

**NATIONAL COMPANY LAW TRIBUNAL  
CUTTACK BENCH  
CP(IB) No. 03/CB/2023**

*(An application under Section 9 of The Insolvency & Bankruptcy Code,  
2016 read with Rule 6 The Insolvency & Bankruptcy (Application to  
Adjudicating Authority) Rules, 2016)*

**In the Matter of:**

**CULVER MAX ENTERTAINMENT PVT. LTD.**

**[ RENAMED AS SONY PICTURES NETWORKS INDIA PVT. LTD.]**

Registered Office Address at:

4<sup>th</sup> Floor, Interface, Building No. 7,  
Off. Malad Link Road, Mumbai-  
400064, Maharashtra, India

..... APPLICANT/OPERATIONAL CREDITOR

VERSUS

**RECHARGEKIT FINTECH PRIVATE LIMITED**

**[ FORMERLY KNOWN AS RECHARGEKIT COMMUNICATIONS PVT. LTD.]**

Registered Office Address at:

Esplanade One Mall, Room No.  
725, 7<sup>th</sup> Floor, Rasulgarh,  
Bhubaneswar, Khorda-  
751010, Odisha, India

..... RESPONDENT/CORPORATE DEBTOR

**ORDER PRONOUNCED ON: 16.10.2026**

**CORAM:   CHEEKATI RADHA KRISHNA, MEMBER (JUDICIAL)  
              BANWARI LAL MEENA, MEMBER (TECHNICAL)**

**APPEARANCE:**

**FOR APPLICANT:   MR. SASWAT K. ACHARYA, ADV.  
                          MRS. SUSHREE PHOLGU, ADV.  
                          MR. ABHIJEET AGARWAL, ADV.  
                          MR. JAISH JOSHI, ADV.  
                          MR. SHUBHAM AGRAWAL, ADV.  
                          MR. DHIREN CHAUDHARY, ADV.  
                          MR. KRUTIBASH MOHAPATRA, ADV**

**FOR RESPONDENT: MR. SOURYA SUNDAR DAS, SENIOR ADV.  
                          MRS. SHALAKA DAS, ADV.  
                          MR. SRI OM SWARUP, ADV.  
                          MS. SOBHNA DAS, ADV.**

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**ORDER**

**PER: BANWARI LAL MEENA, MEMBER (TECHNICAL)**

1. The present application has been filed by **Culver Max Entertainment Private Limited /now re-named as** Sony Pictures Networks India Pvt. Ltd. w.e.f. May 2026 (hereinafter referred to as **“Operational Creditor”/ “OC”**) under Section 9 of the Insolvency & Bankruptcy Code, 2016 (hereinafter referred to as **“Code”**) read with Rule 6 of The Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 against one **RechargeKit Fintech Private Limited** (formerly known as RechargeKit Communications Private Limited) (hereinafter referred to as **“Corporate Debtor”/“CD”**) seeking initiation of Corporate Insolvency Resolution Process (hereinafter referred to as **“CIRP”**) for a default amount of **Rs.5,94,67,249/-** which fell due on **03.07.2022**.

2. The present petition was filed on 20.12.2022 and *vide* Order dated 30.04.2024, this Adjudicating Authority had dismissed the present Petition on the ground that the Company Secretary of the Applicant lacked express Board authorization to institute proceedings under Section 9 of the Code. Aggrieved thereby, the Applicant preferred **Company Appeal (AT) (Ins.) No. 1167 of 2024** before the Hon'ble NCLAT, Principal Bench, New Delhi. The Hon'ble NCLAT, *vide* Order dated **10.12.2025**, **set aside** the rejection order dated 30.04.2024 and remanded the matter back to this Tribunal with a direction to provide an opportunity to the Applicant to cure the defect in authorization in terms of the proviso to Section 9(5)(ii) of the Code, and thereafter adjudicate the application afresh on merits.

3. Pursuant to the remand directions and this Tribunal's order dated 08.01.2026, the Applicant filed an Additional Affidavit dated 20.01.2026 placing on record a certified copy of the Board Resolution dated 22.08.2024 along with Letter of Authorization dated 16.01.2026 issued by the General Counsel & Executive Director in favour of Ms.

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Sapna Chaurasia, Senior Lead Counsel, to cure the defect in authorization and affirm, verify, and ratify the pleadings on behalf of the OC.

**SUMMARY OF PLEADINGS**

**CONTENTIONS BY APPLICANT:**

4. The Applicant/Operational Creditor, Culver Max Entertainment Private Limited/nor renamed as Sony Pictures Networks India Private Limited, has in its application made *inter-alia* the following averments:

a. The OC, is a company engaged in broadcasting, media distribution, and operating the digital over-the-top (“OTT”) streaming platform *Sony LIV*. The CD, Rechargekit Fintech Private Limited (***formerly known as Rechargekit Communications Private Limited***), is an entity having its registered office in Bhubaneswar, Odisha. The parties entered into a **Subscription Collaboration Agreement dated 23.04.2021** (hereinafter referred to as the “SCA”) for an initial term of 12 months, under which the CD agreed to market, promote, and sell premium subscription codes of *Sony LIV* to its partners and consumers.

b. In terms of **Clause 1.1** and **Clause 1.5** of the SCA, the OC initially provided the CD with 5,000 Premium Subscription Codes across various denominations at an agreed discount of 20% on the prevailing market price, aggregating to a total value of Rs. 20,75,000/-. The breakdown and valuation of the initial 5,000 subscription codes allotted to the CD are set out below:

| Pack Type           | Coupon Validity | Denominations | Price of the Subscriptions Codes at discounted Rate (per Agreement Clause 1.1) | Total Value of The Subscription Codes |
|---------------------|-----------------|---------------|--------------------------------------------------------------------------------|---------------------------------------|
| LIV Premium Monthly | 1 year          | 1000          | Rs.239                                                                         | Rs.2,39,000/-                         |

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|                                  |           |             |           |                       |
|----------------------------------|-----------|-------------|-----------|-----------------------|
| LIV<br>Premium<br>Half<br>Yearly | 1 year    | 1000        | Rs.559    | Rs. 5,59,000/-        |
| LIV<br>Premium<br>Yearly         | 1 year    | 1000        | Rs.799    | Rs. 7,99,000/-        |
| LIV<br>Special                   | 1 year    | 1000        | Rs. 159   | Rs. 1,59,000/-        |
| LIV<br>Special+                  | 1 year    | 1000        | Rs. 319   | Rs. 3,19,000/-        |
| <b>Total</b>                     | <b>NA</b> | <b>5000</b> | <b>NA</b> | <b>Rs.20,75,000/-</b> |

For subsequent recharges after exhausting the initial batch of 5,000 codes, an **Application Programming Interface ("API")** mechanism was established, tested, and integrated across the servers of both parties, enabling the CD to raise digital subscription requests without any quantitative restrictions.

c. Under **Clause 3.1** and **Clause 3.2** of the SCA, the CD committed to an unconditional Annual Minimum Guarantee ("MG") of Rs. 6,00,00,000/- (Rupees Six Crores), payable in Quarterly Minimum Guarantee ("QMG") tranches of Rs. 1,50,00,000/- at the close of every quarter. Considering the social and economic hardships faced during Covid, the Agreement pursuant to **Clause 3.2**, provided that in case there is COVID-19, lockdown restrictions exceeding 15 days during the term of the agreement, the payment of the QMG in which such lock down is imposed, the due date for that Quarter and as well all the subsequent quarters, if any, will proportionally be extended by 90 days, and as a result the overall term of the SCA will also be proportionally extended by 90 days i.e. thereby up to 21.07.2022.

d. Under **Clauses 3.3, 3.5, and 3.6 of the SCA**, the CD was obligated to make payment within 24 hours of actual consumer purchase and in the event the QMG exceeded actual

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consumption, the balance deficit was payable by the CD within 30 days of the submission of the invoice by the OC to CD.

e. Between August 2021 and February 2022, the OC raised running invoices towards actual consumption as well as the fell-due QMG tranches, amounting to an aggregate sum of Rs. 3,01,63,310/-. Against these invoices, the CD made remittances totalling only Rs. 5,32,751/-, leaving massive unpaid defaults under Invoice No. 271400000721 (Rs. 1,46,66,901/- outstanding) and Invoice No. 271400000998 (Rs. 1,49,63,658/- entirely unpaid). The details of the invoices raised by the OC and payments received against each invoice are tabulated below:

| Date of Invoice   | Invoice No.   | Invoice Amount (In INR) | Payment Received Against Invoice (in INR) | Date of Receipt of payment |
|-------------------|---------------|-------------------------|-------------------------------------------|----------------------------|
| 31 August 2021    | 27140000 0429 | 318                     | 318                                       | 7 September, 2021          |
| 31 August 2021    | 27140000 0430 | 3,111                   | 3,111                                     | 7 September 2021           |
| 31 August 2021    | 27140000 0431 | 10,562                  | 10,562                                    | 7 September 2021           |
| 31 August 2021    | 27140000 0432 | 8,292                   | 8,292                                     | 7 September 2021           |
| 30 September 2021 | 27140000 0554 | 7,180                   | 7,180                                     | 8 November 2021            |
| 15 November 2021  | 27140000 0720 | 3,672                   | 3,672                                     | 15 December 2021           |
| 15 November 2021  | 27140000 0721 | 149,66,901              | 3,00,000                                  | 28 February 2022           |

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|                                      |                          |                    |                                              |                           |
|--------------------------------------|--------------------------|--------------------|----------------------------------------------|---------------------------|
| 28<br>Decem<br>ber<br>2021           | 27140000<br>0852         | 3,272              | 3,272                                        | 24 January<br>2022        |
| 31<br>Januar<br>y 2022               | 27140000<br>0965         | 4,949              | 4,949                                        | 18 February<br>2022       |
| 31<br>Januar<br>y 2022               | 27140000<br>0966         | 28,121             | 28,121                                       | 18 February,<br>2022      |
| <b>11<br/>Februa<br/>ry<br/>2022</b> | <b>2714000<br/>00998</b> | <b>1,49,63,658</b> | <b>No payment<br/>Received till<br/>Date</b> | <b>Not<br/>applicable</b> |
| 28<br>Februa<br>ry<br>2022           | 27140000<br>1196         | 1,63,310           | 1,63,310                                     | 17 March,<br>2022         |
| <b>Total</b>                         |                          | <b>3,01,63,310</b> | <b>5,32,751</b>                              |                           |

f. Despite multiple written reminders issued by the OC between 15.12.2021 and 22.02.2022, the CD failed to clear its outstanding dues. The CD explicitly acknowledged its liability *vide* email dated 31.01.2022. Upon continued non-payment, the OC issued a notice dated 10.03.2022 calling upon the CD to remedy the material payment breach within 15 days. Despite receipt of the notice, the CD failed to cure the default, leading the OC to invoke **Clause 9.1.1 of the SCA** and terminate the contract *vide* Termination Notice dated 03.06.2022.

g. In terms of **Clause 9.1** and **Clause 9.4** of the SCA, upon termination due to default by the CD, the entire MG of Rs. 6,00,00,000/- fell immediately due and payable after setting off payments already remitted. *Vide* demand letter dated 01.07.2022, the OC called upon the CD to pay the net outstanding balance of Rs. 5,94,67,249/-, which fell due on 03.07.2022 and remained unpaid. In view of the persistent default, the OC issued a statutory Demand Notice under Section 8 of the Code dated 25.08.2022. The CD replied to the Demand

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Notice on 05.09.2022 raising frivolous, untenable, and afterthought contentions, to which the OC responded *vide* its letter dated 21.09.2022.

**h.** The Applicant submitted that the MG consideration constitutes a valid and crystallized operational debt arising out of the provision of digital media distribution services through both physical codes and by providing API integration set up by the OC. The defaulted sum of Rs. 5,94,67,249/- exceeds the statutory threshold of Rs. 1 Crore mandated under Section 4 of the Code, and since there was no genuine pre-existing dispute raised prior to default, the present Application deserves to be admitted for initiation of CIRP against the CD.

**REPLY BY RESPONDENT:**

**5.** The submissions made by the Respondent/Corporate Debtor, Rechargekit Fintech Private Limited (formerly Rechargekit Communications Private Limited), through its Managing Director/Authorized Representative, Mr. Abhisekh Srivastav, are summarized herein:

**a.** The CD submitted that the present Application filed under Section 9 of the Code is non-maintainable and liable to be dismissed in limine due to lack of competence and authorization on the part of the signatory instituting the petition. It was contended that the petition has been verified and filed by the Company Secretary of the Applicant without any specific Board Resolution empowering him to sue or initiate legal proceedings against the Respondent. Relying upon the judgment of the Delhi High Court in ***M/s Nibro Limited v. National Insurance Co. Ltd.*** (AIR 1991 Del 25), the Respondent submitted that a company must be represented by its Managing Director or by a director specifically authorized by a proper Board Resolution, and that while Order XXIX Rule 1 of the CPC specifies who may sign the

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verification of pleadings, it does not provide as to who would represent the company. It was further averred that while the underlying agreement was signed with Sony Pictures Networks India Private Limited, the petition has been instituted by Culver Max Entertainment Private Limited without explaining in the body of the petition under what circumstances it could pursue the litigation, and that the Applicant merely annexed a certificate under Rule 29 of the Companies (Incorporation) Rules, 2014 stating that the company was originally incorporated as Set India Private Limited.

**b.** The Respondent submitted that the alleged SCA dated 23.04.2021 is invalid, unconscionable, and unenforceable in the eyes of law, having been obtained by taking undue advantage of extreme personal distress and medical emergency. It was contended that on 24.04.2021, when the representative of the Applicant, one Mr. Cletus, insistently pushed for execution of the contract via an online link, the signatory of the Respondent was severely afflicted with COVID-19 with high fever and isolated in a room without access to computer systems, while his entire family was critically infected. The Respondent placed on record hospital records and death certificates demonstrating that the father of the signatory was admitted to Apollo Hospital, Bhubaneswar and expired due to COVID-19 on 25.04.2021 (*Annexure R-3*), and the signatory himself was subsequently hospitalized at Neelachal Hospital between 28.04.2021 and 02.05.2021 (*Annexure R-4*). The Respondent contended that the signatory was not in a conscious or stable state of mind to peruse the terms, and the agreement was signed under misrepresentation that it was a mere formality.

**c.** The Respondent has further contended that it had categorically objected to and rejected the MG clause prior to the

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execution of the contract. It was highlighted that *vide* email dated 21.04.2021 (*Annexure R-2*), the Respondent explicitly informed the Applicant to delete the MG clause from the draft agreement due to uncertainties surrounding the COVID-19 pandemic. It was further submitted that immediately upon recovering and examining the executed agreement, the Respondent issued an **email dated 21.05.2021** (*Annexure R-5*) reiterating that it had never consented to any MG condition and offering to continue the collaboration purely on an actual commission basis, failing which the Applicant was requested to terminate the engagement and close all business access.

**d.** The Respondent submitted that the alleged agreement is void and violative of principles of natural justice as it is entirely one-sided, granting unilateral termination rights under Clause 9.1 exclusively to the OC without conferring corresponding rights on the CD. It was further contended that subsequent to 21.05.2021, discussions arose regarding the execution of a fresh agreement and rectification of valuation errors, during which disputes emerged regarding stamp duty obligations under the Bombay Stamp Act, 1958, leading the Respondent to refuse payment of stamp duty for an indefinite transaction amount *vide* email communication dated 30.06.2021 (*Annexure R-6*).

**e.** The Respondent further submitted that it denied to pay any stamp duties as the present agreement is purely a contingent contract where the work of the Respondent Company is to approach individuals with an offer to purchase the subscription of the Applicant Company, and it is very much possible that even after making several offers, the Respondent Company may not get success in selling even one subscription, and since the Respondent Company never agreed for minimum guarantee sale,

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imposing stamp duty on an uncertain amount of transaction is highly impossible.

f. The Respondent submitted that it never utilized or redeemed a single code out of the initial batch of 5,000 subscription codes allotted by the Applicant. It was contended that under Clause 3.1 of the Agreement, the Minimum Annual Commitment of Rs. 6,00,00,000/- was payable strictly "in consideration of the subscription being provided" to the Respondent, meaning that the actual delivery and supply of subscription codes was a condition precedent to any payment liability. The Respondent averred that the Applicant failed to supply subscription codes worth Rs. 6 Crores and only provided codes with an effective valuation of Rs. 13,90,000/-, the breakdown of which, as computed by the Respondent, is set out below:

| <b>Subscription Type</b> | <b>Pack</b> | <b>Number of Codes</b> | <b>Rate per Code (in Rs.)</b> | <b>Total Valuation (in Rs.)</b> |
|--------------------------|-------------|------------------------|-------------------------------|---------------------------------|
| LIV Premium Monthly      |             | 1250                   | 239/-                         | 2,98,750/-                      |
| LIV Premium Half-Yearly  |             | 250                    | 559/-                         | 1,39,750/-                      |
| LIV Premium Yearly       |             | 250                    | 799/-                         | 1,99,750/-                      |
| LIV Special              |             | 1,750                  | 159/-                         | 2,78,250/-                      |
| LIV Special+             |             | 1,500                  | 319/-                         | 4,78,500/-                      |
| <b>Total</b>             |             | <b>5,000</b>           | <b>NA</b>                     | <b>13,90,000/-</b>              |

The Respondent contended that in the absence of actual supply of codes matching the MG value, no operational debt of Rs. 6 Crores ever crystallized or became due, and further emphasized that all actual recharges processed through the API mechanism were paid timely and in full, leaving no operational default.

g. The Respondent submitted that under Clause 3.2 of the SCA, in the event a COVID-19 lockdown exceeded 15 days, a

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payment extension of 90 days was mandatory for the current as well as subsequent quarters. The Respondent placed on record successive lockdown and shutdown orders issued by the Government of Odisha (*Annexure R-7*) demonstrating continuous lockdown restrictions from 01.05.2021 to 01.08.2021, and contended that by applying the proportionate contractual formula, the timeline for making payment stood extended by 540 days, rendering the invoices raised and the alleged claim completely premature and fallacious.

**h.** The Respondent further has contended that this Tribunal lacks jurisdiction to entertain the present petition for two distinct reasons. **First**, Clause 12 of the Agreement expressly provides that the Courts of Mumbai shall have exclusive jurisdiction over all disputes arising out of the contract. **Second**, since the maximum possible value of the initial 5,000 codes delivered was only Rs. 13,90,000/-, and all actual API recharges stood fully paid, the genuine claim of the Applicant cannot exceed Rs. 13,90,000/-, which falls far below the mandatory pecuniary threshold of Rs. 1,00,00,000/- prescribed under Section 4 of the Code.

**i.** The Respondent contended that the Applicant failed to fulfill its reciprocal representations, as *Sony LIV* lacked competitive digital content and failed to reflect or recognize the Respondent as an authorized seller on its OTT portal/FAQ section (*Annexure R-8*), thereby frustrating digital sales. The Respondent maintained that it never admitted any debt or MG liability, having only paid for actual services availed, and submitted that the claims raised by the Applicant are misconceived, unsustainable, and liable to be dismissed with costs.



**REJOINDER BY APPLICANT:**

**6.** In response to the contentions raised by the Corporate Debtor in its Reply, the Applicant/Operational Creditor filed its Rejoinder Affidavit through its Authorized Signatory, making *inter-alia* the following averments:

**a.** The Applicant submitted that the defenses and grounds raised by the Respondent in its Reply are *ex-facie* spurious, illusory, and an afterthought, concocted for the first time to create a facade of a dispute where none exists in reality. It was averred that the change of name of the Applicant Company from Sony Pictures Networks India Private Limited to Culver Max Entertainment Private Limited was carried out in accordance with the due process of law under the Companies Act, 2013, and the Respondent was fully aware of this fact well prior to the institution of the present proceedings.

**b.** The Applicant submitted that the Respondent's assertion regarding non-consent to the MG clause is completely false and belied by contemporaneous records. It was countered that during initial contract negotiations on 21.04.2021, the Respondent had merely objected to the proposed 30-day payment extension in the event of a COVID-19 lockdown, citing it as insufficient. Pursuant thereto, the parties renegotiated the terms over a telephonic discussion on 22.04.2021, wherein the Applicant agreed to extend the payment timeline to 90 days for the lockdown-affected quarter as well as subsequent quarters, and the revised draft incorporating Clause 3.2 was shared with and accepted by the Respondent. The Applicant placed on record the email trail dated 21.04.2021 to 23.04.2021 (*Annexure 16*) to establish that the draft agreement was explicitly approved by Mr. Anwar Ul Haque, Director of the Respondent Company, on 23.04.2021 before being executed. The Applicant further placed on record an email dated

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22.02.2022 (*Annexure 17*) wherein the Respondent reaffirmed its contractual commitment, stating that its redemptions were increasing and assuring that it would meet its Annual MG targets.

**c.** The Applicant denied the Respondent's allegation that the contract was executed under coercion or during an incapacitated state of mind, submitting that the signatory, Mr. Abhisekh Srivastav, had reviewed the draft agreement more than 24 hours prior to signing. The Applicant placed on record a digital Audit Report (*Annexure 19*) detailing the timestamps, email IDs, and IP addresses involved, establishing that the agreement was viewed and approved without demur, and was subsequently acknowledged by the Respondent *vide* email dated 30.06.2021 (*Annexure 20*). The Applicant denied receipt of the alleged email dated 21.05.2021 relied upon by the Respondent, and contended that the unilateral absence of a termination right for the Respondent cannot invalidate a voluntarily executed commercial contract.

**d.** The Applicant submitted that no fresh agreement was ever agreed to be executed in place of the original contract. It was clarified that the subsequent discussions in June and July 2021 were solely for the purpose of re-franking the existing agreement to ensure compliance with the Bombay Stamp Act, 1958, without altering any substantive contractual terms. The Applicant contended that under Clause 22 of the Agreement, stamp duty was to be borne equally between the parties, and it was the Respondent who wrongfully resisted paying its share of the stamp duty.

**e.** The Applicant rebutted the Respondent's defense regarding the insufficiency of subscription codes, submitting that the initial 5,000 codes were merely an initial batch for immediate

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distribution, whereas the primary commercial mechanism was the API integration. The Applicant placed on record an extensive email trail (*Annexure 18*) demonstrating live deployment of the API mechanism across the servers of both parties between July and August 2021. The Applicant contended that there was no quantitative restriction on the number of subscription requests the Respondent could process through the API, and it was the Respondent's own commercial failure that it did not generate sufficient minimum requests to meet its committed QMG/MG targets.

**f.** The Applicant submitted that the Respondent's contention that the claim is limited to Rs. 13,90,000/- is legally flawed and contrary to the express terms of the contract. It was averred that while payments against actual API consumption were required to be adjusted against the QMG, however, even if the CD failed to achieve the sales in order to match the guaranteed amount threshold it did not bar the Applicant to invoice the deficit, and in case of a termination under Clause 9.1.1, the entire Annual Minimum Guarantee of Rs. 6,00,00,000/- fell due under Clause **9.4**, leaving a crystallized default of Rs. 5,94,67,249/- which well exceeds the threshold under Section 4 of the Code.

**g.** The Applicant further submitted that the Respondent's allegations regarding digital content quality and marketing representation on the *Sony LIV* portal are baseless and wholly irrelevant to the payment default. The Applicant placed on record an email dated 30.11.2022 (*Annexure 21*), issued by the Respondent after receipt of the Section 8 Demand Notice, wherein the Respondent acknowledged its internal business slowdown and retailer issues, and sought to re-initiate business with the Applicant by proposing new commercial subscription models.

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**SUR-REJOINDER BY RESPONDENT:**

7. In response to the Rejoinder filed by the Operational Creditor, the Respondent/Corporate Debtor filed its Sur-Rejoinder Affidavit through its Managing Director, Mr. Abhisekh Srivastav, making *inter-alia* the following averments:

a. The Respondent submitted that the Rejoinder Affidavit filed by the Applicant does not establish any admission of the alleged debt on the part of the Respondent. It was contended that a fundamental ambiguity and bona fide dispute persist regarding the quantum of the alleged operational debt, and that the genuine claim of the Applicant remains far below the statutory threshold of Rs. 1,00,00,000/- prescribed under Section 4 of the Code, thereby failing to satisfy the mandatory prerequisites of Section 9. The Respondent denied that the defenses raised in its Counter Affidavit were afterthoughts, asserting that these substantive objections were contemporaneously communicated by its representatives to the Applicant and are duly corroborated by authentic documentary records.

b. The Respondent reiterated that it never consented to, accepted, or admitted the MG clause. It was submitted that *vide* emails dated 21.04.2021 and 21.05.2021 (Annexures R-2 and R-5 to the Reply), the Respondent had expressly insisted upon the removal of the MG condition, and that even the email communications annexed as *Annexure 16* to the Rejoinder demonstrate that the Respondent was consistently reluctant to agree to any MG. The Respondent expressed willingness to pay amounts of Rs. 5 to 7 Lakhs which was solely in response to demands raised by the OC and was strictly confined to actual consumption, rather than an admission of the Rs. 6 Crore MG.

c. The Respondent submitted that the Applicant provided only the initial allocation of 5,000 subscription codes at the

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inception, whose aggregate commercial valuation amounts to only Rs. 13,90,000/- based on the agreed pack-wise denominations. It was contended that under the contemplated contractual structure, the API mechanism was to be utilized only after the actual consumption and exhaustion of the delivered subscription codes. The Respondent further averred that the email trail annexed as *Annexure 18* to the Rejoinder does not establish any testing of API integration for code generation, but merely pertains to technical UAT and configurations relating to video streaming for end users.

**d.** The Respondent maintained that the signatory to the agreement was severely afflicted with COVID-19 and under extreme mental distress on 24.04.2021, and was not in a conscious, proper, or stable state of mind to make binding commercial decisions, particularly when his father was critically ill and passed away due to COVID-19 on 25.04.2021. The Respondent reiterated that in the absence of any supply of subscription codes beyond the value of Rs. 13,90,000/-, and all actual consumption having been paid, no crystallized operational debt exists, rendering the present petition non-maintainable and liable to be dismissed.

**ADDITIONAL AFFIDAVIT BY APPLICANT:**

**8.** In compliance with the remand directions of the Hon'ble NCLAT and the order of this Tribunal dated 08.01.2026, the Applicant filed an Additional Affidavit dated 20.01.2026 to cure the defect in authorization.

**9.** The Applicant placed on record a certified true copy of the Board Resolution dated 22.08.2024 (*Annexure C*) empowering the General Counsel to institute and defend legal proceedings before this Tribunal with authority to sub-delegate such powers, along with the Letter of Authorization dated 16.01.2026 (*Annexure D*) issued by the General

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Counsel & Executive Director, Mr. Ritesh Khosla, authorizing the Deponent to act on behalf of the Applicant. Pursuant thereto, the Deponent affirmed, verified, and ratified all pleadings and documents on record in the present Company Petition.

**OBJECTION TO ADDITIONAL AFFIDAVIT BY RESPONDENT:**

**10.** In response to the Additional Affidavit filed by the Operational Creditor, the Respondent/Corporate Debtor filed its Reply Affidavit through its authorised representative, making *inter-alia* the following submissions:

**a.** The Respondent submitted that the Additional Affidavit dated 20.01.2026 is misconceived, legally untenable, and fails to cure the fundamental defect of authorization required for instituting proceedings under Section 9 of the Code. It was contended that although the Hon'ble NCLAT granted an opportunity to cure defects in authorization *vide* Order dated 10.12.2025, the steps taken by the OC do not comply with the mandate in letter and spirit. The Respondent disputed the assertion that the original petition was dismissed solely on the ground of authorization, stating that this Tribunal in its earlier order had also given specific findings regarding the non-satisfaction of the alleged default of Rs. 5,94,67,249/-.

**b.** The Respondent specifically objected to the Board Resolution dated 22.08.2024 and the subsequent Letter of Authorization dated 16.01.2026 on the ground of impermissible sub-delegation. Placing on record the Articles of Association of the OC Company (*Annexure 1*), the Respondent contended that under Clause 18 read with Section 179 of the Companies Act, 2013, the Board may empower specific officers to represent the Company, but there is no provision permitting a Director or General Counsel to further sub-delegate powers to another employee to institute legal proceedings. It was averred that in the

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absence of an express provision of sub-delegation in the Articles of Association, the authorization issued by the General Counsel in favor of Ms. Sapna Chaurasia, Senior Lead Counsel, is *void ab initio* and contrary to law.

c. The Respondent further submitted that the Board Resolution relied upon by the Applicant (*Annexure C*) was passed on 22.08.2024, which is approximately one year and nine months after the filing of the Section 9 application on 14.12.2022. It was contended that the said resolution neither bears the signatures of the respective Directors nor names the individual persons holding the offices of Directors, Managing Director, Chief Financial Officer, General Counsel, or Company Secretary. The Respondent argued that legal authorization must be specifically conferred upon named individuals rather than generic designations. Relying upon the judgment of the Hon'ble Delhi High Court in ***M/s Nibro Ltd. v. National Insurance Co. Ltd.*** (AIR 1991 Del 25), the Respondent maintained that the authority to institute legal proceedings affects the policy and finances of a company and must emanate directly from an express Board Resolution, and that the defective sub-delegation fails to satisfy the directions of the Hon'ble NCLAT, rendering the petition liable to be rejected with costs.

#### **ANALYSIS AND FINDINGS**

11. We have heard the Learned Counsel appearing for the OC as well as the Learned Senior Counsel appearing for the CD at length and perused the entire record, including the Section 9 Application, the Counter Affidavit/Reply, the Rejoinder Affidavit, the Sur-Rejoinder, the Additional Affidavit filed pursuant to the remand directions along with the Objections thereto, and the comprehensive Written Notes of Submissions and judicial precedents placed on record by both the parties.

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12. Upon a meticulous examination of the pleadings, documentary evidence, and the contentions advanced by both sides, the following issues arise for our consideration:

- I. Whether the OC has cured all the defects that existed in the authorisation as directed by the Hon'ble NCLAT *vide* order dated 10.12.2025?
- II. Whether the claim for MG under the Agreement dated 23.04.2021 constitutes an "Operational Debt" under Section 5(21) of the Code?
- III. Whether the Respondent Committed Default in terms of Section 3(12) of the Code?
- IV. Whether there exists any genuine "pre-existing dispute" between the parties prior to the issuance of the Demand Notice under Section 8 of the Code, or whether the defenses raised by the Corporate Debtor are mere afterthoughts in view of its admissions of liability?

**ISSUE I: Whether the Operational Creditor has cured all the defects that existed in the authorization as directed by the Hon'ble NCLAT vide order dated 10.12.2025?**

13. A careful reading of the judgment in ***M/s Nibro Ltd. v. National Insurance Co. Ltd.*** (AIR 1991 Del 25 / (1991) 70 Comp Cas 388) reveals that the Hon'ble Delhi High Court was examining the interplay between the general powers of the Board under Section 291 of the Companies Act, 1956 and the provisions of Order XXIX Rule 1 of the Code of Civil Procedure, 1908. While observing that the competence to institute legal proceedings on behalf of a company vests primarily in the Board of Directors unless specifically delegated, the Hon'ble High Court held as follows:

*"It is well-settled that under section 291 of the Companies Act except where express provision is made that the powers of a company in*

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*respect of a particular matter are to be exercised by the company in general meeting, in all other cases the board of directors are entitled to exercise all its powers. Individual directors have such powers only as are vested in them by the memorandum and articles. It is true that ordinarily the court will not unsuit a person on account of technicalities. However, the question of authority to institute a suit on behalf of a company is not a technical matter. It has far-reaching effects. It often affects the policy and finances of the company. Thus, unless a power to institute a suit is specifically conferred on a particular director, he has no authority to institute a suit on behalf of the company. Needless to say such a power can be conferred by the board of directors only by passing a resolution in that regard"*

A close examination of *Nibro Ltd.* (supra) reveals that the suit therein failed because the plaintiff company placed no resolution on record authorising the signatory, nor did the board pass any subsequent resolution ratifying the institution of the suit. Unlike a complete absence of authority where no ratification is ever attempted, an initial defect in authorization is curable through subsequent approval by the Board of Directors, which operates retrospectively to validate the filing from its inception. As held by the Hon'ble Supreme Court in ***United Bank of India v. Naresh Kumar & Ors.*** ((1996) 6 SCC 660), a corporate entity can validly regularize and ratify the institution of legal proceedings at a subsequent stage. The Hon'ble Apex Court observed at Paragraph 10:

*"10. It cannot be disputed that a company like the appellant can sue and be sued in its own name. Under Order 6 Rule 14 of the Code of Civil Procedure a pleading is required to be signed by the party and its pleader, if any. As a company is a juristic entity it is obvious that some person has to sign the pleadings on behalf of the company. Order 29 Rule 1 of the Code of Civil Procedure, therefore, provides that in a suit by or against a corporation the Secretary or any Director or other Principal Officer of the corporation who is able to depose to the facts of the case might sign and verify on behalf of the company. Reading Order 6 Rule 14 together with Order 29 Rule 1 of the Code of Civil Procedure it would appear that even in the absence of any formal letter of authority or power of attorney having been executed a person referred to in Rule 1 of Order 29 can, by virtue of*

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*the office which he holds, sign and verify the pleadings on behalf of the corporation. In addition thereto and de hors Order 29 Rule 1 of the Code of Civil Procedure, as a company is a juristic entity it can duly authorise any person to sign the plaint or the written statement on its behalf and this would be substantial compliance with the maintenance of the suit in the name of the company. A person may be expressly authorised to sign the pleadings on behalf of the company, for example by the Board of Directors passing a resolution to that effect or by a power of attorney being executed in favour of any individual. In absence thereof and in cases where pleadings have been signed by one of its officers a corporation can ratify the said action of its officer in signing the pleadings. Such ratification can be express or implied. The court can, on the basis of the evidence on record, and after taking all the circumstances of the case, specially with regard to the conduct of the trial, come to the conclusion that the corporation had ratified the act of signing of the pleading by its officer."*

14. Under the statutes of the Code, procedural defects in presentation and authorization are treated as curable defects rather than fatal flaws. The proviso to Section 9(5)(ii) of the Code statutorily mandates that before rejecting an application on the ground of an incomplete filing, the Adjudicating Authority must grant seven days' time to the applicant to rectify the defect. In **Palogix Infrastructure P. Ltd. v. ICICI Bank Ltd.** (2017 SCC OnLine NCLAT 266), the Hon'ble NCLAT held that authorization can be conferred on officers by designation across Sections 7, 9, and 10 of the Code, and any defect in authorization is curable under the statutory proviso, observing at Paragraphs 26, 36, and 37 as follows:

*"26. Having regard to objection regarding the removal of defect, we reject the submission made on behalf of the "corporate debtor", in view of the proviso to sub-section (5) of section 7 of the "I & B Code", which reads as follows:*

*"Provided that the Adjudicating Authority shall, before rejecting the application under clause (b) of sub-section (5), give a notice to the applicant to rectify the defect in his application within seven days of receipt of such notice from the Adjudicating Authority."*

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Similar provision has been made under proviso to sub-section (5) of section 9 and sub-section (4) of section 10 of the "I & B Code".

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36. In so far as, the present case is concerned, the "financial creditor"-bank has pleaded that by board's resolutions dated May 30, 2002 and October 30, 2009 the bank authorised its officers to do needful in the legal proceedings by and against the bank. If general authorisation is made by any "financial creditor" or "operational creditor" or "corporate applicant" in favour of its officers to do needful in legal proceedings by and against the "financial creditor"/ "operational creditor"/ "corporate applicant", mere use of word "power of attorney" while delegating such power will not take away the authority of such officer and for all purposes it is to be treated as an "authorization" by the "financial creditor"/ "operational creditor"/ "corporate applicant" in favour of its officer, which can be delegated even by designation. In such case, officer delegated with power can claim to be the "authorized representative" for the purpose of filing any application under section 7 or section 9 or section 10 of the "I & B Code".

37. As per Entry 5 and 6 (Part I) of Form 1, "authorised representative" is required to write his name and address and position in relation to the "financial creditor"/bank. If there is any defect, in such case, an application under section 7 cannot be rejected and the applicant is to be granted seven days' time to produce the board resolution and remove the defect."

This principle was directly tested and affirmed by the Hon'ble Supreme Court in **Rajendra Narottamdas Sheth & Anr. v. Chandra Prakash Jain & Anr.** ((2022) 5 SCC 600), wherein the Hon'ble Apex Court explicitly approved the view taken in *Palogix Infrastructure (Supra)* regarding the authority of an officer to maintain an application under the Code. The Hon'ble Supreme Court held at Paragraph 14 as under:

"14. NCLAT was of the opinion that general authorisation given to an officer of the financial creditor by means of a power of attorney, would not disentitle such officer to act as the authorised representative of the financial creditor while filing an application under Section 7 of the Code, merely because the authorisation was granted through a power of attorney. Moreover, NCLAT in *Palogix Infrastructure* has held that if the officer was authorised to sanction loans and had done so, the application filed under Section 7 of the

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*Code cannot be rejected on the ground that no separate specific authorisation letter has been issued by the financial creditor in favour of such officer. In such cases, the corporate debtor cannot take the plea that while the officer has power to sanction the loan, such officer has no power to recover the loan amount or to initiate corporate insolvency resolution process, in spite of default in repayment. **We approve the view taken by NCLAT in Palogix Infrastructure.***

15. Applying the principles enunciated in **Palogix Infrastructure (supra)** and affirmed by the Hon'ble Apex Court in **Rajendra Narottamdas Sheth (supra)**, the fundamental requirement is that the initiation and maintenance of the application must be backed by competent authorization, and any initial omission in placing such authority on record is curable rather than fatal to the maintainability of the petition. While **Palogix** addressed an authorization conferred through a Power of Attorney, the ratio applies squarely to the present case, where the OC has rectified the procedural omission by placing on record a certified copy of the Board Resolution dated 22.08.2024 along with the formal Letter of Authorization dated 16.01.2026, thereby expressly affirming, verifying, and ratifying the pleadings on record.

16. Insofar as the Respondent's objection regarding impermissible sub-delegation is concerned, a perusal of Clause 18 of the Articles of Association reveals that the Board of Directors is expressly empowered to delegate its powers to any Director, Secretary, or "*any other person or persons, either singly or jointly... either generally or in specific cases, as the Board may think fit.*" Furthermore, Regulation 19(iii) of the Articles permits the management to appoint legal advisers, solicitors, and professionals with specific powers of sub-delegation.

17. The decision relied upon by the Respondent in **State Bank of Travancore v. Kingston Computers (I) P. Ltd.** ((2011) 11 SCC 524) is distinguishable, as the suit in that case failed because no resolution or letter of authority was ever placed on record by the company to establish the authority of the signatory. In the present case, pursuant

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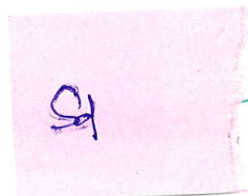
to the Board Resolution dated 22.08.2024, the General Counsel was duly empowered to institute proceedings and delegate authority, in exercise of which Mr. Ritesh Khosla, General Counsel & Executive Director, lawfully executed the Letter of Authorization dated 16.01.2026 authorizing Ms. Sapna Chaurasia, Senior Lead Counsel, to affirm, verify, and ratify all pleadings on record. This subsequent authorization and ratification operate retrospectively, thereby curing the procedural defect and validating the institution of the present Company Petition in strict compliance with the remand directions of the Hon'ble NCLAT dated 10.12.2025.

*Accordingly, **Issue I is answered in the AFFIRMATIVE, in favour of the Operational Creditor.***

**ISSUE II: Whether the claim for Minimum Guarantee (MG) under the Agreement dated 23.04.2021 constitutes an “Operational Debt” under Section 5(21) of the Code?**

**18.** The Ld. Sr. Counsel appearing for the Respondent has contended that the claim of the OC arising out of non-payment of the MG amount cannot be considered as an operational debt in terms of Section 5(21) of the Code. It has been argued by the Respondent that the MG amount claimed to be in default by the OC cannot be held to be an Operational Debt as the same has not been crystallised as the OC has not raised any specific invoice against the amount claimed to be in default and further there has been no supply of goods or services against which such amount can be claimed.

**19.** The LD Sr. Counsel appearing for the CD submitted that as per second limb of S.5(21) of the Act an operational debt can be ‘**a**’ debt in respect of ‘**the**’ payment of *the* dues’ arising under any law for the time being in force and went on to argue that there exist a structural contrast between usage of the indefinite article “**a**” before the term ‘*debt*’ and the definite article “**the**” before the term ‘*payment of dues*’ and



hence any debt arising out of dues in respect of any payment can only be considered as an operational debt if the quantum of payment is crystallised as the term payment has been preceded by the definitive article 'the'. In this regard he has placed reliance on the judgement of the Hon'ble Apex Court in **Shri Ishar Alloy Steels Ltd. v Jayaswals NECO Limited [2001(3) SCC 609]** wherein the Hon'ble Apex Court while interpreting provisions of Negotiable Instruments Act, 1881 determined the legislative intent behind using the definitive article 'the' in a provision and held the following:

*"The" is the word used before nouns, with a specifying particularising effect opposed to the indefinite or generalising force of 'a' or 'an'. It determines what particular thing we are to assume to be meant. "The" is always mentioned to denote particular thing or a person."*

**20.** Section 5(21) of the Code defines an operational debt in the following terms:

*"(21) 'operational debt' means a claim in respect of the provision of goods or services including employment or a debt in respect of the payment of dues arising under any law for the time being in force and payable to the Central Government, any State Government or any local authority;"*

The definition of "Operational Debt" under Section 5(21) of the Code encompasses a claim in respect of the provision of goods or services, including employment or statutory dues payable to the Government.

The expansive scope of the phrase "in respect of the provision of goods or services" under Section 5(21) of the Code was settled authoritatively by the Hon'ble Supreme Court in **Consolidated Construction Consortium Limited v. Hitro Energy Solutions Private Limited ((2022) 7 SCC 164)**. The Hon'ble Apex Court held that the statutory term "in respect of" is not restricted to a narrow supplier-buyer relationship or individual consumption invoices, but embraces all claims arising out of and having a direct, substantial nexus with the underlying contract

for the provision of services. As underscored in the Insolvency Law Committee (ILC) Report (March 2018) and reinforced by the Hon'ble Supreme Court in **Consolidated Construction Consortium Limited v. Hitro Energy Solutions Private Limited ((2022) 7 SCC 164)**, the two limbs of Section 5(21) govern distinct legal categories: the first limb ("a claim in respect of the provision of goods or services") is intentionally couched in broad terms to encompass all private commercial liabilities arising out of contracts for goods or services, whereas the second limb ("a debt in respect of the payment of dues...") was enacted specifically to capture statutory and fiscal dues payable to the Government or local authorities. This statutory demarcation cannot be stretched to mean that a commercial claim between private trading entities is maintainable only if it reflects actual usage or consumption.

The Hon'ble Supreme Court observed at Paragraphs 50.2 and 52 as follows:

*"50.2. Second, Section 8(1) IBC read with Rule 5(1) and Form 3 of the 2016 Application Rules makes it abundantly clear that an operational creditor can issue a notice in relation to an operational debt either through a demand notice or an invoice. As such, the presence of an invoice (for having supplied goods or services) is not a sine qua non, since a demand notice can also be issued on the basis of other documents which prove the existence of the debt. This is made even more clear by Regulations 7(2)(b)(i) and (ii) of the 2016 CIRP Regulations which provide an operational creditor, seeking to claim an operational debt in a CIRP, an option between relying on a contract for the supply of goods and services with the corporate debtor or an invoice demanding payment for the goods and services supplied to the corporate debtor. While the latter indicates that the operational creditor should have supplied goods or services to the corporate debtor, the former is broad enough to include all forms of contracts for the supply of goods and services between the operational creditor and corporate debtor, including ones where the operational creditor may have been the receiver of goods or services from the corporate debtor.*

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52. Similarly, in the present case, the phrase "in respect of" in Section 5(21) has to be interpreted in a broad and purposive manner in order to include all those who provide or receive operational services from the corporate debtor, which ultimately lead to an operational debt. In the present case, the appellant clearly sought an operational service from the proprietary concern when it contracted with them for the supply of light fittings. Further, when the contract was terminated but the proprietary concern nonetheless encashed the cheque for advance payment, it gave rise to an operational debt in favour of the appellant, which now remains unpaid. Hence, the appellant is an operational creditor under Section 5(20) IBC."

Hence as per **Hitro Energy (supra)**, an OC's claim to be a valid operational debt in terms of S.5(21) of the code does not require individual consumption voucher and liability can arise directly from the contractual covenants governing the transaction.

**21.** In the present case the claim of the applicant arises out of a media distribution and API integration under the SCA Agreement dated 23.04.2021. **Clause 1** of the Agreement enumerated the scope of the engagement entered by the parties through the SCA Agreement. Clause 1 of the Agreement is reproduced herein for brevity:

1) Scope of Engagement

- 1.1 Subject to compliance of the terms and conditions of this Agreement by RKIT, RKIT is hereby permitted to distribute Subscriptions to its partners ("Partners"), during the Term of this Agreement. It is hereby clarified that the RKIT shall send request for Subscription to SPN via an API integration ("Subscription Requests"). The Parties agree that the following Subscriptions shall be provided by SPN to RKIT at an agreed discount of 20% on the current market price of the Subscriptions (hereinafter referred to as "Discounted Rates"):

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| Subscription Package |    |        | Original Pricing | Discounted Rates |
|----------------------|----|--------|------------------|------------------|
| LIV Premium          | 1  | Month  | Rs. 299          | Rs. 239          |
| LIV Premium          | 6  | Months | Rs. 699          | Rs. 559          |
| LIV Premium          | 12 | Months | Rs. 999          | Rs. 799          |
| LIV Special          |    |        | Rs. 199          | Rs. 159          |
| LIV Special+         |    |        | Rs. 399          | Rs. 319          |

- 1.2 It is hereby agreed that RKIT shall be entitled to provide the Subscriptions to its Partners subject to the details of the Partners being informed in advance and approved by SPN in writing (email permitted).
- 1.3 RKIT shall pay SPN the Consideration (as defined below) which is in the form of Minimum Guarantee (as defined below), towards SPN providing the Subscriptions to RKIT, during the Term of this Agreement.
- 1.4 RKIT agrees and undertakes that use of any and all logos, banners and other artwork in relation to SonyLIV and/or Subscription including but not limited to be featured on any of the marketing and/or promotional materials, must either be given by SPN and/or approved by SPN, in advance in writing.
- 1.5 Subscription Codes:
- i) Upon the execution of this Agreement, SPN, shall provide a total of 5,000 (five thousand) Subscription codes in relation to the Subscription Packages as specified in the table in Clause 1.1 above ("Subscription Codes"). All the Subscription Codes shall have a redemption validity of 1 (one) year from the date they are shared by SPN to RKIT ("Redemption Validity").
- ii) It is hereby agreed that each Subscription Code shall be redeemed on a one-time basis only and shall be subject to the terms of this Agreement.

**Clauses 1.1** states that by virtue of the agreement the CD is given **the Right to Distribute the Subscription** of the OC's OTT Platform to its Partners provided to the CD by the OC at 20% Discount on the current market price. It is stated that the Subscriptions can be availed by the CD through placing 'Subscription Requests' through the API Integration, however, in terms of **Clause 1.5** immediately upon the execution of the agreement the OC will provide 5000 Subscription codes to the Respondent for immediate sale to its Partners. **Clause 1.3** states that the CD will be required to pay the consideration for the subscriptions as defined at **Clause 3** of the SCA Agreement.

Clause 3 of the Agreement is as following:

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3) Consideration

3.1 In consideration of the Subscriptions being provided to RKIT by SPN, RKIT shall provide SPN with a minimum annual commitment of INR 6,00,00,000/- (Rupees Six Crores only) ("Minimum Guarantee"), during the Term of this Agreement

3.2 It is hereby clarified that RKIT shall provide SPN with a commitment of INR 1,50,00,000/- (Rupees One Crore Fifty Lakhs only) in relation to every quarter of the Term ("Quarterly Minimum Guarantee"), save and except in the event a lockdown is imposed due to the on-going pandemic (COVID-19) which exceeds beyond a period of fifteen (15) days, in such an instance the Quarterly Minimum Guarantee due and payable by RKIT for that quarter and subsequent quarters shall be accordingly

extended for a period of ninety (90) days. It is hereby clarified that the Term in such an event will be extended proportionately for a period of ninety (90) days.

3.3 RKIT agrees that it shall make payments to SPN, within a period of 24 (twenty-hours) after purchase of each Subscription by the customers/end-users i.e. T+1 basis ("Actual Consumption").

3.4 The breakdown of approximate Subscriptions as contemplated herein is as detailed below: It is hereby clarified that the table provided herein is only for the purpose of illustration:

| Subscription Packages | CPS (Rs.) | Approximate Subscriptions | Value (Rs.) |
|-----------------------|-----------|---------------------------|-------------|
| LIV Premium 1 Month   | 239       | 56,000                    | 1,33,84,000 |
| LIV Premium 6 Months  | 559       | 10,000                    | 55,90,000   |
| LIV Premium 12 Months | 799       | 9,993                     | 79,84,407   |
| LIV Special           | 159       | 77,400                    | 1,23,06,600 |
| LIV Special+          | 319       | 65,000                    | 2,07,35,000 |
| Total                 |           | 2,18,393                  | 6,00,00,007 |

3.5 The Parties agree that, in the event the aforesaid Quarterly Minimum Guarantee exceeds the Actual Consumption in the given quarter of the Term, RKIT shall pay SPN the difference between the Quarterly Minimum Guarantee and the Actual Consumption in the given quarter of the Term, within thirty (30) days of submission of the invoice by SPN to RKIT.

3.6 In the event the Actual Consumption exceeds the Quarterly Minimum Guarantee in the given quarter of the Term, it is hereby clarified that RKIT shall to continue to make payments to SPN based on the Actual Consumption in the given quarter of the Term.

3.7 The Parties agree that the aforesaid Minimum Guarantee shall be inclusive of taxes. It is further agreed that SPN shall raise monthly invoices on RKIT based on the Actual Consumption.

3.8 The Minimum Guarantee shall not be subject to change during the Term of this Agreement unless expressly provided for in this Agreement or unless otherwise agreed between the Parties in writing.

3.9 RKIT shall be solely responsible for making all statutory payments and taxes relating to its employees and sub-contractors or otherwise applicable including provident fund, gratuity, etc. as applicable.

Upon reading **Clauses 3.1, 3.2 and 3.5** of the SCA together, it is clear

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that the CD committed an **unconditional Annual Minimum Guarantee ("MG") of Rs. 6,00,00,000/- (Rupees Six Crores), payable in Quarterly Minimum Guarantee ("QMG") tranches of Rs. 1,50,00,000/- at the close of every quarter for the subscriptions.** It has also been clarified in the terms of the clause that even if CD achieves lesser 'Actual Consumption', as defined at **Clause 3.5**, than the QMG even then the CD will be obligated to pay the 'difference' between the Actual Consumption and the QMG for that quarter within 30 days of submission of the invoice of QMG by the OC and as per **Clause 3.6** in case the Actual Consumption exceed the QMG the respondent will be obligated to pay the actual consumption value to the OC in the given quarter and as per **Clause 3.8 of** the Agreement, the MG Amount shall not be changed during the Term unless expressly provided in the Agreement or understood between the parties. It is also seen that **Clause 3.4** illustrates the computation of the MG Amount agreed between the parties and how the same has been determined based on an expected minimum sales by the Respondent after getting the right to promote and sale the subscription codes of the OC.

Hence, upon reading the entire Clause 3 in its entirety, it is observed that the MG amount agreed upon by the parties represents the fixed minimum agreed commercial consideration for the provision of such services and hence has a direct nexus with the scope and purpose of the SCA agreement.

**22.** The Respondent has also contended that the SCA was a contingent contract and hence the debt has not crystallised and has submitted that CD denied to pay the stamp duty payable on the agreement as the same was a contingent contract. The applicant rebutting it has argued that the Agreement is not a contingent contract as Sections 31 and 32 of Indian Contract Act, 1872 contemplate a contract where the performance of an obligation depends upon the happening or non-happening of an uncertain future event, collateral to

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the contract whereas the liability undertaken by the CD to pay the MG under the present Agreement is unconditional. Further it is argued by the OC that the issue of stamping did not arise due to reasons submitted by the CD rather the OC had demanded the CD to pay its share in the extra stamp duty that was found to be payable as per the Bombay Stamps Act, 1958 which was subsequently resolved between the parties and both continued to act as per the terms of the SCA.

**23.** The defence raised by the CD that the Agreement dated 23.04.2021 is a “contingent contract” governed by Sections 31 and 32 of the Indian Contract Act, 1872, is legally untenable and constitutes a clear afterthought. As held by the Hon’ble Supreme Court in **Patel Kantilal Parshottamdas v. Jitenderkumar Nanjibhai Mistry** ((2017) 13 SCC 529), a plea that an agreement is in the nature of a “contingent contract” cannot be set up at a belated stage when no such case was ever pleaded or supported by contemporaneous communications between the parties. In that case, the Hon’ble Apex Court struck down the setting up of a non-pleaded plea of “contingency”, observing at Paragraph 10 as under:

*“10. .... No case was set up by Kanti that agreement was void because of the reason that he was only a lessee in the suit property which was given to him by the original owner Jeevandas for a period of 99 years and as he had not become the owner thereof, the agreement was in the nature of 'contingent contract'. Obviously, no evidence was led by any of the parties to this effect in the absence of pleadings. Therefore, the High Court could not, of its own, set up a new case which was not a case pleaded by any of the parties. The liberty to amend the pleadings which is given is in the nature of allowing the appellant to come out with altogether a new case not even pleaded or argued before the High Court. Such an amendment could not have been allowed even if an application under Order 6 Rule 17 CPC was filed for amending the plaint. In fact, the appellant had not even sought this remedy. The decree passed by the High Court on this ground and direction to the trial court to dispose of the case afresh after allowing amendment in the pleadings and leading further evidence on amended pleadings is,*

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*therefore, clearly erroneous in law. We, thus, set aside this direction."*

24. Applying the ratio of **Patel Kantilal (supra)**, the CD's claim in its Reply that it withheld stamp duty because the contract was merely "contingent" is directly contradicted by the written record and is a clear afterthought. A perusal of the email communications dated 30.06.2021 (Annexure 20 to the Rejoinder) reveals that when the OC requested re-execution of the agreement to regularize a franking error under the Bombay Stamp Act, 1958 (reducing the inadvertent franking of Rs. 12,00,000/- to the correct statutory duty of Rs. 1,20,000/-, to be shared equally at Rs. 60,000/- each), the CD never once characterized the contract as contingent, nor did it condition its execution on any pending operational milestone. On the contrary, the CD initially confirmed that it had *"already signed the first agreement"* and questioned why a revised draft was being circulated when no textual changes had been made.

25. When the OC highlighted the statutory requirement for re-franking, the CD resisted paying its share of stamp duty by asserting that its legal team had advised against it, stating that *"generally for this agreement we use INR 100/- stamp paper"* and claiming that because it was an online agreement, no stamp duty was required. Further, when confronted with Clause 22 of the SCA which explicitly mandates that all applicable stamp duty shall be borne equally by both parties the CD merely claimed that it was not informed about the duty amount or the sharing mechanism.

26. Significantly, neither in its **Reply to the Default Notice dated 03.04.2022** (Annexure 8) nor in its **Reply to the Statutory Demand Notice dated 05.09.2022** (Annexure 13) did the CD ever characterize the agreement as a contingent contract or dispute its validity on account of stamp duty. In its reply dated 03.04.2022, the CD admitted entering into the agreement and expressly acknowledged the QMG

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obligation of Rs. 1,50,00,000/-; similarly, in its reply dated 05.09.2022, it merely raised commercial grievances regarding profit margins, pandemic slowdown, and platform content.

**27.** Under Clauses 3.1 and 3.2 of the SCA, the obligation to pay the Annual Minimum Guarantee of Rs. 6,00,00,000/- in quarterly installments was an absolute, unconditional commercial commitment undertaken by the CD, and was neither contingent upon the CD's internal sales performance nor dependent on future uncertain collateral events. The ordinary performance of a commercial contract and normal business risks associated with consumer demand do not render an agreement a "contingent contract" under Section 31 of the Indian Contract Act, 1872

**28.** Although the CD has sought to characterize the contract as "contingent" in its Reply before this Tribunal, such a defense is legally unsustainable. The Hon'ble Supreme Court in **J.P. Builders & Anr. v. A. Ramadas Rao & Anr.** ((2011) 1 SCC 429) rejected a similar attempt by a defaulting party to evade its obligations by labeling ordinary execution steps as contingent and impossible events, holding at Paragraphs 54, 56 and 69 as under:

*"54. As stated earlier, merely because the contract insists on settlement of a loan of the Bank and handover of the title deeds to the plaintiff from the Bank are not impossible events in the light of the performance made by the plaintiff, the contract in question did not come to an end on this ground and such contract is not a contingent contract and undoubtedly, the Court has jurisdiction to grant relief in terms of the contract. Obtaining no-objection certificate (NOC) from the authority concerned, clearance of NOC from the Income Tax Department or any other State/Central authority, securing title deeds after clearing certain loans are incidental and implied covenants on the part of the vendors to do the needful to give effect to the agreement.*

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**56. We are satisfied that the contract in question is capable of performance and the contention of the learned Senior**

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**Counsel for the appellants that it is a contingent contract and is incapable of performance cannot be accepted.** We have already pointed out that this was not an issue before the trial court and such plea was not raised in the written statement.....

69. We are also conscious of the fact that the said doctrine cannot be permitted to become a device for destructing the sanctity of contract. **The court will also not apply the doctrine of impossibility to assist a party which does not want to fulfil its obligations under the contract.**”

Applying the ratio of **J.P. Builders (supra)**, the CD cannot avoid its crystallized payment liability under the guise of an alleged “contingency” or market difficulty. Fulfilling MG commitments and generating end-user subscriptions were ordinary operational covenants, and the doctrine of impossibility or contingency cannot be invoked to assist a party seeking to wriggle out of its solemn contractual bargains.

**29.** Furthermore, commercial contracts entered into between business entities must be read and enforced as per their express terms, and courts should not seek to imply terms into an agreement where the express language is clear and unambiguous. As held by the Hon’ble Supreme Court in **Nabha Power Limited (NPL) v. Punjab State Power Corporation Limited (PSPCL) & Anr.** ((2018) 11 SCC 508):

“49. ...The explicit terms of a contract are always the final word with regard to the intention of the parties. The multi-clause contract inter se the parties has, thus, to be understood and interpreted in a manner that any view, on a particular clause of the contract, should not do violence to another part of the contract.

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72. **We may, however, in the end, extend a word of caution. It should certainly not be an endeavour of commercial courts to look to implied terms of contract. In the current day and age, making of contracts is a matter of high technical expertise with legal brains from all sides involved in the process of drafting a contract.** It is even preceded by opportunities of seeking clarifications and doubts so that the parties know what they are getting into. **Thus, normally a contract should be read as it reads, as per its express terms.** The implied terms is a concept,

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*which is necessitated only when the Penta test referred to aforesaid comes into play. There has to be a strict necessity for it. In the present case, we have really only read the contract in the manner it reads. We have not really read into it any "implied term" but from the collection of clauses, come to a conclusion as to what the contract says. The formula for energy charges, to our mind, was quite clear. We have only expounded it in accordance to its natural grammatical contour, keeping in mind the nature of the contract."*

**30.** The contention raised by the CD that the SCA dated 23.04.2021 is void or unenforceable on account of vitiation of free consent, coercion, or undue influence during a period of acute medical emergency and COVID-19 distress is factually untenable and legally misconceived. While this Tribunal notes the personal hardship and family bereavement suffered by the authorized signatory, Mr. Abhishek Srivastav, an examination of the contemporaneous record and pre-contract negotiations shows that the agreement was executed consciously after due commercial deliberation. The electronic execution records (Annexure-19 to the Rejoinder) show that the final agreement was formally transmitted to the authorized signatory on 23.04.2021. The document was accessed, reviewed, and deliberately e-signed by him on the following day, 24.04.2021, after having the document in his possession for over twenty-four hours.

**31.** Furthermore, the negotiation email correspondence (Annexure-16 to the Rejoinder) demonstrates that the terms of the agreement were actively negotiated across multiple levels of the CD's management. In response to the CD's requests regarding pandemic-related business disruptions, the OC specifically revised Clause 3.2 to provide an extended 90-day payment timeline for lockdown-affected quarters. Following this mutual consensus, Mr. Anwar Ul Haque, explicitly confirmed acceptance *via* email dated 23.04.2021, stating "*We can go ahead with the agreement*" and providing the credentials of Mr. Abhishek Srivastav as the authorized signatory. Following execution, the CD acted upon the contract by accepting API credentials,



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integrating the streaming infrastructure, and receiving the initial batch of subscription codes without raising any grievance regarding coercion or lack of free consent.

**32.** The legal principle governing commercial contracts entered into by business entities is well established. As held by the Constitution Bench of the Hon'ble Supreme Court in **Har Shankar & Ors. v. The Deputy Excise and Taxation Commissioner & Ors.** ((1975) 1 SCC 737), parties who enter into commercial transactions with open eyes, fully cognizant of the terms and market risks, cannot subsequently plead commercial difficulty to escape their obligations:

*"16. Those interested in running the country liquor vends offered their bids voluntarily in the auctions held for granting licences for the sale of country liquor. The terms and conditions of auctions were announced before the auctions were held and the bidders participated in the auctions without a demur and with full knowledge of the commitments which the bids involved. The announcement of conditions governing the auctions were in the nature of an invitation to an offer to those who were interested in the sale of country liquor. The bids given in the auctions were offers made by prospective vendors to the Government. The Government's acceptance of those bids was the acceptance of willing offers made to it. On such acceptance, the contract between the bidders and the Government became concluded and a binding agreement came into existence between them. The successful bidders were then granted licences evidencing the terms of contract between them and the Government, under which they became entitled to sell liquor. The licensees exploited the respective licences for a portion of the period of their currency, presumably in expectation of a profit. Commercial considerations may have revealed an error of judgment in the initial assessment of profitability of the adventure but that is a normal incident of all trading transactions. **Those who contract with open eyes must accept the burdens of the contract along with its benefits.** The powers of the Financial Commissioner to grant liquor licences by auction and to collect licence fees through the medium of auctions cannot by writ petitions be questioned by those who, had their venture succeeded, would have relied upon those very powers to found a legal claim. **Reciprocal rights and obligations arising out of contract do not depend for their***

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***enforceability upon whether a contracting party finds it prudent to abide by the terms of the contract. By such a test no contract could ever have a binding force."***

Applying the ratio of **Har Shankar (supra)**, the CD actively negotiated the terms, secured specific contractual concessions, executed the contract through its authorized director, and availed itself of the commercial distribution rights thereunder. The belated plea of vitiated consent raised for the first time in response to the Section 9 proceedings is an afterthought and cannot defeat an admitted operational debt.

**33.** The specific question of "*Whether a contractual Minimum Guarantee (MG) / Guaranteed Minimum Royalty payable irrespective of end-user consumption constitutes an operational debt or not*" has been elaborately dealt by Hon'ble NCLAT in **Somesh Choudhary, Suspended Director of Global Fragrances Pvt. Ltd. v. Knight Riders Sports Private Limited & Anr. (Company Appeal (AT) (Insolvency) No. 501 of 2021)**. In that case, the CD contended that a minimum guarantee commitment does not arise out of the provision of goods or services. Rejecting this defense, the Hon'ble NCLAT held that a Minimum Guarantee is a fixed lump sum payment of *reasonably expected revenue from the sale of product* and such a payment is not dependent on the volume of sales. The Hon'ble NCLAT in **Somesh Choudhary (supra)** after finding the nexus of the minimum guarantee clause *therein* with the objective of the agreement *therein* held that since payment of the MG amount is directly connected with the provision of goods or services as envisaged through the Agreement, hence the MG will be considered as an Operational Debt.

Paragraphs 11 and 15 of **Somesh Choudhary (supra)** is reproduced herein as under for quick reference:

*"11. At this juncture, we find it relevant to understand the meaning of 'Guarantee Minimum Royalty'. A guaranteed minimum annual royalty or guaranteed minimum royalty, is a payment made periodically by a licensee to a licensor pursuant to a licence*

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regardless of sales success for a licensed product over that year. **Unlike a royalty which is usually calculated as a percentage of net sales revenue, a minimum royalty is generally an agreed lump-sum payment of reasonably expected revenue from the sale of a licensed product over the agreed time period.**

.....

15. In the instant case, the Respondent has permitted the (a) use manufacture, sell, distribute and advertise the licensed products (b) use of intellectual property rights i.e., the trademark 'Kolkata Knight Riders'/'KKR') brand logo and any other trademark which as the first Respondent may designate in its sole and absolute discretion or in association with the licensed products in India as well as on packaging, promotional and advertising material associated therewith. We are of the considered view that the 'Claim' of the Respondent is in respect of the provision of the Goods and Services for which the 'Corporate Debtor' is contractually obligated to make the payments towards such 'Claim'. The clauses of the Agreement provided for Royalties to be paid as a variable amount to the first Respondent and the **minimum guaranteed amount to be paid as a fixed payment as stipulated under Clause 4.2 of the Agreement.** Keeping in view the terms and conditions of the Agreement, we are of the earnest view that the first Respondent has established a 'Right to Payment' in respect of the provisions of goods and services. We hold that granting an exclusive right and license to the 'Corporate Debtor', to use manufacture, sell, distribute and advertise the licensed products and to use the trademark in association with the licensed products as well as on packaging, promotional advertising material has a direct nexus with the business operations and sales and also with the actual product supplied by the 'Corporate Debtor'. Hence, we hold that the 'Claim' in respect of such provisions of 'goods and services', under the terms of the Agreement, fall within the ambit of the definition of 'Operational Debt' as defined under Section 5(21) of the Code."

34. The commercial validity and binding nature of unconditional Minimum Guarantee commitments was authoritatively affirmed by the Hon'ble Supreme Court in **Raymond Ltd. & Anr. v. M.P. Electricity Board & Ors.** ((2001) 1 SCC 534). The Hon'ble Apex Court held that a minimum guarantee provision represents the agreed fixed consideration for commercial readiness and infrastructure made

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available as a package deal, and a party cannot wriggle out of such solemn commitments by pleading lack of actual consumption:

*“20. As a matter of general principle, any stipulation for payment of minimum guarantee charges is unexceptionable, in a contract of this nature wherein the Board which undertakes generation, transmission and supply of electrical energy has to in order to fulfil its obligation lay down lines and install the required equipment and gadgets and constantly keep them in a state of good repair and condition to render it possible for the consumer to draw the supply required at any and all times..... In fact the tariff inclusive of such a provision for payment of a minimum guaranteed sum irrespective of the supply/consumption factor appears to be the consideration for the commitments undertaken by the Board as a package deal and it is not possible or permissible to allow the consumer to wriggle out of such commitments merely on the ground that the Board is not able to supply at any point of time or period the required or agreed quantum of supply or even supply up to the level of the minimum guaranteed rate of charges. Tinkering with portions of contracts for any such reasons, merely on considerations of equity or reasonableness pleaded for vis-à-vis one party alone will amount to mutilation of the whole scheme underlying the contract... Consumers, who enter into such commitments openly and knowing fully well as these hazards involved in the generation, transmission and supply, will be estopped from going behind the solemn commitment and undertaking on their/its part under the contract.....”*

35. Applying the principles laid down in **Nabha Power** (supra) and **Raymond Ltd.** (supra), the CD, having unconditionally bound itself under Clauses 3.1, 3.2, and 9.4 of the SCA to pay the MG of Rs. 6,00,00,000/- in consideration of receiving the digital distribution rights, initial subscription codes, and API integration, is contractually and legally bound to honour its commitment. As held in *Raymond Ltd.*, the MG was the agreed consideration for the digital infrastructure and distribution access made available by the OC as a package deal, and the CD is estopped from wriggling out of such solemn commitments merely because its own retail redemptions fell short. In terms of *Nabha Power*, this Tribunal cannot rewrite the explicit covenants of the

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contract to imply extraneous contingencies or relieve the CD of its admitted operational liability on grounds of commercial hardships.

**36.** In the present case by virtue of the SCA Agreement, as already discussed in the foregoing paragraphs, the OC agreed to provide the subscription codes of its OTT Platform to the CD at a discounted rate and permitted the CD to sell it to its Partners. The fixed quarterly amount of MG was payable by the CD to OC even if the CD fails to achieve the amount of QMG which clearly shows that the minimum guaranteed amount was not dependent on the sales of the subscriptions made by the CD but was deemed payable at the end of every quarter upon raising of an invoice for such QMG. The only pre-condition was that the OC should fulfill its duties to make the subscription codes available to the CD so that the CD can avail those subscriptions and carry out the distribution. Hence the ratio in **Somesh Choudhary (supra)** applies squarely to the present case and the MG amount payable by the respondent will be an Operational debt as the QMG amount and the entire MG amount arises directly out of the provisions of the agreement. The agreed MG represents the commercial consideration for granting media distribution rights and API integration services, falling squarely within the first limb of Section 5(21) of the Code.

*Accordingly, **Issue II is answered in the AFFIRMATIVE, in favour of the Operational Creditor.***

**ISSUE III: Whether the Respondent has committed Default in terms of Section 3(12) of the Code?**

**37.** The Respondent has argued that there has been no default on part of the Respondent in terms of the SCA Agreement. It is submitted that as per the terms of the Agreement especially **Clauses 1.5 and 1.1** the Applicant was upon execution of agreement was supposed to provide 5000 subscription codes to CD and thereafter on a request

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being made for the provision of subscription codes, the OC will provide the same through the API Integration set up by the OC and against which as a consideration the minimum annual commitment was agreed upon to be paid by the CD. It has been contended by the CD that the CD has never raised any request to provide any subscription code and the OC has not provided any subscription code either so as to claim any Minimum Guarantee and hence nothing was payable on part of the CD. It has been further argued that in terms of **Clause 1.2** the CD required permission in writing from the OC with respect to the partners to whom the CD intends to sell the subscription codes before making any sale of the subscription codes and hence such a written approval/permission is pre-requisite for providing the subscription codes, which never was given by the OC.

**38.** Upon perusing the entire contract especially Clause 1,2 and 3 the entire scheme of arrangement between the parties is of such nature where upon execution of contract the OC will provide 5000 subscription codes to CD, set up the API Integration system and the CD can raise request for subscription codes through the API and which upon receiving such request will be issued by OC.

Clause 1.2 provides that the CD can sale the subscription codes to its partners only after sharing details of such partners in advance and obtaining the applicant's approval. The clause nowhere restricts the CD from placing subscription requests without obtaining such approval. Furthermore, it is not the case of the CD that any request for subscription code was made and it was declined **or** the CD had sent details of its partners, who were prospective purchasers, were sent for approval to the OC and the OC did not approve the same and as a result the CD did not raise any subscription request. It is pertinent to observe that if the interpretation of Clause 1.2 is taken as presented by the CD, then the OC would have never provided the 5000 Subscription codes, the receipt of which is not disputed by the respondent, until the CD had

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secured written approval regarding the prospective buyer partners of the CD. Hence, the reliance on **Clause 1.2** by the CD to argue that the written approval by the OC was a pre-requisite before subscription requests can be made by the CD is misplaced.

**39.** The Respondent has disputed the occurrence of default by contending that in terms of Clause 3.2 of the clause, in case a lock down more than 15 days is imposed then the due date for payment for the quarter will be extended by 90 days, which implies that for every 5 days of lock down the due date of a quarter will be extended by 30 days and since lockdown was imposed for 90 days accordingly the due date of quarterly payment is extended by 540 days and hence the invoice raised by the applicant *w.r.t* QMGs is premature and no default has been committed by the respondent. In contrast, the Ld. Counsel for the Applicant has argued that the maximum permitted extension is 90 days and which will affect every prospective quarter proportionately and accordingly the term of the contract will get extended by maximum 90 days. The relevant portion of Clause 3.2 reads as follows:

*Save and except in the event of a lockdown is imposed due to the on-going pandemic (COVID-19) which exceeds beyond a period of fifteen days, in such an instance the **quarterly minimum guarantee due and payable by RKIT for that quarter and subsequent quarter shall be accordingly extended for a period of 90 days. It is clarified that the Terms in such an event will be extended proportionately for a period of 90 days.***

**40.** It is observed that the defense raised by the CD that the claims and invoices raised by the OC are premature on the assertion that the payment timelines stood extended by 540 days under Clause 3.2 of the SCA is legally flawed and mathematically untenable. A plain and literal reading of Clause 3.2 of the SCA reveals that the parties agreed that in the event of any government-mandated COVID-19 lockdown exceeding 15 days during a quarter, the due date for payment of the QMG for the affected quarter would be extended by 90 days, and the overall term of

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the agreement would be extended proportionately by a period of 90 days. The agreement was executed on 23.04.2021 for an initial term of 12 months (365 days). Consequently, the contractual extension granted on account of the pandemic lockdowns during the initial quarter was a single, proportional 90-day extension, shifting the overall term up to 21.07.2022. The CD's attempt to multiply and aggregate successive monthly administrative lockdown notifications to claim a cumulative extension of 540 days is an artificial construct that does complete violence to the express text of the contract. An interpretation that results in a 540-day (18-month) extension on a 12-month commercial contract would lead to commercial absurdity and rewrite the core bargain of the parties.

**41.** The CD in response to the averment by the OC that the entire Minimum Annual Commitment/MG has become payable upon termination of SCA *vide* the termination notice dated 01.07.2022 has contended that the termination is invalid as the applicant has failed to provide the minimum 30 days' notice to the respondent prior to termination in terms of Clause 9.

Upon perusal it is seen that the SCA provides for three distinct provisions in **Clauses 9.1, 9.2 and 9.3** enabling applicant to terminate the contract, the extract of which is reproduced herein below:

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9.1. This Agreement may be terminated by SPN without prejudice to its other rights and remedies hereunder upon the occurrence of any of the following events:

- 9.1.1. Upon 15 (fifteen) days written notice (email permitted), if RKIT is in breach of any of the terms and conditions of this Agreement which is capable of remedy and is not remedied within fifteen (15) days of receipt of written notice from SPN specifying the breach; and
- 9.1.2. Forthwith if RKIT is in breach of any of the terms and conditions of this Agreement which is incapable of remedy.
- 9.2. This Agreement may be terminated by SPN immediately, by way of written notice to the RKIT, in the event RKIT (i) has a liquidator or administrative receiver appointed over any part of its undertaking or assets; or (ii) has passed a resolution for winding up its business or where a court of competent jurisdiction makes an order to that effect; or (iii) enters into any voluntary arrangement with its creditors or becomes subject to an administration order.
- 9.3. This Agreement may be terminated by SPN, without assigning any reasons, by giving prior written notice of thirty (30) days to RKIT.

It is seen that the Applicant was enabled to terminate the contract u/s 9.1.1 after giving 15 days' notice since the respondent did not honour the quarterly payments in terms of the SCA. Clause 9.4 of the SCA categorically stipulates that upon such termination caused by the default of the CD, the entire Annual MG of Rs. 6,00,00,000/- shall immediately fall due and become payable, subject to the adjustment and set-off of the amounts already remitted by the CD. The record reveals that upon persistent failure on the part of the CD to clear the outstanding QMG tranches, the OC issued a notice dated 10.03.2022 calling upon the CD to cure the material payment breach within the stipulated cure period of 15 days. Despite receipt of the said notice, the CD failed to remedy the default. Consequently, the OC validly invoked Clause 9.1.1 of the SCA and terminated the agreement *vide* Termination Notice dated 03.06.2022 after 85 days which is permissible in terms of this clause. Hence, the defence of absence of 30 days' notice is not required in terms of the contract and there is nothing in the SCA that states anything contrary.

**42.** By operation of Clause 9.4 of the SCA, upon termination of the agreement on account of the CD's default, the entire unpaid balance of

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the Annual Minimum Guarantee crystallized into an operational debt due and payable. Pursuant thereto, the OC issued a demand letter dated 01.07.2022 demanding the payment of the net outstanding sum of Rs. 5,94,67,249/- (computed after adjusting the payments totalling Rs. 5,32,751/- previously remitted by the CD), which fell due on 03.07.2022 and remained unpaid.

**43.** The crystallized operational debt of Rs. 5,94,67,249/- satisfies the pecuniary threshold of Rs. 1,00,00,000/- mandated under Section 4 of the Code. The liability is clearly established from the express covenants of the agreement and the failure of the CD to honour the payment terms.

Accordingly, **Issue III is answered in the AFFIRMATIVE**, in favour of the Operational Creditor.

**ISSUE IV: Whether there exists any genuine “pre-existing dispute” between the parties prior to the issuance of the Demand Notice under Section 8 of the Code, or whether the defenses raised by the Corporate Debtor are mere afterthoughts in view of its admissions of liability?**

**44.** The law regarding the existence of a pre-existing dispute under Section 9 of the Code is well settled by the Hon’ble Supreme Court in **Mobilox Innovations Private Limited v. Kirusa Software Private Limited** ((2018) 1 SCC 353), wherein the Hon’ble Apex Court held at Para 51 as follows:

*“51. 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)(i)(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*

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*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 a 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."*

The aforesaid principle was reiterated by the Hon'ble Supreme Court in **Kay Bouvet Engineering Ltd. v. Overseas Infrastructure Alliance (India) Private Limited ((2021) 10 SCC 483)**, wherein it was reaffirmed that all the Adjudicating Authority is required to see is whether there is a plausible contention requiring further investigation and that the defense is not a patently feeble legal argument, mere bluster, or an assertion unsupported by any evidence.

45. Applying the **Mobilox** standard to the present record, the defenses raised by the CD regarding the alleged non-supply of codes beyond the value of Rs. 13,90,000/-, content deficiency on the OTT platform, and non-display on the FAQ section of the Sony LIV portal are wholly unsupported by any material record and are directly contradicted by its own admissions. Records reveal that the CD accepted the digital distribution rights, was provided the initial batch of 5,000 subscription codes, and had live API infrastructure integrated across its servers to generate codes on demand without quantitative limits. During the entire active period of the agreement, the CD never issued any notice of deficiency, or dispute regarding the platform or API services prior to the default notice dated 10.03.2022. On the contrary, in response to payment reminders, the CD acknowledged its liability *vide* email dated 31.01.2022 and reaffirmed *vide* email dated 22.02.2022 (Annexure 17 to the Rejoinder) that redemptions were picking up and that it would achieve the committed MG targets. Even subsequent to the Section 8 Demand Notice, the CD *vide* email dated

30.11.2022 (Annexure 21 to the Rejoinder) admitted its internal retail slowdown and sought to revive business ties. Having enjoyed the distribution rights and API integration without any demur, the defenses set up belatedly in the Reply are mere afterthoughts and do not constitute a genuine pre-existing dispute.

**46.** Furthermore, the record reveals that the CD never asserted any entitlement to a 540-day extension during the subsistence of the contract. On the contrary, when running invoices were raised and reminders issued, the CD acknowledged its payment liabilities *vide* email dated 31.01.2022 and reaffirmed its commitment to achieve the Minimum Guarantee targets *vide* email dated 22.02.2022 without ever claiming that the amounts were not yet due. It was only after the contract was terminated on 03.06.2022 and statutory demand notices were issued that this cumulative 540-day calculation was conjured as an afterthought.

**47.** The CD's reliance on the purported email communication dated 21.05.2021 (Annexure R-5 to the Reply) to substantiate an alleged pre-existing dispute and refusal to accept the MG clause is wholly unmerited and constitutes a moonshine defense. A careful examination of the record on hand reveals that the alleged email originated from an unverified address (**anwar@rechargekitgmail.com**), which is completely at variance with the genuine email domain (**anwar@rechargkitmail.com**) consistently utilized by the authorized representative of the CD in regular business dealings. The OC has categorically denied receipt of any such communication on its servers.

**48.** It is very pertinent to note here that the email communication cited by the respondent is sent from an email address with the domain name- '**@rechargekitgmail.com**'. In today's time it won't be an over estimation to state that every individual has an email address to operate a smartphone and more often than not it is of the email service provider

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**'Gmail'** with the domain name "**@gmail.com**" owned by Google LLC and the domain name in the email address is a compound word comprising of two words **'rechargekit'** and **'gmail'** which this court finds suspicious and is constrained to note that this copy of email dated 21.05.2021 annexed with the reply by the respondent is prima facie seems forged.

49. Furthermore, the assertions contained in the purported email of 21.05.2021 demanding deletion of the MG clause and requesting immediate cessation of business are directly demolished by the subsequent undisputed conduct and written representations of the CD. The communications on record (Annexures 17 and 18 to the Rejoinder) establish that following May 2021, the CD actively integrated the live API infrastructure across its servers, accepted subscription codes, and continued commercial operations. Crucially, on 22.02.2022 (nearly nine months after the alleged email), the CD explicitly reaffirmed its contractual commitment, assuring the OC that its redemptions were increasing and that it would meet its committed Minimum Guarantee targets. A party cannot be permitted to set up a self-serving, unverified communication to contradict its own subsequent admissions. Therefore, in terms of the test laid down in **Mobilox Innovations** (supra), the alleged email of 21.05.2021 is a concocted and illusory plea that fails to demonstrate the existence of any real, plausible pre-existing dispute prior to the issuance of the statutory demand notice.

*Accordingly, **Issue IV is answered in the NEGATIVE, in favour of the Operational Creditor.***

50. In view of the foregoing, we are convinced that the Operational Creditor provided digital distribution rights, subscription codes, and API integration services under the Subscription Collaboration Agreement dated 23.04.2021. The requisites of an application under Section 9 of the Code are available on record and stand duly proved.

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The default amount of Rs. 5,94,67,249/- is much above the statutory threshold limit of Rs. 1 Crore mandated under Section 4 of the Code, and the application is filed well within limitation. Further, in the absence of any genuine pre-existing dispute raised prior to the issuance of the Demand Notice under Section 8 of the Code, we do not find any reason for not admitting the present petition for initiation of CIRP against the Corporate Debtor.

**51.** The Petition bearing **CP (IB) No. 03/CB/2023** filed by **Culver Max Entertainment Private Limited (now renamed as Sony Pictures Networks India Pvt. Ltd.)** under Section 9 of the Code read with Rule 6(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency Resolution Process (CIRP) against **RECHARGEKIT FINTECH PRIVATE LIMITED (formerly known as RechargeKit Communications Private Limited)**, the Corporate Debtor, is **ADMITTED**.

**52.** A moratorium is declared under Section 14 of the Insolvency and Bankruptcy Code, 2016, prohibiting the following actions in terms of Section 14(1) of the Code:

- a. The institution of suits or continuation of pending suits or proceedings against the CD, 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 CD 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 CD in respect of its property, including any action under the Securitisation 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 CD.

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- e. The moratorium shall remain in force from the date of this order till the completion of the CIRP or until this Adjudicating Authority approves a resolution plan under section 31(1) of the code or passes an order for liquidation of the CD under Section 33 of the Code, whichever is earlier.

**53.** The Operational Creditor has not proposed any name of an Insolvency Professional to act as the Interim Resolution Professional (“IRP”) in terms of Section 9(4) of the Code.

We hereby appoint **Mr. Amarendra Kar**, having Registration No. **IBBI/IPA-001/IP-P02956/2025-2026/14557**, Email ID: **caamarendrakar@gmail.com**, as the IRP in terms of Section 16(4) of the Code. The IRP has filed his written consent in Form-2 and has affirmed that no disciplinary proceedings are pending against him.

**54.** The IRP may be appointed as RP by CoC separately in accordance with the provisions of the Code and the rules and regulations made thereunder, subject to confirmation of possession of a valid Authorisation for Assignment in terms of Regulation 7A of the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016.

**55.** The IRP so appointed shall make a public announcement of the initiation of the CIRP and call for submission of claims in terms of Section 15 read with Section 13(1)(b) of the Code.

**56.** The supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated, suspended, or interrupted during the moratorium period. The CD shall extend full assistance and co-operation to the IRP in discharge of his duties as and when he takes charge of the assets and management of the CD.

**57.** The IRP shall perform all its functions as contemplated, inter alia, by sections 17, 18, 20 & 21 of the Code. It is further made clear that all personnel connected with CD, its Promoter or any other person

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associated with the management of the CD are under a legal obligation under Section 19 of the Code to extend every assistance and co-operation to the IRP. Where any personnel of the CD, its Promoter, or any other person is required to assist or co-operate with IRP, but does not assist or co-operate, the IRP is at liberty to make an appropriate application to this Adjudicating Authority with a prayer for passing an appropriate order.

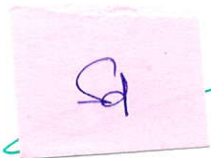
**58.** The IRP shall be under a duty to protect and preserve the value of the property of the CD and manage the operations of the CD as a going concern as a part of the obligation imposed by Section 20 of the Code.

**59.** The IRP/RP shall submit periodic progress reports before this Adjudicating Authority in accordance with the provisions of the Code and the regulations framed thereunder.

**60.** The OC shall deposit an initial amount of Rs.3,00,000/- (**Rupees Two Lakhs only**) within **3 days** (Three days) from the date of receipt of this order towards the expenses of the CIRP. Proof of such deposit shall be filed before this Adjudicating Authority along with the first progress report. The IRP shall be at liberty to seek further interim finance, as required, in accordance with law.

**61.** Further, the Registry is directed to communicate a copy of this order to the Operational Creditor, the Corporate Debtor, the Interim Resolution professional and the concerned Registrar of Companies within seven working days and upload the same on the website of this Tribunal immediately after pronouncement.

**62.** The IRP shall also serve a copy of this order upon statutory authorities including the Income Tax Department, GST authorities, State commercial Tax Department, Provident Fund authorities and such other authorities as may have claims against the Corporate Debtor, as well as employees or workmen associations, if any.



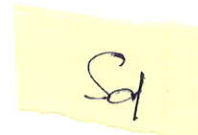
**63.** The Corporate Insolvency Resolution Process shall commence from the date of this order.

**64.** The Resolution Professional shall submit reports and compliances before this Adjudicating Authority strictly in accordance with the timelines prescribed under the Code and the regulations made thereunder.

**65.** The application bearing **CP(IB) No. 3/CB/2023** stands **ALLOWED.**



**BANWARI LAL MEENA**  
**MEMBER (TECHNICAL)**



**CHEEKATI RADHA KRISHNA**  
**MEMBER (JUDICIAL)**