IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH (COURT– I) CHENNAI

ATTENDANCE CUM ORDER SHEET OF THE HEARING
HELD ON **11.08.2026** THROUGH VIDEO CONFERENCE

CORAM: HON'BLE SHRI. SANJIV JAIN, MEMBER (JUDICIAL)
HON'BLE SHRI VENKATARAMAN SUBRAMANIAM, MEMBER (TECHNICAL)

Application No	:	
Petition No	:	CP(IBC)/346(CHE)/2025
Name of Petitioner & Name of Respondent	: :	Jaishankar A L Vs Financial Software & Systems Pvt Ltd
Section	:	9 R/w Rule 6 of IBC, 2016

ORDER

CP(IBC)/346(CHE)/2025

Present: Mr. Revanth, Ld. Counsel for the Corporate Debtor.

Vide separate order pronounced in the open Court, the petition is dismissed.

File be consigned to records.

-sd-
[VENKATARAMAN SUBRAMANIAM]
MEMBER (TECHNICAL)

-sd-
[SANJIV JAIN]
MEMBER (JUDICIAL)

MS

Date: 11.08.2026

IN THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH – I, CHENNAI

CP(IBC)/346(CHE)2025

[filed 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 ***Financial Software & Systems Private Limited***

Jaishankar A.L.,
D.701, Purva Park,
Cox Town, Bengaluru-560 005

… Petitioner/Operational Creditor

-Vs-

Financial Software & Systems Private Limited (FSS),
No. 42, Ground Floor, Saradha Apartments,
3rd Main Road, Gandhi Nagar,
Adyar, Chennai-600 020

… Respondent/Corporate Debtor

Present:

For Operational Creditor : Shri. Vivek Menon, Advocate
For Corporate Debtor : Shri. Revanth, Advocate

CORAM :

SANJIV JAIN, MEMBER (JUDICIAL)
VENKATARAMAN SUBRAMANIAM, MEMBER (TECHNICAL)

Order Pronounced on 11th August , 2026

ORDER

This petition under Section 9 of the Insolvency and Bankruptcy Code, 2016 {"**IBC**") r/w Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 has been filed by **Jaishankar A.L.,** (hereinafter referred to as **"Petitioner/Operational Creditor"** or **"J.A.L."**) against **Financial Software & Systems Private Limited** (hereinafter referred to as ("**Respondent/Corporate Debtor"** or "**FSS"**) for initiating Corporate Insolvency Resolution Process ("**CIRP"**).

2. **Part-I** of the petition sets out the particulars of the Petitioner/Operational Creditor, Jaishankar A.L. He has office at D.701, Purva Park, Cox Town, Bengaluru-560 005. **Part-II** of the petition sets out the details of the Corporate Debtor, **Financial Software & Systems Private Limited**. It was incorporated on 20.02.1991 with Authorized (Nominal) Share Capital of Rs.130.95 Crores and Paid-up Share Capital of Rs.9.62 Crores. Its Registered Office is situated at No. 42, Ground Floor, Saradha Apartments, 3rd Main Road, Gandhi Nagar, Adyar, Chennai-600 020 within the jurisdiction of this Tribunal. In **Part-III** of the petition, the Petitioner

has not proposed the name of any Interim Resolution Professional. **Part-IV** of the petition contains the particulars of operational debt i.e., Rs.4,38,12,095/- and date of default as under:

Invoice details	**Date of Invoice**	**Date of Default**	**Amount Rs.**
FSS/11/2023	28.11.2023	30.11.2023	48,18,333/-
FSS/12/2023	01.03.2024	31.03.2024	4,66,290
FSS/01/2024	01.03.2024	31.03.2024	2,97,36,000

Principal Amount	Rs.3,50,20,623/-
Interest at 24% (p.a) from date of default + GST at 18%	Rs. 87,91,742/-
Total as on 31.03.2025	**Rs. 4,38,12,095/-**

3. In Part V , following documents have been submitted by the petitioner to support his arguments:

   a) Executive Consultant Agreement dated 14.05.2021.

   b) Letter of Termination, 'without cause' dated 03.06.2023.

   c) Invoices bearing Nos. FSS/11/2023, FSS/12/2023 & FSS/1/2024 dated 28.11.2023, 01.03.2024 & 01.03.2024.

   d) Email dated 03.01.2023 stating performance targets met as of December, 2022.

e) Email dated 24.05.2023 confirming performance targets exceeded for Full Year 2022-23.

f) MIS Reports confirming targets exceeded.

g) Emails exchange where Operational Creditor requested payment of his legal dues (series) dated 09.07.2023, 17.07.2023, 22.07.2023, 25.08.2023, 02.10.2023, 02.03.2024, 06.04.2024, 29.04.2024, 20.06.2024 & 15.07.2024.

h) Letter coercing the Operational Creditor to give up Performance Incentive dated 16.02.2024.

i) Order dated 14.10.2024, passed by the Hon'ble Supreme Court in C.A. Nos. 11664-11672 of 2024 regarding enforcement of arbitral award suffered by Corporate Debtor

j) Calculation sheet.

4. Brief facts

4.1. *Financial Software & Systems Private Limited* (Corporate Debtor) historically operated through two primary divisions/ verticals i.e. Cash Tech division and Pay Tech division. Jaishankar A.L. (the Petitioner) was, engaged as the *Chief Executive Officer*

(CEO) of the Pay Tech Business Unit of FSS (Corporate Debtor) vide **Executive Consultant Agreement** dated **14.05.2021**.

4.2. The Agreement was for a period of 3 years which inter alia stipulated that the Operational Creditor shall meet certain *Key Performance Indicators* (KPIs) for FY 2022-23 and FY 2023-24 which are more fully specified in Exhibit D annexed to the Agreement to qualify and earn Performance Incentive / Performance Bonus, along with increments based on the extent to which such KPI objectives have been exceeded. *The KPIs could, with mutual consent, be modified on a yearly basis.*

4.3. FSS terminated the petitioner by cancelling the Executive Consultant Agreement (as per Clause 11 a(ii) of the Consultant Agreement) with effect from June 03, 2023 and Operational Creditor was placed on Garden Leave for a period up to 6 months i.e. up to December 03, 2023.

5. **Arguments on behalf of J.A.L. (Petitioner)**

5.1. It is stated that the Operational Creditor was entitled to in addition to his professional fees , a Performance Bonus payable upon the achievement of certain KPI objectives.

5.2. J.A.L. raised the following invoices against FSS which have not been paid.:

Invoice No	**Date**	**Nature of claim**	**Amount claimed Rs.**
FSS 11/2023	28.11.2023	Professional fees for Nov 23	40,83,333
FSS 12/2023	01.03.2024	Professional fees for Dec 23	3,95,161
FSS 01/2024	31.03.2024	Performance Incentive for FY 2022-23	2,97,36,000

5.3. Operational Creditor submitted that the Corporate Debtor defaulted in payment of a sum of Rs. 4,38,12,095/- as on 31.03.2025 including interest. The calculation sheet is provided as under:

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CALCULATION SHEET

A. Professional Fees - ₹ 52,84,623/-

November 2023 Invoice No. FSS/11/2023 dated 28.11.2023 for ₹ 48,18,333/-
Date of default - Due date: 30.11.2023.

December 2023: Invoice No. FSS/12/2023 dated 01.03.2024 for ₹ 4,66,290/-
Date of default - Due date: 31.03.2024.

TOTAL OF PROFESSIONAL FEES = ₹48,19,333 + 4,66,290 = ₹ 52,84,623/-

B. Performance Incentive - ₹ 2,97,36,000/-

FY 2022-23 Invoice No. FSS/01/2024 dated 01.03.2024 for ₹ 2,97,36,000/-
Date of default - Due date: 31.03.2024.

Principal Amount Due: (A+B) = ₹52,84,623 + ₹2,97,36,000 = ₹ 3,50,20,623/-

C. Interest from Date of Default - ₹ 87,91,472/-

- Interest @ 24% p.a. (as per invoices) ₹ 74,50,400/-
- GST on Interest @ 18% p.a. ₹ 13,41,072/-

Interest Overdue as of 31.03.2025 ₹ 87,91,472/-

TOTAL CORPORATE DEBT A + B + C as on 31.03.3025

₹ 52,84,623 + ₹ 2,97,36,000 + ₹ 87,91,472 = **₹ 4,38,12,095/-**

5.4. It is stated that it is standard practice for the Board of Directors of the Corporate Debtor to meet before the commencement of a financial year and based on relevant economic and financial considerations and the state of the market, to set out an **Annual Operating Plan (AOP)** which sets forth the financial goals of KPIs of that particular financial year. Petitioner states that this AOP would supersede the KPI objectives stipulated in Exhibit D of the Consultant Agreement since they were mutually agreed upon and set out before the beginning of the financial year. The said exercise was carried out for FY 2022-23 also.

5.5. It is stated that petitioner , during the course of FY 2022-23 was conscientious of performance of his duties and exceeded the expectations of the Board of Directors of the Corporate Debtors by surpassing his KPI objectives for the financial year. This was acknowledged by the Corporate Debtor *vide* email dated 03.01.2023 and 24.05.2023.

5.6. **The AOP of FY 2022-23**, as set out in the MIS Report of FSS, was:

Revenue	Rs. 277.3 crore
EBITDA	Rs. (-) 11.2 crore

5.7. It is stated that Pay Tech division for which J.A.L. was the CEO , went above and beyond the above milestones as evidenced in the MIS reports of FSS as well as the email sent out by the Head of Finance dated 24.05.2023. It is stated in the email dated 24.05.2023 the Head of Finance of FSS admitted that the Pay Tech **Revenue** for FY 2022-23 was Rs. 290.7 crore, which was a 4.8% increase against the AOP Target of Rs. 277.3 Cr; and the Pay Tech **EBITDA** was Rs. 4.6 crore, which was a 141.07% increase against the AOP target loss of Rs.11.2 crore. Petitioner stated that FSS however contended that J.A.L. is not entitled to performance bonus since he did not achieve the milestones set out in Exhibit D of the Executive Consultant Agreement. A comparison of the various milestones is set out hereunder:

Category	KPIs of FY 2022-23 as per Exhibit D of Executive Consultant Agreement (Rs.)	KPIs as per AOP for FY 2022-23 Targets (Rs.)	Actual Achieved (Rs.) based on mail by Head of Finance

Revenue	675 crore	277.3 crore	290.7 crore
EBITDA	172 crore	(-) 11.2 crore Loss	4.6 crore Profit

5.8. Petitioner states that it is FSS's case that since the performance incentive payable to J.A.L. was disputed by FSS, the petition ought to be dismissed due to the existence of a dispute. However, it is an established law that for considering a pre-existing dispute, the same must be one of substance, and that mere denials would not suffice to exempt this Tribunal from being seized of the matter.

5.9. It is stated that the issue before this Tribunal is whether or not the defence raised by FSS established a pre-existing dispute or was a moonshine defence which would not oust the jurisdiction of this Tribunal.

5.10. It is trite law that modifications and amendments to terms of a contract may be made by subsequent correspondences between parties to the said contract. Since the Executive Consultant Agreement does not specify a specific method of modifying the KPIs of J.A.L., the fixture of the AOP targets for FY 2022-23 as reflected in the MIS reports tantamounts to a modification of J.A.L.'s KPIs as per the Executive Consultant Agreement.

5.11. It is submitted that it would be unreasonable that when FSS itself in its MIS Reports specified its target revenue and EBITDA to be Rs. 277.3 crore and (-) 11.2 crore respectively, J.A.L., despite achieving those targets was denied his performance bonus since he did not achieve revenue and EBITDA of Rs. 675 crore and Rs. 172 crore respectively as per Consultant agreement. This cannot be a reasonable argument as J.A.L.'s KPIs far exceeded that of FSS's targets which was set by FSS itself.

5.12. It is stated that by FSS's own admission in its email dated 24.05.2023, J.A.L. not only met the AOP targets but exceeded them. This is reflected in the MIS report of FSS as well. Therefore, it may be seen from the above that J.A.L. clearly met and exceeded his KPIs which were modified by FSS through the publication of the same in its MIS report and was further admitted by its Head of Finance in the email dated 24.05.2023.

5.13. It is stated that only because FSS, being fully mindful of its undisputable debt of Rs. 2,97,36,000/- that was due and payable to J.A.L. towards Performance Incentive, for FY 2022-23, FSS maliciously withheld J.A.L.'s Garden Leave as a bargaining chip and condition precedent to compel J.A.L. to issue a No Dues Certificate. It is stated that this did not meet the requirement for a pre-existing dispute. In any case, this lone defence raised by FSS is a mere moonshine defence with no substance or merit whatsoever and is a counterblast to J.A.L.'s petition and therefore holds no water.

5.14. It is stated that FSS admitted in the letter dated 16.02.2024 issued to J.A.L. that his dues from 01.11.2022 to 03.12.2022 totalling Rs. 44,91,667/- were due and payable to him. Furthermore, in light of the targets specified in the MIS reports of

FSS and the email dated 24.05.2023 sent by FSS's Head of Finance, it can be seen that J.A.L. is eligible to receive the performance incentive since he exceeded his targets for FY 2022-23. The total sum due to J.A.L. in respect of his performance bonus, calculated in the manner provided for in Exhibit E of the Executive Consultant Agreement, is Rs. 2,97,36,000/-. The total debt due from FSS to J.A.L., which has been admitted, therefore falls within the pecuniary jurisdiction of this Tribunal.

6. Arguments by FSS (respondent)

6.1. it is stated that J.A.L. signed Executive Consultant Agreement dated 14.05.2021 ("the Agreement") and was engaged as Chief Executive Officer (CEO) of the Pay Tech business unit of FSS ("Annexure A", page 16 of FSS's Paper book). As per the Agreement, he was entitled to a Fixed Executive Fee of Rs. 4,90,00,000 per annum and a certain performance incentive, the payment of which was expressly conditioned solely upon the achievement of pre-agreed performance metrics as detailed in

Exhibits D and E of the Agreement ("Annexure A", pages 34 to 37 of Respondent's Paper book).

6.2. On **03.06.2023**, FSS exercised its right under Clause 11 (ii) of the Agreement and **terminated** the agreement *'without cause'*, and in accordance with Clause 11 (d) of the Agreement and J.A.L. was placed on *Garden Leave* for six months ending 03.12.2023 (Termination Letter is provided as "Annexure C", page 47 of Respondent's Paper book).

6.3. On 09.07.2023, during the garden leave, J.A.L. issued an email claiming an alleged bonus of Rs. 2,60,00,000 (Rupees Two Crores and Sixty Lakhs). In response to the said email, Mr. Balasubramanian V, CEO-Cash Tech (who was heading the Cash Tech and Pay Tech Business divisions) issued a response stating: "*Regarding your incentive, it is based on the consulting agreement signed by you with the company with such parameters provided and agreed by you and your performance against such parameters provided* ." (Annexure 5, page 64 of **Vol. 1** Applicant's Paper book). Hence, as early as July 2023, FSS informed in writing that the payment of the performance incentive would be based on the Agreement only. These facts remain undisputed. Thereafter, petitioner issued other communications in 2023 asking for performance incentive. Pertinently, J.A.L. did not even mention AOP as a metric or that the Agreement was amended by virtue of the AOP or otherwise in such emails.

6.4. On **02.03.2024**, an email was issued by J.A.L. containing baseless invoices for alleged professional fee and performance incentive, and FSS expressly rejected and disputed J.A.L.'s performance incentive and professional fee claims by email dated **06.04.2024** issued by Mr. Gautam Rohidekar, the then SVP-Legal of FSS, and provided detailed reasons for the same in the said email ("Annexure G", page 56 of FSS's Paper book).

6.5. It is stated that in the aforesaid email of 06.04.2024, the following explanation was also provided by the Respondent to J.A.L. for rejection / denial of claims:

i) the KPI (Measurement) set out in Exhibit D of the Agreement specifies the following targets for FY22 & FY23:

Revenue— Rs. 675 Crores; *EBITDA*—Rs. 172 Crores ("Annexure A", page 35 of Respondent's Paper book), which were not achieved.

ii) And, as per Exhibit E of the Agreement if less than 100% of the KPI target is achieved, the incentive payable is 0%.

iii) It is submitted that FSS's Pay Tech Business Division achieved Revenue of only Rs. 296.47 Crores (43.92% of KPI target) and EBITDA of only Rs. 5.38 Crores (3.13% of KPI target) in FY 2022-23 ("Annexure G", page 56 of Respondent's Paper book). Since the achievement was well below 100% in both the metrics, J.A.L. was entitled to **nil performance incentive** under the Agreement.

6.6. Thereafter on 29.04.2024, J.A.L. issued further email baselessly demanding payment of professional fee and performance incentive, without providing any reason. FSS issued an email dated **20.06.2024** denying all allegations and assertions (including allegations on payment of professional fee and performance incentive) and reiterated FSS's justifications provided in aforesaid email of 06.04.2024. (email dated 20.06.2024 is "Annexure H", page 58-59 of Respondent's Paper book).

6.7. It is stated that J.A.L. issued the **Form 3 and 4 demand notice** dated **02.05.2025** where he made vague and baseless references to the AOP and provided a computation sheet, where he deliberately omitted quoting the metrics for performance incentive under Exhibit D of the Agreement which he was bound by. The petitioner made such claims with the sole motive to unjustly enrich himself without any basis and is nothing but an afterthought. The Form 3 and 4 demand notice was also promptly denied by **FSS** vide **response** dated **13.05.2025,** where pre-existing disputes as to allegations and claims of professional fee and performance incentive were also informed to J.A.L. (Response to Form 3 and 4 is "Annexure I", pages 60-65 of Respondent's Paperbook).

6.8. The entire claim of J.A.L. for performance incentive rests on the assertion that the Key Performance Indicators / targets ("KPI") in Exhibit D of the Agreement were *"modified"* by the *Annual*

Operating Plan ("AOP") and an email dated 24.05.2023 about financial highlights of FSS. This assertion is untenable in light of Clauses 15 and 19 of the Agreement. Clause 15 reads as: *"No supplement, modification, amendment or waiver of the terms of this Agreement shall be binding on the parties hereto unless executed in writing by the party to be bound thereby."* ("Annexure A", page 22 of Respondent's Paperbook). Further, Exhibit E provides: *"The Performance Incentive is payable on a yearly basis based on achieving pre-agreed performance / business results as per the KPI (Measurement) attached with this agreement."* ("Annexure A", page 37 of Respondent's Paper book). There is no Board resolution, authorised written communication or any written amendment of the Agreement which was made/executed by FSS in respect of the alleged modification of KPIs as mentioned in Exhibit D of the Agreement nor did FSS agree to such modification otherwise at any point in time.

6.9. It is submitted that targets in the AOP are entirely irrelevant in the present matter as no modification / amendment to

Agreement was agreed in writing by J.A.L. and FSS pursuant to the AOP or otherwise (Pages 4–7 of Respondent's Paper book). Hence, all the targets for J.A.L. to claim performance incentive were only comprised in Exhibits D and E of the Agreement. It is evident from aforesaid FSS's email dated 06.04.2024 that J.A.L. failed to meet his KPI targets as defined in the Agreement and was therefore not entitled to any performance incentive ("Annexure G", pages 56–57 of Respondent's Paper book). It is pertinent to state that J.A.L. did not allege / claim modification of KPI at any time before issuance of Form 3 and Form 4 dated 02.05.2025 by him, which itself shows mala fides on part of J.A.L.. Hence, reference to AOP is clearly an afterthought to coerce FSS into paying the disputed sum(s).

6.10. It is stated that, in the present case, *FSS genuinely, expressly and unequivocally disputed J.A.L.'s claims* of professional fee, Performance Incentive and interest *thereon well before the issuance of the Form 3 and 4 demand notice* (dated 02.05.2025 by petitioner, *through emails of 06.04.2024 and 20.06.2024* (Annexures G and H, pages 56–60 of Respondent's Paper book). It is submitted that FSS disputed the professional fee, and performance incentive claims through aforesaid emails dated 06.04.2024 and 20.06.2024 reiterating that J.A.L. was not entitled to professional fee (without completion of certain exit formalities) and performance incentive. Both the aforesaid communications disputing the claims of J.A.L. were issued more than a year prior to the issuance of Form 3 and 4 demand notice. It is well-settled law that this Tribunal must reject an application under Section 9 of the Code where notice of a dispute has been received by the Operational Creditor, or where there is a record of a dispute in the information utility.

6.11. Regarding petitioner's alleged claim for professional fees of Rs. 52,84,623, it is submitted that the same is subject to completion of exit formalities required by FSS's policies (which is usual in any company in the industry) and stated in FSS's email of 06.04.2024, and such amount in any event is well below the threshold of Rs. 1,00,00,000 prescribed under Section 4 of the Code for initiation of CIRP ("Annexure G", page 57 of

Respondent's Paper book). Hence, none of J.A.L.'s claims (including interest claims) is tenable.

6.12. It is evident from the above facts that J.A.L. is requiring this Tribunal to adjudicate contested questions of contractual interpretation on merits, including whether the AOP targets supersede the KPI targets in Exhibits D and E of the Agreement in the absence of a written amendment pursuant to Clause 15 of the Agreement, and whether J.A.L. achieved his performance milestones. It is submitted that this exercise is beyond the scope of proceedings under Section 9 of the Code. The Hon'ble Supreme Court in **Mobilox Innovations Private Limited v. Kirusa Software Private Limited (2018) 1 SCC 353** has held that the Adjudicating Authority is not expected to enter into final determination of a dispute at the admission stage of a Section 9 application. Where the dispute involves genuine questions of fact and contractual interpretation, the application must be rejected.

7. Analysis and findings

7.1. Heard the Learned Counsels and perused the pleadings.

7.2. Jaishankar A.L. (Operational Creditor) was appointed as Chief Executive Officer of Pay Tech Division of Financial Software & Systems Private Limited (Corporate Debtor) vide Executive Consultant Agreement dated **14.05.2021**. The agreement was for a period of three years.

7.3. FSS cancelled the Executive Consultant Agreement *without cause* (as per Clause 11 a(ii) of the Consultant Agreement) and terminated the petitioner from his role as Chief Executive Officer of Pay Tech Business Unit with effect from June 03, 2023 and Operational creditor was placed on Garden Leave for a period up to 6 months i.e. up to December 03, 2023.

7.4. The Agreement *inter alia* stipulated that the Operational Creditor should meet certain *Key Performance Indicators* (KPIs) for FY 2022-23 and FY 2023-24 which were specified in Exhibit D annexed to the Agreement to qualify and earn Performance

Incentive / Performance Bonus, along with increments based on the extent to which such KPI objectives have been exceeded.

7.5. It is the claim of the operational creditor that Corporate Debtor has not paid the three invoices raised by the Operational Creditor. He has given the dates of default as 30.11.2023 and 31.03.2024. Operational Creditor submitted that the Corporate Defaulter defaulted a sum of Rs. 4,38,12,095/- as on 31.03.2025 with interest.

7.6. It is the case of Operational Creditor that the **Annual Operating Plan (AOP)** set by the Board of Directors of the Corporate Debtor before the commencement of a financial year where the financial goals and KPIs of that particular financial year were set forth *would supersede* the KPI objectives stipulated in Exhibit D of the Executive Consultant Agreement, as they were mutually agreed upon and set out before the beginning of the financial year.

7.7. The Operational Creditor contends that for the financial year 2022-23 the Pay Tech division for which he was the CEO achieved and exceeded KPI set out in Annual Operating Plan. This was confirmed by MIS reports of FSS as well as the email sent out by the Head of Finance on 24.05.2023. Hence Operational Creditor was eligible for professional fees and performance incentive for which he raised invoices and Corporate Debtor committed default in payment of the same. The Operational Creditor sent the Demand Notice under IBC on **02.05.2025**.

7.8. Per contra Corporate Debtor stated that Operational creditor was eligible for performance incentive only based on KRIs stipulated in Executive Consultant Agreement dated 14.05.2021 and not based on Annual Operating Plan as claimed by the Operational Creditor. It is stated that Corporate Debtor raised the objections to the invoices by emails dated:

i) 03.06.2023 signed by Mr. Rudhraapathy J. (Director)

ii) 06.04.2024 by Mr. Gautam Rohidekar (erstwhile SVP-Legal) and

iii) 20.06.2024 by Mr. Prakash Kaliyappan (Senior Manager – Legal) well before the demand notice dated 02.05.2025 was sent by Operational Creditor and hence it is pre-existing dispute.

7.9. It is stated that the demand notice dated 02.05.2025 was promptly responded on 13.05.2025 stating that the debt due was denied and there was pre-existing dispute.

7.10. In Rejoinder, it is stated by Operational Creditor that since the Executive Consultant Agreement did not specify a specific method of modifying the KPIs , the fixture of the AOP targets for FY 2022-23 as reflected in the MIS reports did tantamount to modification of Operational Creditor's KPIs as per the Executive Consultant Agreement and the defence raised by Corporate Debtor was a moonshine defence.

7.11. Before proceeding further let us examine the documentary evidences available in this regard:

i) KPI parameters as per Executive Consultant Agreement:

KPI (Measurement) for FY '22 and FY '23

	Revenue	EBITDA
FY '22	₹502 crs	₹116.5 crs
FY '23	₹675 crs	₹172 crs

Consultancy Agreement Page 2

The Parties agree that the KPI's can be modified with the mutual consent, on a yearly basis and may be agreed upon before the beginning of each financial year.

* Specific metrics will be discussed to ensure quantitative assessment of performance and its linkage to the Incentive under EXHIBIT E.

ii) Comparative Chart of Key Performance Indicators (KPI) given by Operational Creditor based on Consultant Agreement, Annual Operating Plan and Actuals for financial year 2022-23:

Category	**KPIs of FY 2022-23 as per Exhibit D of Executive Consultant Agreement (Rs.)**	**KPIs as per AOP for FY 2022-23 Targets (Rs.)**	**Actual Achieved (Rs.)**

Revenue	675 crore	277.3 crore	290.7 crore
EBITDA	172 crore	(-) 11.2 crore Loss	4.6 crore Profit

iii) Eligible amount of incentive as per Consultant Agreement and the stipulation that the performance incentive is payable on a yearly basis based on achieving pre agreed performance/ business results as per the KPI (Measurement) attached with agreement:

EXHITBIT E

FEES, ENTITLEMENTS and PAYMENT TERMS

Fixed Executive Fee	INR 4,90,00,000/- per annum
Incentive*	INR 2,10,00,000/- per annum

* The Performance Incentive is payable on a yearly basis based on achieving pre-agreed performance / business results as per the KPI (Measurement) attached with this agreement.

The Executive will be covered under the Group Medical Insurance (Medical, Personal Accident and Term Life) of the Company at a level as applicable.

On achievement of target percentage, the payout of the incentive would be as per schedule given below. In case of multiple targets, the weighted average shall be considered.

S.No	% of Target achieved	% of Incentive payable
1	< 100%	0%
2	100%	100%
3	100.1% to 120	120%
4	Above 120.1%	140%

Taxes: Any payment under this Agreement to the Executive shall be exclusive of all applicable taxes and levies except direct taxes relating to income arising out of this assignment.

iv) Extract from termination notice dated 03.06.2023

Please be informed that your Consultant Agreement is hereby terminated and your designated role as Chief Executive Officer of the Paytech Business Unit under the Consultant Agreement with FSS is terminated (as per Clause 11(a)(ii) of the Consultant Agreement) with this notice being effective from today, i.e., June 03, 2023 and your notice period will immediately commence and continue for a period of up to 6 (six) months, i.e., latest until December 03, 2023 and you are placed on Garden Leave as specified below.

As per Clause 11(a)(ii) of the Consultant Agreement, you will be provided with "salary" on a pro rate basis (pro rata of "Fixed Executive Fee" stated in Exhibit E to the Consultant Agreement) during the notice period, subject to you providing your invoice and the information and details required by the Company, and fulfilling your obligations under the Consultant Agreement, including but not limited to obligations under Clauses 9, 10, 13 etc. of the Consultant Agreement, to the satisfaction of the Company.

7.12. Based on the above documents , it is observed that the Operational Creditor who joined FSS as CEO of Pay Tech

Division on 14.05.2021 was terminated on 03rd June 2023. The relevant period for calculation of his incentive would be Financial Year 2022-23 as that was the full financial year on which he served the company.

7.13. The issue to be decided is:

i) *whether the petitioner is eligible for incentive for FY 2022-23 ,*

ii) *if so, is it based on Consultant agreement or based on AOP (Annual Operating Plan).*

7.14. Petitioner states that incentive should be based on AOP, as AOP was set in the beginning of the year by the Board. He relied on the MIS report to support his case that he achieved the parameters as set in AOP.

7.15. Per contra FSS stated that KPI was based on Executive Consultant Agreement. The Petitioner failed to achieve the Objectives and Key Results and was reluctant to work towards cash neutral Pay Tech AOP, despite board directions and failed in agreed deliverables. An extract of the e -mail dated 03.06.2023 sent by Mr.Rudraa J , Director, FSS explains the position:

8. You have been repeatedly made aware by the management that the AOP as submitted by you to the Board cannot be presented to lenders as it does not meet Board and lenders' expectations. You are refusing to come to terms with the reality of Paytech business and non-availability of funding in near term and reluctant to work towards cash neutral Paytech AOP despite Board's clear directions. Further, you have exhibited lack of understanding and utter disregard for the concerns of the management by failing to give three-year business plan for Paytech.

9. Despite being compensated well above the industry standards, you have been grossly underperforming in your role as CEO- Paytech as against the parameters agreed by you under the Consultant Agreement signed by you on 14 May 2021 ("**Consultant Agreement**"). Among other things, you have failed to: (i) achieve the Objectives and Key Results (OKRs) and Key Performance Indicators in the Consultant Agreement and (ii) deliver Product Road map and a Platform strategy for the Paytech business which are agreed deliverables as per your contract.

7.16. There were further mails sent by FSS to the petitioner on 06.04.2024 by Mr. Gautam Rohidekar (erstwhile SVP-Legal) and 20.06.2024 by Mr. Prakash Kaliyappan (Senior Manager – Legal) stating that the petitioner was making unsustainable claims which were not maintainable.

7.17. The Company issued the letter dated **22 February 2024** to the petitioner regarding **full and final payment** under the Consultant Agreement along with the release letter. In the letter, the Company stated that it would process the release of the full and final payment of Rs. 44,91,667/- to him subject to he completing his obligations under the said letter. Till date, petitioner deliberately withheld from providing the signed copy of the said letter to the Company due to which this payment is pending.

7.18. It is observed that all these correspondences regarding the performance incentive between the petitioner and FSS happened well before the demand notice dated 02.05.2025 under IBC sent by Operational Creditor. FSS had made clear its stand that petitioner was not eligible for performance incentive due to non achievement of KPIs as mentioned in Executive Consultant Agreement and the claim of the petitioner for performance incentive based on AOP is unfounded as FSS did not convey any thing in writing to the effect that incentive would be calculated on the basis of AOP.

7.19. From the above analysis and findings , it is observed that Corporate Debtor raised the dispute long before the demand notice was issued under IBC . So the tribunal is of the view that there is a pre existing dispute and the defense raised by Corporate Debtor is not a moonshine defense.

7.20. Hon'ble Supreme Court in ***Mobilox Innovations Pvt. Ltd. v. Kirusa Software Pvt. Ltd.,*** "(2017) ibclaw.in 01 SC" stated that :

25. *Therefore, the adjudicating authority, when examining an application under Section 9 of the Act will have to determine:*

(i) Whether there is an "operational debt" as defined exceeding Rs.1 lakh? (See Section 4 of the Act) (Rs. 1 crore now)

(ii) Whether the documentary evidence furnished with the application shows that the aforesaid debt is due and payable and has not yet been paid? and

(iii) Whether there is existence of a dispute between the parties or the record of the pendency of a suit or arbitration proceeding filed before the receipt of the demand notice of the unpaid operational debt in relation to such dispute?

If any one of the aforesaid conditions is lacking, the application would have to be rejected.

Apart from the above, the adjudicating authority must follow the mandate of Section 9, as outlined above, and in particular the mandate of Section 9(5) of the Act, and admit or reject the application, as the case may be, depending upon the factors mentioned in Section 9(5) of the Act.

7.21. Hon'ble NCLAT in **Talbot& Company vs Austin Distributers Pvt Ltd** *(2023) ibclaw.in 34 NCLAT* held that:

16. It is well settled that in Section 9 proceedings the Adjudicating Authority is not to enter into final adjudication with regard to existence of dispute between the parties regarding operational debt. What has to be looked into is whether the defence raises a dispute which needs further adjudication by a competent court. Disputes pertaining to contractual issues are not to be resolved in Section 9 proceedings. If we apply the test laid down in Mobilox by the Hon'ble Apex Court to the facts of the present case it is clear that the defence raised by the Corporate Debtor in their reply filed in Section 9 application is not illusory or moonshine. The present is neither a case where there is undisputed debt for which insolvency can be asked by the Appellant to be initiated. The Adjudicating Authority has, therefore, correctly applied the ratio of the Mobilox Judgment in dismissing the Section 9 application.

7.22. Hon'ble Supreme Court in **GLS Films Industries Pvt Ltd versus Chemical Suppliers India P.Ltd.** *(2026) 266 Comp Cas 368: 2026 SCC Online SC 551* stated that :

21. Given the obtaining facts and the afore stated settled legal position, it was not for the National Company Law Appellate Tribunal to delve into the appellant's dispute to decide whether it had actual merit. All that is required is for the Adjudicating

Authority to satisfy itself as to the existence of a plausible pre-existing dispute, which was not spurious, hypothetical or illusory. Whether the party raising that dispute would succeed on the strength thereof is not within the ken of such inquiry.

7.23. In view of the above analysis, findings and the legal position, the Petition **CP 346/CHE/2025** filed by the petitioner is **dismissed.**

7.24. File be consigned to record.

Sd/-	Sd/-
VENKATARAMAN SUBRAMANIAM MEMBER (TECHNICAL)	**SANJIV JAIN** MEMBER (JUDICIAL)