deficient service or unreconciled discrepancies. The absence of any prior objection further

establishes that the Reply Letter is a post-facto defense without any pre-existing dispute. Accordingly, the operational debt claimed in the present application is valid and undisputed.

2.16 The Applicant has attached the following documents:

- I. Invoices and the due date of each invoice.
- II. Working Computation of the default.
- III. Service Agreement dated 30.05.2010.
- IV. Certificate of Incorporation and fresh incorporation of the Corporate Debtor.
- V. Copy of the letter dated 05.02.2024.
- VI. Copy of the email dated 04.12.2024 along with the demand notice dated 04.12.2024.
- VII. Copy of the acknowledgement dated 05.12.2024.
- VIII. Copy of the email dated 12.12.2024 addressed by the Counsel for the Corporate Debtor.
- IX. Copy of the Reply Letter dated 25.12.2024 addressed by the Counsel for the Corporate Debtor.
- X. Copy of the Rejoinder Letter dated January 25, 2025, addressed by the counsel for the Operational Creditor.
- XI. Copy of the Bank Statement of the Corporate Debtor for the period January 1, 2023, to February 13, 2025.
- XII. Copy of Confirmation for the Invoices as mentioned in Schedule - I is annexed hereto and marked as Annexure 'L'.

2.17 There was another additional affidavit dated 02.05.2025 filed by the applicant, vide which copy of NeSL Form-D – Record of default has been brought on

record. The said Form-D states that the status of authentication of default is "Deemed to be Authenticated", date of default is 10.07.2023 and default amount is Rs. 2,46,20,895.20/-.

**3. REPLY BY THE CORPORATE DEBTOR:**

3.1 Mr. Ravi Goyal has filed an affidavit-in-reply on behalf of the Respondent, which was solemnly affirmed, notarised, and verified on 09.06.2025. The contentions of the Respondent in the aforesaid Affidavit are summarised hereinbelow:

3.2 It is submitted that the balance sheet for the financial year 2023-24 evidences that the Corporate Debtor had substantial assets, including immovable properties, plant and machinery.

3.3 However, the Corporate Debtor's business operations were adversely affected due to delays in customer payments and other external market factors beyond its control, temporarily impairing its ability to discharge certain financial obligations.

3.4 The Corporate Debtor is actively pursuing recovery of trade receivables, as reflected in its financial statements. Realisation of the said receivables is expected to significantly improve its liquidity position and enable it to meet its obligations towards creditors.

3.5 In April 2025, the Corporate Debtor signed a term sheet to sell 90% of its stake in Novus Technologies Pte. Ltd. The sale aims to reduce debt, improve cash flow, and support phased repayment of dues.

3.6 The Corporate Debtor expects inflow of funds in the next quarter from ongoing strategic and commercial arrangements, which will be used to address its

liabilities, including dues to operational creditors. Recovery efforts are also underway, and upon realization, the Corporate Debtor aims to clear outstanding dues within a reasonable time.

- 3.7 It is submitted that the Insolvency and Bankruptcy Code, 2016 is a beneficial legislation aimed at revival of the Corporate Debtor, and not a tool for mere debt recovery. The Hon'ble Supreme Court has repeatedly cautioned that the Adjudicating Authority must be vigilant against misuse of the insolvency process for coercive recovery. In the present case, the petition lacks bona fides and appears to be a pressure tactic to harass the Corporate Debtor. The alleged claim of Rs. 2,37,39,495.20 is wholly baseless.
- 3.8 It is submitted that the petitioner, Securitrans India Pvt. Ltd. ("SIPL"), has acted in complete breach of the Service Agreement dated 30 May 2010, as renewed on 5 February 2024. Consequently, no amount is due or payable. The petition has been filed with malafide intent and in disregard of the contractually agreed dispute resolution mechanism of arbitration under Clause 27 of the Service Agreement.
- 3.9 It is further submitted that the petition fails to establish that the claim qualifies as an operational debt under the IBC. It does not demonstrate that the claim is valid, due, or enforceable, and overlooks SIPL's failure to provide key deliverables under the Service Agreement, such as daily shortage reports and monthly performance reports, which are essential for reconciliation and payment.
- 3.10 The Service Agreement, particularly Clause XXVI (Compensation and Billing) and Annexure II(11), stipulates that payments are to be made only after mutual discussion and resolution of discrepancies — a process SIPL has failed to

follow. For over 14 years, the Corporate Debtor has consistently made payments against duly reconciled invoices. However, SIPL has failed to acknowledge or address repeated concerns and discrepancies raised by the Corporate Debtor, resulting in financial losses.

3.11 SIPL's petition ignores the condition precedent under the Service Agreement that discrepancies must first be mutually discussed and resolved. No evidence has been placed on record to show that such discussions occurred or that the disputed invoices were reconciled. The petitioner has also concealed material facts, including repeated objections and communications from the Corporate Debtor regarding service deficiencies and billing discrepancies.

3.12 Furthermore, the petitioner has failed to invoke arbitration despite the existence of an arbitration clause in the Service Agreement, reinforcing that the present petition is not a bona fide insolvency proceeding but a coercive recovery measure. It is well settled that the IBC cannot be used as a substitute for contractual dispute resolution mechanisms such as arbitration.

3.13 The Corporate Debtor reiterates that it has consistently made payments against reconciled invoices and duly honoured its contractual obligations. There is no default within the meaning of Section 9 of the IBC. The petitioner's claim is not only disputed but also arises from unresolved contractual breaches and reconciliation discrepancies. Initiating proceedings under the IBC despite these pre-existing disputes is improper and constitutes an abuse of the process.

3.14 It is submitted that the Corporate Debtor is a solvent entity with valuable assets and active recovery mechanisms. Concrete steps are being taken to restore its financial position, including recovery of receivables, divestment of equity in a

subsidiary, and other strategic measures. The present petition is frivolous, misconceived, and liable to be dismissed.

**4. REJOINDER BY THE APPLICANT/OPERATIONAL CREDITOR:**

4.1 Ms Priyanka Atal has filed an affidavit-in-rejoinder on behalf of the Applicant, which was solemnly affirmed, notarised, and verified on 16.06.2025. The contentions of the Applicant in the aforesaid Affidavit are summarised herein below:

4.2 It is submitted that the Corporate Debtor's reliance on "substantial assets, including immovable properties, plant and machinery" is misconceived and extraneous to the extent of Section 9 application. The IBC is triggered by the existence of a default under Section 3(12) of the IBC which requires proof of non-payment of an undisputed operational debt. The Corporate Debtor's alleged "solvency" or "asset ownership" is irrelevant in nature.

4.3 It is further submitted that the IBC adopts a cash-flow insolvency test, not a balance-sheet test. In any event, the Corporate Debtor's audited financial statements (Annexure A to the Reply, Page 48) reflect a standalone loss of Rs.669.85 million in FY 2023–24 (as against a profit of Rs. 148.77 million in FY 2022–23), and a consolidated loss of ₹800.88 million (as against a profit of Rs. 369.62 million in the previous year). Revenue has also declined by approximately 11.6%, from Rs.17,075 million to Rs. 15,088 million.

4.4 It is submitted that the Corporate Debtor's balance sheet (Annexure A to the Reply, Pages 51 and 144) shows that borrowings have increased to approximately Rs. 9,000 million (standalone), while current liabilities (Annexure A to the Reply, Page 221) have surged to Rs. 10,026.73 million

(consolidated). These figures reflect a deteriorating liquidity position, rendering the value of immovable assets irrelevant under Section 9, as they cannot be readily liquidated to meet immediate operational debt obligations.

4.5 The audited financial statement for the year ended 31.03.2024 explicitly admits that:

*"On a standalone basis, the loss for the year was Rs. 669.85 Million whereas on a consolidated basis the loss for the year was Rs. 800. 88 Million. The loss was primarily on account of loss allowance of trade receivable and certain commitment payments. FY 2023-24 was the year of consolidation, as we are in the process of shifting gears towards high growth areas particularly on the digital payment side, which is a key focus area for the Company. As a result, we saw subdued performance with total income of Rs. 15,088 Million and Adjusted EBITDA of Rs. 3,815 Million. During the year under review, our operating cash flows improved to Rs. 3,492 Million and net debt reduced to Rs. 5,707 Million. "*

(emphasis supplied)

4.6 It is submitted that the Corporate Debtor's balance sheet reveals borrowings increased to approximately Rs. 9,000 million (standalone) and current liabilities surged to Rs. 10,026.73 million (consolidated). These figures demonstrate that the Corporate Debtor's deteriorating liquidity position renders its immovable assets as irrelevant under Section 9, as they cannot be liquidated to discharge operational debts.

4.7 In view of the above submissions, it is submitted that the audited financial statements conclusively demonstrate a standalone loss of Rs. 669.85 million and a consolidated loss of Rs. 800.88 million for FY 2023-24, alongside an

11.6% revenue decline. The balance sheet further reveals monstrous borrowings (Rs. 9,000 million, standalone) and current liabilities (Rs. 10, 026.73 million, consolidated), unequivocally proving a liquidity crisis. The immovable assets being illiquid, cannot remedy this cash-flow insolvency or discharge the admitted operational debt of Rs. 2.37 crore. It is therefore the defence taken by the Corporate Debtor on “substantial assets, including immovable properties, plant and machinery” is not valid.

4.8 It is submitted that the Corporate Debtor’s reliance on “external market factors” and delays in customer payments is wholly extraneous to the adjudication of the present Section 9 petition under the IBC. External business challenges, even if assumed to be true, do not absolve the Corporate Debtor of its liability to discharge admitted dues. The IBC is triggered upon the occurrence of a default, and general business difficulties are irrelevant to this determination.

4.9 The Corporate Debtor’s attempt to link operational debt with broader market conditions is misplaced. The IBC is a remedy for default, not a forum to address commercial hardships. Liquidity issues due to customer delays are business risks borne by the Corporate Debtor and do not affect the Operational Creditor’s rights under Section 9.

4.10 It is submitted that the Corporate Debtor has expressly admitted its liability. Such admission establishes the existence of a legally enforceable debt arising from a contractual relationship. The defence raised pertains only to alleged discrepancies in specific invoices, not a denial of overall liability. Further, the acknowledgment of past payments and reconciliations amounts to an implicit admission of an operational debt within the meaning of Section 3(11) of the IBC.

4.11 It is further submitted that the Corporate Debtor's financial statements disclose outstanding trade payables, which include dues owed to the Operational Creditor. This contradictory position admitting liability in statutory records while withholding payment cannot be sustained. In the absence of any pre-existing dispute prior to the Section 8 notice, the Corporate Debtor's selective denial is untenable and affirms the existence of an undisputed operational debt.

4.12 It is submitted that the Operational Creditor consistently raised invoices and submitted compliance reports (Petition, Vol. I, Annexure L), which were accepted and partially paid by the Corporate Debtor without objection. The belated reliance on Clause XXVI of the Service Agreement is misconceived, as the Corporate Debtor continued to avail services and make payments, thereby tacitly admitting the validity of the claims. Clause 11 in the Service Agreement explicitly mandates that *"All payments for service charges shall be made after mutually discussing discrepancy if any and then cleared within 10 days of the bills forwarded."* The Corporate Debtor never initiated such discussions or disputed any invoice before the Section 8 demand notice.

4.13 It is further submitted that the Corporate Debtor acknowledged the dues and even made part payment during the alleged "dispute" period. The acceptance of services, making payments, and belated alleging discrepancies discloses the mala fide intent to create an illusory dispute.

4.14 It is submitted that The Corporate Debtor's reliance on Clause XXVII of the Service Agreement, which provides for arbitration, is misconceived. The IBC operates independently of contractual dispute-resolution mechanisms, and the existence of an arbitration clause does not bar the Operational Creditor's statutory right to initiate insolvency proceedings upon proof of default.

4.15 The Corporate Debtor's belated invocation of the arbitration clause is a tactical afterthought to obstruct the IBC process. No arbitration was initiated prior to the Section 8 notice or during the business relationship, indicating the absence of any genuine pre-existing dispute. Under the IBC, a dispute must be real and prior to the demand notice not a post-filing defence. The conduct of the Corporate Debtor reflects a mala fide intent to misuse contractual terms to evade liability.

4.16 It is settled law that the existence of an arbitration clause does not bar the maintainability of a petition under Section 9 of the IBC. The IBC is a remedy for insolvency resolution, not a forum for recovery or contractual dispute resolution. Accordingly, the Corporate Debtor's reliance on the arbitration clause is misconceived, contrary to settled principles, and untenable.

4.17 It is submitted that the Corporate Debtor's assertions pertaining to proposed equity sales and anticipated future inflows are irrelevant. The scope of inquiry under the IBC is limited to the existence of an operational debt, occurrence of default, and absence of a genuine pre-existing dispute.

4.18 The Operational Creditor's claim is based on undisputed invoices for services rendered, which remain unpaid despite repeated demands. The Corporate Debtor's audited financials reflect outstanding trade payables with no reference to any set-off or dispute. Prospective recoveries or asset sales do not cure the existing default or negate liability under the IBC.

4.19 It is submitted that the unpaid amounts under the invoices have been admitted on several occasions by the Corporate Debtor. No dispute in respect of the unpaid invoices and the default amount raised by the Corporate Debtor.

4.20 The Corporate Debtor's own conduct of acceptance in services, made part payments and never invoked arbitration or formal reconciliation during the long course of business relation demonstrates the absence of any real or substantial dispute.

## **5. ANALYSIS AND FINDINGS**

5.1 We have perused all the documents and pleadings of both parties and heard both the Ld. Counsel for the Operational Creditor and the Corporate Debtor.

5.2 The Analysis and Findings of the above case are as follows:

### **1. Existence of Operational Debt and Default**

1.1 The OC, Securitrans India Private Limited, has provided documentation to prove the existence of an operational debt:

- I. A Services Agreement dated May 30, 2010.
- II. A renewal letter/agreement dated February 5, 2024.
- III. Invoices for services rendered.
- IV. A working computation of the default amount of Rs. 2,37,39,495.20.
- V. The first default is alleged to have occurred on July 10, 2023, with a demand notice issued on December 4, 2024.
- VI. The Operational Creditor argues that the debt is undisputed because the invoices were raised only after the Corporate Debtor's (CD) confirmation.

1.2 The CD, AGS Transact Technologies Limited, does not explicitly deny the existence of a debt but claims it is not due or payable due to contractual breaches by the OC.

1.3 The CD has not provided evidence of a full payment against the claimed amount.

2. The existence of a service agreement and unpaid invoices establishes the existence of a debt. The core issue is whether this debt is due and undisputed.
3. Demand notice dated 04.12.2024, issued by the OC on page 78 of the Application reveals the total amount of debt as Rs. 2,37,39,495.20/- which includes the principal amount of Rs. 2,00,22,525.20/- and interest amount of Rs. 37,16,970.00/-. It also reveals that agreed terms under the Service Agreement (as extended from time to time), the Operational Creditor agreed to clear all payments within 10 days of the bills forwarded. the relevant clause from the Services Agreement is reproduced herein below:

*"11. All payments for service charges should be made after mutually discussing if any discrepancies and then cleared within 10 days of bills forwarded."*

Accordingly, all payments for service charges have to be made after mutual discussions, if any discrepancies are there and thereafter they will be cleared within 10 days of forwarding of the bills.

The Applicant has attached the list of invoices, due date of payment of invoices and working computation of default.

4. In spite of availing the services of the OC, the CD failed to clear the amounts claimed under the invoices which were duly approved by the CD. The copy of confirmation of invoices by the CP is annexed as "Schedule-I" with the Application.
5. The CD issued holding letter dated 12.12.2024 and then reply to the demand notice on 25.12.2024. In reply the CD states the following:

*However, under the Notice SIPL has wrongly demanded payment towards the alleged invoices by citing clause (11) of Annexure II and thereby incorrectly portraying that payment towards the invoices should strictly be cleared within 10*

*days. It is significant to mention that while demanding the alleged amount of Rs. 2,37,39,495.20/- SIPL has completely disregarded the fact that the payment towards the invoices is subject to mutual discussion between the parties. Further, under the Notice SIPL has conveniently neglected to establish that the parties deliberated upon the purported outstanding invoices and therefore, AGS is liable to make payment towards the alleged outstanding invoices, this itself shows SIPL's malafide intentions of extorting money from AGS.*

6. It is submitted that the Operational Creditor consistently raised invoices and furnished compliance reports, which were accepted and partly paid by the Corporate Debtor without objection. The Corporate Debtor's belated reliance on Clause XXVI of the Service Agreement is misconceived, as it continued to avail services and make payments, thereby implying acceptance of the claims. Clause 11 in the Service Agreement mentions that *"All payments for service charges shall be made after mutually discussing discrepancy if any and then cleared within 10 days of the bills forwarded."* The Corporate Debtor never initiated such discussions or disputed any invoice before the Section 8 demand notice.
7. It is observed that in the Service Agreement dated 30.05.2010, the amount is due and payable as per Annexure II Clause 11. which is reproduced as below:  
*"All payments for service charges should be made after mutually discussing discrepancy if any and then cleared within 10 days of bills forwarded."*
8. Accordingly, the invoices which were raised by the Applicant were due and payable after mutually discussing any discrepancies between the parties. The OC has placed on record various emails attaching invoices which have been confirmed by the CD. Therefore, we find that the invoices were due and payable.

9. The CD in its reply states that the fact that SIPL rendered services and consistently failed to adhere to key terms of the Service Agreement, such as submission of daily shortage/overage reports and monthly/weekly performance reports, which are prerequisites for reconciliation and payments.
10. There is no evidence to support the contention made by the CD and it shows that the defence for reconciliation and payments is nothing but moonshine in nature and, therefore, the issue is decided against the CD. Moreover, the CD had been extending/renewing the Service Agreement from time to time and the last such extension was provided by the CD on 05.02.2024 for the period from 01.01.2024 till 31.12.2024 and if the CD was having some material deficiency of service issues with the Applicant, it would not have renewed the Service Agreement. It is also noticed from the details of pending invoices attached on page nos. 11 to 38 of the Application that majority of the pending invoices relates to the period upto the date of renewal of the Agreement by the CD on 05.02.2024 and the outstanding as on the said date may not be treated as having any issue as otherwise the CD would not have renewed the Service Agreement. From page 38 of the Application it can be seen that out of total principal outstanding of Rs. 2 crores claimed by the Applicant, amount of Rs. 1.36 crores relates to the F.Y. 2023-24 and only Rs. 0.64 crores relates to the F.Y. 2024-25. It is also important here to note that the Applicant has not claimed the invoices to the extent of Rs. 8,81,400/- as on October, 2024, which were pending approval of the CD.
11. The Applicant has also attached as Annexure J, a copy of NeSL Record of Default in Form D, which states the status of authentication of default as “deemed to be authenticated.”

**12. Relevance of the Arbitration Clause**

12.1 The Operational Creditor contends that the existence of an arbitration clause (Clause 27) is irrelevant to the IBC proceedings. They argue that the IBC provides a statutory remedy for a default on an operational debt, which operates independently of contractual dispute resolution mechanisms. This position is in line with well-established precedents.

12.2 The Corporate Debtor claims that the Operational Creditor's failure to invoke arbitration demonstrates a lack of bona fides and reinforces that the petition is a coercive recovery measure rather than an insolvency proceeding.

13. The existence of an arbitration clause does not, by itself, bar a Section 9 application. The Supreme Court has repeatedly held that the IBC is a separate legal mechanism for insolvency resolution. However, the presence of an arbitration clause and the failure of either party to invoke it could be a factor when assessing the genuineness of a pre-existing dispute. If the dispute was genuinely serious, then the Corporate Debtor would have initiated the arbitration proceedings prior to the Section 8 demand notice. No arbitration took place prior to the demand notice sent by the Operational Creditor.

14. The existence of an arbitration clause in the Purchase Order does not preclude the filing of an application under Section 9 of the IBC and in this regard a judgement of the Hon'ble Supreme Court in **Tata Consultancy Services Ltd. v. Vishal Ghisulal Jain**, [Civil Appeal No 3045 of 2020] is relevant which categorically held:

*“21. .... In terms of Section 238 and the law laid down by this Court, the existence of a clause for referring the dispute between parties to arbitration does not oust the jurisdiction of the NCLT to exercise its residuary*

*powers under Section 60(5)(c) to adjudicate disputes relating to the insolvency of the Corporate Debtor.”*

**15.** Accordingly, it is now well settled that the jurisdiction of the Adjudicating Authority under the IBC is not excluded merely by reason of an arbitration clause. The CD's argument that the arbitration clause must be complied with prior to insolvency proceedings is therefore unsustainable in light of these legal principles.

### **16. The Corporate Debtor's Financial Position and Solvency**

16.1 The Operational Creditor argues that the Corporate Debtor's financial health is irrelevant under the IBC's "cash-flow insolvency" test. They provide the Corporate Debtor's own financial statements for the F.Y. 2023-24 to demonstrate a deteriorating financial position, with a standalone loss of **RS. 669.85 million** and an increase in current liabilities (standalone) to **Rs. 8343.93 million** and borrowings/non-current liabilities (standalone) to **Rs. 5548.33 million**. The OC states that the Corporate Debtor's "substantial assets" are illiquid and cannot be used to discharge the immediate operational debt. Such a huge loss coupled with huge amount of current liabilities and the inability of the CD to pay comparatively low amount of debt claimed in this Application, prima facie gives rise to serious doubt about the viability of the CD. We are, however, not expressing any opinion with respect to the viability of the CD and the same may be examined by the CoC/RP during the CIRP process.

16.2 The Corporate Debtor attempts to use its solvency as a defense, pointing to substantial assets, ongoing recovery efforts, and a planned sale of a subsidiary stake. They argue that the petition lacks bona fides and should not be used as a debt recovery tool.

17. The IBC's primary focus is on whether a default has occurred, not on the overall financial health of the company. A company can have substantial assets but still be unable to pay its debts as they become due, which is the essence of cash-flow insolvency. The Corporate Debtor's own audited financial statements, revealing significant losses and high liabilities actually support the Operational Creditor's claim of a liquidity crisis.

18. Therefore, we are of the considered view that this Application is complete as all the required documents to establish debt and default have been attached. We further hold that the Application satisfies all the necessary requirements for admission under Section 9 of the Code. In view of the above, we find that the matter is fit for admission under Section 9(5)(i) of the Code. The amount claimed in default is in excess of the threshold of Rs. 1 crore as prescribed under section 4 of IBC, 2016. The Applicant has also attached NESL Record of default in Form D, which states the status of authentication of default as "deemed to be authenticated."

19. We make it clear that at this stage, we have not crystalized the amount as claimed in the application, the same is left to be collated by the IRP.

20. Further, we hereby appoint Mr. Brijendra Kumar Mishra as Interim Resolution Professional of the Corporate Debtor from the available list of panel of Resolution Professional as maintained by IBBI to conduct Insolvency Resolution Process as mentioned under Insolvency and Bankruptcy Code, 2016.

**ORDER**

- i. The Respondent/Corporate Debtor- **AGS TRANSACT TECHNOLOGIES LIMITED** [CIN: L72200MH2002PLC138213], is admitted into the Corporate Insolvency Resolution Process under Section 9(5) of the Code.

- ii. As a consequence thereof, moratorium under Section 14 of Insolvency and Bankruptcy Code, 2016 is declared for prohibiting all of the following in terms of Section 14(1) of the Code:
  - 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;
  - e. The provisions of sub-section (1) shall however, not apply to such transactions, agreements 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 the Corporate Debtor.
- iii. The order of moratorium shall have effect from the date of this order till the completion of the Corporate Insolvency Resolution Process or until this Adjudicating Authority approves the Resolution Plan under sub-section (1) of

- Section 31 or passes an order for liquidation of Corporate Debtor under Section 33 of the IBC, 2016, as the case may be.
- iv. It is further directed that the supply of essential goods/services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period as per provisions of sub-sections (2) and (2A) of Section 14 of IBC, 2016.
- v. We hereby appoint **Mr. Brijendra Kumar Mishra**, a registered Insolvency Professional having registration no. **IBBI/IPA-002/IP-N00109/2017-18/10257**, as the IRP of the Corporate Debtor as the Applicant has not proposed the name of any IRP in the Application.
- vi. The IRP shall perform all his functions as contemplated, inter-alia, under Sections 17, 18, 20 & 21 of the IBC, 2016. It is further made clear that all personnel connected with the Corporate Debtor, its Promoters or any other person associated with the management of the Corporate Debtor are under legal obligation under section 19 of the IBC, 2016 for extending assistance and co-operation to the IRP. Where any personnel of the Corporate Debtor, its Promoter or any other person required to assist or co-operate with IRP, do not assist or co-operate, the IRP is at liberty to make appropriate application to this Adjudicating Authority with a prayer for passing an appropriate order.
- vii. This Adjudicating Authority directs the IRP to make a public announcement for the initiation of CIRP and call for the submission of claims under Section 15, as required by section 13(1)(b) of the IBC, 2016.

- viii. The IRP is expected to take full charge of the Corporate Debtor's assets, and documents without any delay whatsoever.
- ix. The IRP or the RP, as the case may be, shall submit to this Adjudicating Authority periodical reports with regard to the progress of the CIRP in respect of the Corporate Debtor.
- x. The IRP shall be under duty to protect and preserve the value of the property of the Corporate Debtor and manage the operations of the Corporate Debtor as a going concern, to the extent possible, as a part of obligation imposed by Section 20 of the IBC, 2016.
- xi. The Operational Creditor is directed to pay an advance of **Rs. 3,00,000/-** (Rupees Three Lakhs Only) to the IRP within a period of 7 days from the date of this order **to meet the cost of CIRP** arising out of issuing public notice and inviting claims etc. till the CoC decides about his fees/expenses.
- xii. The Registry is directed to communicate a copy of this order to the Operational Creditor, Corporate Debtor and to the IRP and the concerned Registrar of Companies, after completion of necessary formalities, within seven working days and upload the same on the website immediately after the pronouncement of the order. The Registrar of Companies shall update its website by updating the Master Data of the Corporate Debtor in MCA portal specifically mentioning regarding admission of this Application and shall forward the compliance report to the Registrar, NCLT.
- xiii. The commencement of the Corporate Insolvency Resolution Process shall be effective from the date of this order.

- xiv. **Accordingly, CP (IB)/505(MB)2025 stands admitted.** A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

Sd/-  
**Sameer Kakar**  
**Member (Technical)**

Sd/-  
**Nilesh Sharma**  
**Member (Judicial)**

// C.S, LRA//