NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT – II
CHENNAI

ATTENDANCE CUM ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL, CHENNAI BENCH, HELD ON 03.11.2026 AT 10.30 A.M. THROUGH VIDEO CONFERENCING:

CORAM: SHRI. JYOTI KUMAR TRIPATHI, HON'BLE MEMBER (JUDICIAL)
SHRI. RAVICHANDRAN RAMASAMY, HON'BLE MEMBER (TECHNICAL)

APPLICATION NUMBER : --

PETITION NUMBER : CP(IBC)/314(CHE)2025

NAME OF THE PETITIONER : Ambica Tanks

NAME OF THE RESPONDENT(S) : Value Mount Lixiviate Pvt Ltd

UNDER SECTION : Sec 9 Rule 6 of IBC, 2016

ORDER

Present: Ld. Counsel Mr. S. Satish for the Respondent.

Vide separate order pronounced in open court, **CP(IBC)/314(CHE)2025** is Allowed.

Sd/-
RAVICHANDRAN RAMASAMY
Member (Technical)

Sd/-
JYOTI KUMAR TRIPATHI
Member (Judicial)

kg

IN THE NATIONAL COMPANY LAW TRIBUNAL,

DIVISION BENCH – II, CHENNAI

CP (IBC) / 314 (CHE) / 2025

(Filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 r/w Rule 6 of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016)

AMBICA TANKS,
Through its Partner Mr. Arjun Singh Rajput,
Registered Office at S no. 51, Mirapur, Ta: Dehgam,
District, Gandhinagar, Gujarat – 382308

… Operational Creditor/Petitioner

-Vs-

VALUE MOUNT LIXIVIATE PRIVATE LIMITED
Registered Office: Plot no S 23 & S 24,
Sipcot Industrial Complex phase III,
Mukundarayapuram Post,
Mukundarayapuram, Vellore, Walajapet,
Tamil Nadu, India, 632405.

…Corporate Debtor/Respondent

Order Pronounced on ***03.11.2026***

CORAM
SHRI JYOTI KUMAR TRIPATI, MEMBER (JUDICIAL)
SHRI RAVICHANDRAN RAMASAMY, MEMBER (TECHNICAL)

For Petitioners: *Ld. Counsels Rahul Kumar Soni, Chandradeep Kumar.*
For Respondent: *Ld. Counsel S. Sathish.*

O R D E R

(Heard Through Hybrid Mode)

1. This Petition has been filed under Section 9 of the Insolvency and Bankruptcy code, 2016 ("*IBC*") read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 by **Ambica**

Tanks, (hereinafter referred to as '*Operational Creditor'*) seeking to initiate Corporate Insolvency Resolution Process against **Value Mount Lixiviate Private Limited** (hereinafter referred to as '*Corporate Debtor*').

2. Part-I of the Petition sets out of the details of the Operational Creditor with its Registered office situated at S no. 51, Mirapur, Ta: Dehgam, District, Gandhinagar, Gujarat – 382308 and address for correspondence at No 422, 4th Floor, Satva Icon, Opposite of Vastral Garn Metro Station, SP Ring Road, Vastral, Ahmedabad – 382418.

3. Part-II of the Petition sets out the details of the Corporate Debtor, Value Mount Lixiviate Private Limited, with Identification No. U32119TN2024PTC166543, incorporated on 04.01.2024, with an Authorized Share Capital of Rs. 10,00,000/- and the Paid-up Share Capital of Rs. 10,00,000/- having its registered office at Plot no S 23 & S 24, Sipcot Industrial Complex phase III, Mukundarayapuram Post, Mukundarayapuram, Vellore, Walajapet, Tamil Nadu, India, 632405.

4. In Part-III of the Petition the Operational Creditor has proposed **Mr. Manish Santosh Buchasia** having registration number IBBI/ IPA-002/ IPN00487 / 2017-2018/11449**,** an Insolvency Professional to act as a interim Resolution Professional.

5. Part-IV of the Petition states that the total outstanding Debt is Rs. 1,25,58,067 (One Crore Twenty-Five Lakhs Fifty Eight Thousand Sixty Seven

only) as the total default amount and further states that Operational creditor not claims any interest on principle / Default amount. It is stated that the Date of Default is 25.10.2024.

6. Part-V of the Petition describes the Particulars of the Operational Debt, documents, records and evidence of the default as below:

- Provision of Law, Contract or Other Document under Which Operational Debt Has Become Due - IBC 2016, Sale Goods Act, Etc.
- The Operational Creditor has submitted the details pertaining to the debt and the default committed by the Corporate Debtor before the Services Limited (NeSL) and Form C (Record of Financial Information) was generated from NeSL portal.
- List of other documents attached to this Application in order to prove the Existence of Operational Debt and the amount in default- Statement of Account is Attached

7. <u>SUBMISSIONS OF PETITIONER:</u>

7.1 It is stated that the Ambica Tanks (hereinafter referred as "Operational Creditor") is a partnership firm. The Firm is engaged in the business of manufacturing and selling industrial tanks and related products whereas Value Mount Lixiviate Private Limited (hereinafter referred to as Corporate Debtor) is a company incorporated under Companies Act,2013.

7.2 It is stated that the directors of the Corporate Debtor approached the operational creditor in January 2024 to purchase goods from the operational creditor. The operational creditor supplied the goods to the Corporate Debtor

over the period from March 2024 to May 2024. The Corporate Debtor made the part payments for the goods supplied by the operational creditor from March 2024 to October 2024. The Copies of the ledger statement are attached herewith as *ANNEXURE -A3*

7.3 It is stated that the operational creditor supplied the goods to the extent of Rs. 2,85,42,486/ - (Two Crore Eighty-Five Lakhs Forty-Two Thousand Four Hundred and Eighty- Six Only) over the period from January 2024 to May 2024. It is further states that the Corporate debtor made part payments of Rs.1,59,84,419/ - (One Crore Fifty-Nine Lakhs Eighty-Four Thousand Four Hundred Nineteen only) to the Operational Creditor over the period from January 2024 to October 2024. The Copy of the Bank Statement is attached herewith as *ANNEXURE – A5*

7.4 It is stated that thereafter, operational creditor raised the invoice to the Corporate Debtor on different dates 13.03.2024, 29.03.2024 and 08.05.2024 for the supply of goods to the Corporate 2,85,42,486/- (Two Crore Eighty-Five Lakhs Forty-Two Thousand Four Hundred and Eighty Six Only) out of which the Corporate Debtor made a default in paying the total balance of amount Rs 1,25,58,067 / - (One Crore Twenty-Five Lakhs Fifty Eight Thousand and Sixty-Seven Only). The Copies of the invoices are attached herewith as *ANNEXURE-A4*.

7.5. It is stated that the operational creditor made regular follows up for the payment of the aforesaid amount to the corporate debtor. However, all efforts made by the Operational Creditor to receive payment from the Corporate Debtor were futile. The efforts of the Operational creditor were not appreciated by the Corporate Debtor and Payment of Rs 1,25,58,067 /- (One Crore Twenty Five Lakhs Fifty-Eight Thousand and Sixty-Seven Only) was not made by the Corporate Debtor. It is stated further stated that several reminders, calls and follow ups were made by the Operational Creditor, However the Corporate Debtor was not addressed the concern of the Operational Creditor and failed to make payment towards the outstanding amount of Rs 1,25,58,067/- (One Crore Twenty-Five Lakhs Fifty-Eight Thousand and Sixty-Seven Only).

7.6. It is stated that the Operational Creditor finally issued demand notice upon the Operational Creditor in Form 3 as prescribed under section 8 of the Insolvency and Bankruptcy Code, 2016 and Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, on 22.07.2024 to make payment of outstanding dues immediately. The copy of demand notice along with service attached herewith *ANNEXURE - A6*.

7.7. It is stated that that Operational Creditor made all the efforts to maintain the business relation but ultimately, when Operational Creditor was left with no other option, the present application is hereby filed before the

Tribunal and further states that the Corporate Debtor was liable to make the payment against the invoices raised on 13.03.2024, 29.03.2024 and 08.05.2024. The last invoice raised by the Corporate Debtor was on 08.05.2024. Thus the debt fell due w.e.f. 08.05.2024 and continuing till date.

7.8. Therefore, the Operational creditor submitted that the total amount claimed to be in default as on date is of INR 1,25,58,067/- (One Crore Twenty-Five Lakhs Fifty- Eight Thousand and Sixty- Seven Only). It is further states that the date of default is 25.10.2024, i.e. the day when the Corporate Debtor was liable to pay the amount, but failed without giving any reason or explanation.

8. <u>SUBMISSIONS BY RESPONDENT:</u>

8.1 It is stated that the Corporate Debtor was incorporated on 04.01.2024. (Mr. Kandasamy Raja, Mr. Natesan Manmani and Mr. Vellalapalayam Ramasamy are the first directors of the Corporate Debtor). Master Data of Corporate Debtor is enclosed as *ANNEXURE-A*. To expedite various a quick start operations Pre incorporation contracts, agreement and ground work were kick started by the Directors, one among them was to place order for made to order "leaching tanks" which required a considerable lead time.

8.2 It is stated that the Respondent/Corporate Debtor submits that Mr. Arjun Singh Rajput (partner of Petitioner/Operational Creditor) visited the proposed facility of Respondent/Corporate Debtor in November 2023 prior to

its incorporation and purportedly claimed that he has expertise in supply of tailor-made Leaching Tanks and is operating units and requested for a substantial advance. Email from Arjun Sing dated November 28, 2023 is enclosed as *ANNEXURE-B*. It is further stated that the Mr. Arjun Singh Rajput had informed he would initially raise a Proforma invoice through his Sole Proprietorship Shiv Enterprises. GST details of M/s. Shiv Enterprises confirming its sole proprietorship status and being owned by Mr. Arjun Singh Rajput is enclosed as *ANNEXURE-C*.

8.2 It is stated that the Since the Corporate Debtor was yet to be incorporated, the Proforma Invoice was raised by Shiv Enterprises on Gold One Refinery Private Limited, in which Kandasamy Raja is a Director. Master Data of Gold One Refinery Private Limited is enclosed as ANNEXURE-D. The Proforma Invoice dated 28.11.2023 raised by Shiv Enterprises (proprietorship concern of Mr. Arjun Singh Rajput) on Gold One Refinery Private Limited to receive advance is enclosed as ANNEXURE-E. It is stated that payment of a sum of Rs. 60,00,000/- (Rupees Sixty Lakhs) was made by Kandasamy Raja on 29.11.2023 from his HDFC bank account (Bank Account Statement enclosed as ANNEXURE-F) to Shiv Enterprises Proprietorship of Mr. Arjun Singh Rajput.

8.3 It is stated that the, it was categorically mentioned in email dated 01.12.2023 that confirmation has to be obtained before raising tax invoices for supplies when effected. It is stated that Shiv Enterprises in fact after

incorporation of Corporate Debtor raised an Proforma Invoice dated 11.03.2024 (**copy enclosed as** ANNEXURE-I) and has clearly mentioned the advance amount therein.

8.4 It is stated that the post incorporation of Corporate Debtor, Mr. Arjun Singh Rajput informed that the supply of LEACHING TANKS would be done through his Partnership Firm M/s. Ambica Tanks wherein he and his wife Mrs. Ravita Arjun Singh Rajput are partners. GST Registration Certificate of M/s. Ambica Tanks is enclosed as ANNEXURE-J.

8.5 It is stated that the Tax Invoices were raised by Ambica Tanks on the Corporate Debtor for the finalized quantity the details of which are as follows

Invoice No	Date	Amount
IN-89	13.03.2024	1,19,45,140
IN-90	13.03.2024	86,35,511
Debit Note 8 (TCS)	31.03.2024	15,581
IN-004/24-25	08.05.2024	79,58,876
	Total	2,85,55,108

8.6 It is stated that the against the aforesaid invoices the payment made is as follows (Bank Account Statement of Corporate Debtor enclosed as ANNEXURE-K**)**

Value Date	Description	Amount
12-01-2024	RTGS Dr-CNRBR52024011271676796-HDFC0009254-AMBICA TANKS-/FAST/ FAST	₹ 50,00,000.00
29-03-2024	IB NEFT Dr P089240311984729 AMBICA TANKS HDFC0009254 50200046377458 MATERIALS PURCHASE	₹ 25,00,000.00
05-04-2024	IB NEFT Dr P096240314126999 AMBICA TANKS HDFC0009254 50200046377458 MATERIALS PURCHASE	₹ 25,00,000.00
01-05-2024	IB NEFT Dr P122240319498051 AMBICA TANKS HDFC0009254 50200046377458 MATERIALS PURCHASE	₹ 10,00,000.00
09-05-2024	RTGS Dr-CNRBR52024050980079513-HDFC0009254-AMBICA TANKS-/NONE	₹ 10,00,000.00
14-05-2024	RTGS Dr-CNRBR52024051480350644-HDFC0009254-AMBICA TANKS-/NONE	₹ 20,00,000.00
06-08-2024	RTGS Dr-CNRBR52024080686074449-HDFC0009254-AMBICA TANKS-/NONE	₹ 5,00,000.00
09-10-2024	RTGS DRCNRBR5202410099051 1872-HDFC0009254-AMBIKA TANKS-/NONE	₹ 10,00,000.00
25-10-2024	RTGS DRCNRBR5202410259166 6059-HDFC0009254-AMBIKA TANKS-/NONE	₹ 5,00,000.00

Amount Paid from the Account of Kandasamy Raja		
29-11-2023	RTGS DR-NVNM0000006-SHIV ENTERPRISE-T NAGAR -CH-HDFCR52023112957949678	₹ 60,00,000.00
	TOTAL	₹ 2,20,00,000.00

8.7 It is stated that the as stated earlier a mere accounting of value of invoice raised and payments made would alone bring to the light the fact that the amount alleged to be due is only Rs. 65,55,108/- which is less than the threshold limit of one crore specified under Section 4 of IBC, 2016. This even without considering the value of defect in goods and deficiency in service for which the Operational creditor is fully liable. It is further stated that the

Respondent/Corporate Debtor has incurred considerable cost including but not limited to painting of the tanks, GST Penalty and other incidental expenses relevant to this particular transaction. These amounts are accordingly, to be adjusted before settling the Applicant.

8.8 It is stated that the without prejudice to the above there has been significant defects in the material supplied by the Operational Creditor and the Corporate Debtor is incurring money to cure the defects and the Petitioner/Operational Creditor is fully liable for the same. The details of some of expenditure incurred is enclosed as ANNEXURE-L.

8.9 It is stated that the when the above defects and expenditure incurred was informed to the Petitioner/Operation Creditor, the Operational Creditor instead of rectifying the same has in haste filed this petition. The Corporate Debtor is in the process of initiating appropriate legal action against the Petitioner/Operational Creditor for recovering the actual losses and damages suffered by it on account of the Petitioner/Operational Creditor defective supply of materials and/or service. It is further stated that the Petitioner/Operational Creditor instead of taking responsibility for the defective products supplied by it and rectifying the same has despicably filed this petition suppressing the payments received and using this Tribunal as a recovery forum, with oblique and ulterior motives.

8.10. It is stated that, a mere accounting of value of invoice raised and payments made would alone bring to the light the fact that the amount alleged to be due is less than the threshold limit of one crore specified under Section 4 of IBC, 2016. This even without considering the value of defect in goods and deficiency in service for which the Operational creditor is fully liable.

8.11. It is stated that the Petitioner/Operational Creditor has not come before this Tribunal with clean hands and has suppressed significant material information, which goes into the root of the matter and further states that the petition is not maintainable as the Petitioner/Operational Creditor has deliberately suppressed the payments received as part of the transaction which is claimed to be operational debt.

9. <u>REJOINDER FILED BY THE OPERATIONAL CREDITOR:</u>

9.1 It is stated that the Counter Statement does not even sufficiently deal with the fact that the debt has been authenticated by the NeSL. It is stated that the Respondent who despite having ample opportunity has conspicuously and deliberately refrained from disputing the NESL authentication of the invoices issued by the Petitioner. This silence is not merely an omission; it constitutes an admission of the authenticity and validity of the said invoices.

9.2 It is stated that the NESL (National e-Governance Services Limited) authentication is the statutory and conclusive mechanism for authenticating electronic invoices. Once a document is NESL- authenticated, the burden shifts

entirely to the party challenging its authenticity to prove otherwise. The Respondent has provided no such evidence and has raised no such challenge. The invoices bearing NESL authentication, namely IN-089, IN-090, Debit Note No. 08, and IN- 004/24-25, are therefore beyond any reasonable doubt valid and authentic documents establishing the operational debt. Once the default is authenticated in terms of Regulation 21 of the IBBI (Information Utilities) Regulations, in terms of Section 9(3)(d) of the IBC, the debt is deemed to be authenticated and that alone is sufficient evidence to admit the Corporate Debtor into CIRP. It is submitted that the Operational Creditor has inadvertently filed the Form C of NeSL authentication as opposed to the Form D which shows the debt as authenticated. Copy of the record of default is filed herewith as Exhibit A-1.

9.3 It is stated that the once the existence of an operational debt is established through valid documentation, unless the corporate debtor provides cogent counter-evidence disputing the debt's quantum, authenticity, or liability the said Operational Debt stands valid. The Respondent has failed to provide any such cogent counter-evidence. It is denied that the Petitioner has "deliberately suppressed significant material information". It is denied that any suppression of facts has occurred. The Original Petition clearly and comprehensively set forth all material facts regarding the transaction, the invoices issued, the goods supplied, and the payments received. The

Respondent, having benefited from the goods supplied, cannot now be permitted to place such frivolous defences.

9.4 It is stated that the operational creditor denied that any advance has been paid by the Corporate Debtor to the Operational Creditor. The Counter seeks to rely on a completely unrelated proforma invoice raised by a 3rd party entity Shiv Enterprise which proforma invoice is not even raised on the Corporate Debtor, but on Gold One Refinery Pvt Ltd. The said Proforma invoice neither is raised by the Operational Creditor, nor is it raised on the Corporate Debtor. It is an invoice, which admittedly even pre-dates incorporation of the Corporate Debtor. In this regard it is stated that:

a. A contract formed before incorporation is unenforceable. An alleged pre-incorporation contract cannot and will not automatically bind the company upon incorporation. The proforma invoice is dated 28.11.2023, The Corporate Debtor was incorporated on 04.01.2024 as evidenced by the Master Data maintained by the Ministry of Corporate Affairs. Without prejudice, for a pre-incorporation contract to bind the Corporate Debtor and to be enforced by the Corporate Debtor, in terms of the Specific Relief Act, the Corporate Debtor must ratify a contract entered into on it's behalf, the same has to be validly notified by a notice of adoption to the contracting party, which notice the Company must affirm its obligations under the contract. Consequently, neither can the Corporate Debtor sur or be sued in respect of an alleged pre-incorporation contract, which it has not ratified.

b. Secondly, the alleged pre-incorporation contract is not even entered into in the name of the promoter, but rather is entered into, in the name of another incorporated entity being Gold One Refinery Private Limited. There is no evidence produced by the Corporate Debtor as to what is the arrangement if any between the said Gold One Refinery Private Limited

and the Corporate Debtor. However, there is absolutely no arrangement between the Operational Creditor herein and the Corporate Debtor to adjust monies paid by the said Gold One Refinery Private Limited.

c. There is absolutely no arrangement between Shiv Enterprises and the Operational Creditor to adjust any amount paid by Gold One Refinery Private Limited to the credit of the Corporate Debtor.

d. The purported bank statement produced is not of the Corporate Debtor or of the said Gold One Refinery Private Limited, but instead is the personal bank account of one of the Directors of the Corporate Debtor making payment to Shiv Enterprises, which transfer is of no relevance in the instant case since there was no privity of contract between the Operational Creditor and the Director of the Corporate Debtor.

e. Lastly, it is submitted that in respect of proforma invoice dated 11.03.2024 that this proforma invoice is also between Shiv enterprises and the Corporate Debtor and not the Operational Creditor herein.

9.5 It is stated that, apart from the above, fact that this entire defence is entirely puerile and an afterthought is evident from the fact that when tax invoice was finally raised by the Operational Creditor on 13.03.2024, no such alleged advance was recognised by the Operational Creditor. If the Corporate Debtor considered that there was an advance paid to Shiv Enterprises which ought to have been reckoned in the tax invoice of the Operational Creditor, the same ought to have been highlighted on 13.03.2024 itself, which was not done. Operational Creditor, until the filing of the Petition has not raised any objection to the raising of the tax invoice nor stated that an alleged advance paid ought to Shiv Enterprises be reckoned. Perusal of the communications produced by the Operational Creditor in Page 219 of application further

reflects that whenever payment reminder was sent, the Corporate Debtor had never disputed the same by only undertook to process the payment immediately. This communication trail has also not been disputed.

9.6 It is stated that, this defence of pre-incorporation arrangement, alleged advance paid, alleged set off of the advance paid to one Shiv Enterprises, etc., were never raised prior to filing of the Company Petition, were not pre-existing disputes between the parties, are raised for the first time in response to this Petition as a puerile attempt to defeat the Petition, and are liable to be set aside when considering the Petition. Claim for set off of such alleged advance paid is also not to be considered. Any pre-existing dispute / claim for set off ought to have been done prior to filing of the Petition. When the Corporate Debtor has not even bothered to respond to the Demand Notice under Form 3 that this set-off / pre-existing dispute exists, and further when the entire amount is authenticated in the NeSL, attempt to raise these disputes at this belated stage is liable to be rejected.

9.7. It is stated that the Respondent's assertion in the Counter regarding the quantum of debt is fundamentally flawed. The Respondent contends that the amount alleged to be due is "less than the threshold limit of one crore" is denied. The aggregate amount of all invoices, substantially exceeds the statutory- threshold of Rs. 1,00,00,000/- prescribed under Section 4 of the IBC, 2016. When on the one hand Petitioner has asserted in its demand notice that

the Corporate Debtor has repaid only Rs. 1.59 crores out of the total due of Rs. 2.85 crores, which assertion remained uncontroverted until the filing of the Petition, no claim of repayment to a tune of Rs. 2.20 crores can be accepted, that too when the alleged repayment is by a third-party entity to another third party entity.

9.8. It is stated that the Respondent's contention regarding extent of alleged repayment made is legally and factually indefensible. The Respondent argues that payments made to entities associated with the Petitioner should be adjusted against the operational debt owed to the Petitioner. It is vehemently denied that no such adjustment is permissible under law. It is further states that the Petitioner is a distinct legal entity – a Partnership Firm known as Ambica Tanks. Any other entity, whether associated with the Petitioner or the partners, remains a separate legal entity. It is a settled law that each legal entity remains independent and is not responsible for the liabilities of another, regardless of common ownership or management and consolidation or set-off of debts between different entities is permissible only when the parties expressly agree to it or when statutory provisions mandate it. No such agreement exists between the Petitioner and the Respondent, and no statutory provision mandates such cross-entity adjustment. The Respondent's argument is therefore both legally unsustainable and factually baseless.

9.9. It is stated that the penalty arose due to wrong address which was given by Respondent for generating E-way bill. The Respondent was the one who provided the incorrect address. The Respondent cannot shift the consequences of its own negligence onto the petitioner. This is a contractual liability of the Respondent, not an offset to the operational debt. The Respondent's assertion that the Petitioner should have "reclaimed the amount from GST department" is equally untenable. The Respondent was the buyer; it was the Respondent's responsibility to verify the accuracy of information provided for GST purposes. The Petitioner cannot be made liable for the Respondent's administrative lapses.

9.10. It is stated that the Petitioner supplied the tanks and the Respondent accepted delivery of the same. The Petitioner's obligation under the transaction was limited to supply and delivery. Once the goods have been delivered and accepted, the responsibility for maintenance, operation, and any consequential losses is that of the buyer. It is stated that the Respondent has merely speculated about alleged defects without providing any substantive evidence, contemporaneous documentation, or credible proof. The burden of proof lies on the party alleging defects, and the Respondent has failed to discharge this burden. It is denied that the Respondent tried to communicate with the Petitioner, no credible evidence has been adduced to substantiate this allegation. Such serious allegations require proof beyond mere assertion.

9.11. It is stated that the Respondent's contention, as articulated in Point 19, that the Petitioner supplied defective material and that the Respondent is incurring money to cure these alleged defects is entirely unsubstantiated. The Respondent has not provided:

(a) Any complaint letter to the Petitioner regarding defects;

(b) Any correspondence from the Respondent's side after project completion;

(c) Any technical report or inspection document evidencing alleged defects;

(d) Any proof of expenses allegedly incurred for remedying these defects;

(e) Any communication whatsoever contemporaneous with the alleged defects.

The absence of all such documentary evidence is deafening. It is pertinent to state that a party making serious allegations of defective supply bears the obligation to substantiate such allegations with credible evidence.

9.12. It is stated that the Respondent's defence, taken in its entirety, suffers from a fundamental and fatal defect. The Respondent has failed to meet its burden of proof under Section 9 of the IBC, 2016. To successfully resist the admission of the petition, the Respondent must establish that:

(a) The operational debt does not exist - The Respondent has not done so. The NESL-authenticated invoices stand unchallenged;

(b) The operational debt is time-barred - No such plea has been raised;

(c) The operational debt has been discharged - No credible evidence of payment of the outstanding amount has been provided;

(d) The operational debt is genuinely disputed and such dispute must be pre-existing on valid legal or factual grounds - Here the Disputes raised are not pre-existing nor legally valid.

9.13. It is stated that based on the provisions of the Insolvency and Bankruptcy Code (IBC), 2016, and established judicial precedents such as ***Mobilox Innovations Pvt. Ltd. v. Kirusa Software Pvt. Ltd, (2018) 1 SCC 353***, the operational debt must indeed be disputed on valid, pre-existing legal or factual grounds to defeat a petition for the initiation of the Corporate Insolvency Resolution Process (CIRP). Here the Respondent's Counter- Reply comprises nothing more than vague denials and frivolous contentions which are nothing but an afterthought. It is further stated that the entire defence of the Respondent is manifestly an afterthought. The Respondent had multiple opportunities to raise issues of alleged defects, claimed communication failures, and purported counterclaims before filing the Counter. The fact that these contentions are being raised only now, after the petition has been admitted and only to resist the initiation of CIRP, demonstrates that these are nothing more than delaying tactics,

10. <u>WRITTEN SUBMISSIONS FILED BY THE CORPORATE DEBTOR:</u>

10.1. It is stated that the mere accounting of value of the invoice raised and payments made would alone bring to the light the fact that the amount alleged to be due is only Rs. 65,55,108/- which is less than the threshold limit of one crore specified under Section 4 of IBC, 2016. This even without considering the

value of defect in goods and deficiency in service for which the Operational creditor is fully liable.

Invoice No	Date	Amount
IN-89	13.03.2024	1,19,45,140
IN-90	13.03.2024	86,35,511
Debit Note 8 (TCS)	31.03.2024	15,581
IN-004/24-25	08.05.2024	79,58,876
	Total	2,85,55,108
Less: Total Payment directly made by Corporate Debtor **(Annexure K)**		1,60,00,000
Less: Payment made by Kandasamy Raja Director of Corporate Debtor to Shiv Enterprises Proprietorship of Mr. Arjun Singh Rajput who is Partner of Operational Creditor **(Annexure F)**		60,00,000
BALANCE IS LESS THAN THE threshold limit of one crore specified under Section 4 of IBC, 2016		Rs. 65,55,108/-

10.2. It is stated that the mere fact that Section 8 Notice is not replied, does not prevent the Corporate Debtor from pleading issues of 'Pre-Existing Dispute' or that the 'debt' has been paid, in their Reply to the Petition filed under Section 9 of the Code and the Adjudicating Authority if satisfied can Creditor dismiss the Section 9 Application filed by the Operational creditor. This aforesaid legal position is squarely covered by the decision of the Hon'ble NCLAT, Principal Bench, New Delhi in *Greymatter Entertainment Pvt. Ltd. Vs Pro Sportify Pvt. Ltd. Company Appeal (At) (Insolvency) No. 1043 of 2021.* The said Judgment follows the ratio laid by Hon'ble NCLAT, Principal Bench, New Delhi in *Brandy Realty Services Ltd.' Vs. Sir John Bakeries India Pvt. Ltd. Company Appeal (AT) (Insolvency) No. 958 of 2020* and also *in Neeraj Jain Vs. Cloudwalker*

10.3. It is stated that the without prejudice to the above, that there has been defects in the material supplied by the Operational Creditor and the Corporate Debtor is incurring money to cure the defects and the Petitioner/Operational Creditor is fully liable for the same. The details of some of expenditure incurred are enclosed *as Annexure L*

11. <u>WRITTEN SUBMISSIONS BY OPERATIONAL CREDITOR:</u>

11.1 It is stated that the Corporate Debtor's contention that the amount due is "less than the threshold limit of one crore" is factually incorrect and legally untenable. The aggregate amount of all invoices, substantially exceeds the statutory threshold of Rs 1,00,00,000. When on one hand the Petitioner has asserted in its demand notice that the Corporate Debtor has repaid only Rs. 1.59 crores out of the total due of Rs 2.85 crores which assertion remains uncontroverted until the filing of the Petition, there remains an undisputed balance exceeding the threshold. Alleged payment by one third-party company to another third-party entity cannot discharge repayment obligations. The payment is alleged to have been made by one Gold One Refinery Pvt Ltd., to one Shiv Enterprise. Neither the Corporate Debtor nor the Operational Creditor were parties to that transaction.

11.2. It is stated that the Corporate Debtor's principal defence rests on an alleged advance said to have been paid to a third party, Shiv Enterprises, under a proforma invoice dated 28.11.2023, which is sought to be set off against the present operational debt. This defence is liable to be rejected for the following cumulative reasons:

a. **Pre-incorporation contract without being adopted by the Company is unenforceable**: The Corporate Debtor was incorporated only on 04.01.2024, as per its Master Data maintained by the Ministry of Corporate Affairs (Pg. 36 of CP Vol 1). The proforma invoice dated 28.11.2023 (Pg. 18 of the Counter) necessarily pre-dates incorporation and, in the absence of ratification through a valid notice of adoption as contemplated under the law of pre-incorporation contracts and the Specific Relief Act, cannot bind or be enforced by the Corporate Debtor. Therefore, neither the Corporate Debtor can sue or be sued in respect of an alleged pre- incorporation contract which is not ratified.

b. **No privity of contract**: The proforma invoice was not raised on the Corporate Debtor at all, but on an unrelated third entity, Gold One Refinery Private Limited. There is no evidence produced by the Corporate Debtor as to what is the arrangement if any between There is no arrangement — pleaded or evidenced — between the said Gold One Refinery Private Limited and the Corporate Debtor. The Operational Creditor and either Gold One Refinery Private Limited or Shiv Enterprises permitting adjustment of any sum paid by Gold One Refinery Private Limited against the dues of the Corporate Debtor.

c. **Payment traced to a personal account, not the Corporate Debtor**: The bank statement relied upon by the Corporate Debtor evidences payment from the personal account of one of its Directors to Shiv Enterprises, a transaction between two entities with no privity to the Operational Creditor, and therefore of no relevance to the present debt.

d. **Conduct is inconsistent with the defence**: When the tax invoices were finally raised by the Operational Creditor on 13.03.2024, no advance was recognized, adjusted, or even referred to by either party. No objection on this

count was raised at any stage prior to the filing of the Petition, not even in response to the Form 3 demand notice dated 22.07.2024, to which no reply was sent at all.

11.3. It is stated that the consolidation or set-off of debts between distinct legal entities is permissible only where the parties expressly agree, or a statute so mandates. Ambica Tanks is a distinct partnership firm; no agreement or statutory provision permits adjustment of payments made by or to unrelated third parties against its dues. The plea of set-off is, therefore, both legally unsustainable and factually baseless.

11.4. It is stated that the, to successfully resist admission under Section 9 of the IBC, 2016, the Corporate Debtor was required to establish that: (a) the operational debt does not exist; (b) it is time-barred; (c) it has been discharged; or (d) it is genuinely disputed on pre-existing, valid legal or factual grounds.

11.5. It is stated that the Corporate Debtor has failed to establish any of the above. The NeSL- authenticated invoices stand unrebutted; no plea of limitation is raised; no credible proof of discharge beyond the admitted part-payment of Rs. 1,59,84,419/- is placed on record; plea of pre-incorporation contract is raised for the first time in the counter to this Petition and, as demonstrated above, the disputes now sought to be raised are neither pre-existing nor legally valid. The Corporate Debtor has not even responded to the

Demand Notice issued under Section 8 which in itself shows that the defenses raised in the Petition are raised for the first time and as an afterthought.

11.6. It is stated that the as per *Mobilox Innovations Pvt. Ltd. v. Kirusa Software Pvt. Ltd., (2018) 1 SCC 353,* that a dispute raised to resist a Section 9 petition must be a genuine dispute existing prior to the demand notice, on valid legal or factual grounds — not a spurious, hypothetical, or illusory defence conjured up to avoid admission. These circumstances, taken cumulatively, demonstrate that the defenses are an afterthought raised for the first time in the Counter, solely to delay and defeat admission of an otherwise clear and undisputed claim for operational debt.

11.7. It is stated that the from a bare perusal of the above it can be understood that pre incorporation contracts entered into can be enforced by the company or against the company if the same is accepted by the company and communicated to the other party with whom the contracted is entered into. In the instant case since the ingredients under Section 15(h) and 19(e) are not satisfied the pre incorporation contract is not binding on the operational creditor.

FINDINGS OF THIS TRIBUNAL:

12. We have heard the learned Counsels for both the parties and perused the documents on record.

13. The present Company Petition has been filed by the Operational Creditor under Section 9 of the Insolvency and Bankruptcy Code, 2016 ("IBC") seeking initiation of Corporate Insolvency Resolution Process ("CIRP") against the Corporate Debtor for default in payment of operational debt.

14. In the present case, the contention of Operational Creditor is that operational creditor supplied the goods to the tune of Rs. 2,85,42,486/ - (Two Crore Eighty-Five Lakhs Forty-Two Thousand Four Hundred and Eighty- Six Only) over the period from January 2024 to May 2024. It is further states that the Corporate debtor made part payments of Rs.1,59,84,419/ - (One Crore Fifty-Nine Lakhs Eighty-Four Thousand Four Hundred Nineteen only) to the Operational Creditor over the period from January 2024 to October 2024.

15. It is stated that, Operational creditor raised the invoice to the Corporate Debtor on different dates 13.03.2024, 29.03.2024 and 08.05.2024 for the supply of goods to the Corporate 2,85,42,486/- (Two Crore Eighty-Five Lakhs Forty-Two Thousand Four Hundred and Eighty-Six Only) out of which the Corporate Debtor made a default in paying the total balance of amount Rs 1,25,58,067 / - (One Crore Twenty-Five Lakhs Fifty Eight Thousand and Sixty-Seven Only). It is further stated that the Corporate debtor made part payments of Rs.1,59,84,419/ - (One Crore Fifty-Nine Lakhs Eighty-Four Thousand Four Hundred Nineteen only) to the Operational Creditor over the period from January 2024 to October 2024.

16. Operational creditor had issued a Demand Notice in Form-3 under Section 8 of the Code on 22.07.2024. Despite receipt of the demand notice, the Corporate Debtor failed to liquidate the outstanding dues. It is further states that the date of default is 25.10.2024, i.e. the day when the Corporate Debtor was liable to pay the amount on the invoice raised.

17. Per contra, the respondent's contention is that Mr. Arjun Singh Rajput (partner of Petitioner/Operational Creditor) visited the proposed facility of Respondent/Corporate Debtor in November 2023 prior to its incorporation and purportedly claimed that he has expertise in supply of tailor-made Leaching Tanks and is operating units and requested for a substantial advance. It is further stated that the Mr. Arjun Singh Rajput had informed he would initially raise a Proforma invoice through his Sole Proprietorship Shiv Enterprises

18. The Respondent stated that the Since the Corporate Debtor was yet to be incorporated, the Proforma Invoice was raised by Shiv Enterprises on Gold One Refinery Private Limited, in which Kandasamy Raja is a Director. The Proforma Invoice dated 28.11.2023 raised by Shiv Enterprises (proprietorship concern of Mr. Arjun Singh Rajput) on Gold One Refinery Private Limited to receive the advance. It is stated that payment of a sum of Rs. 60,00,000/- (Rupees Sixty Lakhs) was made by Kandasamy Raja on 29.11.2023 from his

HDFC bank account to Shiv Enterprises Proprietorship of Mr. Arjun Singh Rajput.

19. Also, the respondent further stated post incorporation of Corporate Debtor, Mr. Arjun Singh Rajput informed that the supply of Leaching tanks would be done through his Partnership Firm Ambica Tanks wherein he and his wife Mrs. Ravita Arjun Singh Rajput are partners and the Tax Invoices were raised by Ambica Tanks on the Corporate Debtor for the finalized quantity is Rs 2,85,55,108/- against the invoices corporate debtor has made Payment of Rs. 2,20,00,000/-.

20. The respondent stated that, a mere accounting of value of invoice raised and payments made would alone bring to the light the fact that the amount alleged to be due is only Rs. 65,55,108/- which is less than the threshold limit of one crore specified under Section 4 of IBC, 2016. Thus even without considering the value of defect in goods and deficiency in service for which the Operational creditor is fully liable and further stated that the Respondent/Corporate Debtor has incurred considerable cost including but not limited to painting of the tanks, GST Penalty and other incidental expenses relevant to this particular transaction.

21. The issue for consideration in the present case is whether there is an existing operational debt payable and whether there exists a pre-existing dispute prior to issuance of the demand notice under Section 8 of the Code.

22. The supply of Leaching tanks by the Operational Creditor to the Corporate Debtor is not disputed. The business relationship between the parties and the transactions giving rise to the debt is also admitted between the parties.

23. The invoices bearing NeSL authentication - namely IN-089, IN-090, Debit Note No. 08 and IN-004/24-25 are authenticated records of default in terms of Regulation 21 of the IBBI (Information Utilities) Regulations, 2017. In terms of Section 9(3)(d) of the IBC, 2016, such authentication is deemed sufficient evidence of default for admission of a Section 9 application. The Corporate Debtor has neither disputed this authentication in its Counter nor adduced any evidence to rebut it.

24. With Regard to the Corporate Debtor's contention that the outstanding amount is less than the statutory threshold limit of Rs. 1 Crore. It is stated by Corporate debtor that out of the total claimed operational debt of Rs. 2,85,42,486/-, an amount of Rs. 2,20,00,000/- has already been paid. Consequently, the remaining balance alleged to be due is only Rs. 65,55,108/-, which falls short of the minimum threshold limit specified under Section 4 of the Insolvency and Bankruptcy Code, 2016.

25. It is an admitted fact by both parties that the Corporate Debtor has paid a sum of Rs. 1,59,84,419/- towards the operational debt, out of the total claimed amount of Rs. 2,85,42,486/- against the invoices raised by the Operational

Creditor for supplies made. Hence, this Tribunal notes that the core issue for consideration is whether the balance amount of Rs. 1,25,58,067/- has been paid to the Operational Creditor by the Corporate Debtor.

26. It has been placed on record that an alleged advance of Rs. 60,00,000/- is said to have been paid to a third party, Shiv Enterprises, under a proforma invoice dated 28.11.2023. However, as per the Master Data maintained by the Ministry of Corporate Affairs, the Corporate Debtor was incorporated only on 04.01.2024. Therefore, the proforma invoice dated 28.11.2023 necessarily pre-dates the incorporation of the Corporate Debtor.

27. This Tribunal observes that the proforma invoice was not raised on the Corporate Debtor at all, but rather on an unrelated third-party entity, Gold One Refinery Private Limited. Furthermore, the Corporate Debtor has neither pleaded nor produced any evidence to establish the existence of an arrangement between itself and Gold One Refinery Private Limited. Crucially, there is nothing on record to indicate any agreement involving the Operational Creditor, Gold One Refinery Private Limited, or Shiv Enterprises that permits the adjustment of sums paid by Gold One Refinery Private Limited against the outstanding dues of the Corporate Debtor.

28. It is observed that the bank statement relied upon by the Corporate Debtor evidences a payment made from the personal account of one of its Directors to Shiv Enterprises. This constitutes a transaction between third

parties lacking any privity of contract with the Operational Creditor, and it is, therefore, of no relevance to the adjudication of the present debt

29. The Corporate Debtor has failed to place any material evidencing payment of the balance amount to the Operational creditor. Accordingly, default in payment of operational debt of Rs. 1,25,58,067/- payable to the Operational creditor by the Corporate debt stands proved.

30. This Tribunal is satisfied that the defence raised by the Corporate Debtor is in the nature of a set-off against Third party entities and does not constitute a genuine pre-existing dispute concerning the operational debt claimed in the present proceedings.

31. With regard to GST penalties levied on the Corporate Debtor, Quality issues in material supplied, this tribunal is of the view that apart from making allegations of manipulation, the Corporate Debtor has not produced any contemporaneous material showing that the alleged disputes by Corporate debtor was disputed before issuance of the demand notice.

32. It has been held in the case *of Mobilox Innovations Pvt. Ltd. v/s. Kirusa Software Pvt. Ltd.*, reported in *MANU/SC/1196/2017* that if there is a debt and default, and there is no pre-existing dispute the petition filed under Section 9 of IBC has to be admitted. The relevant para of the Judgment is extracted here below;

Para 25 - Therefore, the adjudicating authority, when examining an application Under Section 9 of the Act will have to determine:

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

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

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

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

Para 40 –

..... the adjudicating authority is to see at this stage is whether there is a plausible contention which requires further investigation and that the "dispute" is not a patently feeble legal argument or an assertion of fact unsupported by evidence. It is important to separate the grain from the chaff and to reject a spurious defence which is mere bluster. However, in doing so, the Court does not need to be satisfied that the defence is likely to succeed. The Court does not at this stage examine the merits of the dispute except to the extent indicated above. So long as a dispute truly exists in fact and is not spurious, hypothetical or illusory, the adjudicating authority has to reject the application.

33. The Hon'ble Supreme Court in the above mentioned case held that while considering a petition under Section 9, the Adjudicating Authority is required to examine whether there exists a real dispute and not a patently feeble legal argument or unsupported assertion. The Supreme Court observed that the dispute must truly exist in fact and should not be spurious, hypothetical or illusory.

34. This Tribunal is satisfied that an operational debt exists and default has occurred and no genuine pre-existing dispute has been established by the Corporate Debtor.

35. Taking into consideration the facts and circumstances of the case, as well as the position of Law, we are of the view that the petition filed by the Operational Creditor, is to be **Admitted** under Section 9(5) of the IBC, 2016. In the present case, the operational creditor has proposed Mr. Manish Santosh Buchasia having registration number IBBI/ IPA-002/ IPN00487 / 2017-2018/11449**,** an Insolvency Professional to act as a interim Resolution Professional and hence this Tribunal appoints **Mr. Manish Santosh Buchasia** having Reg No: **IBBI/ IPA-002/ IPN00487 / 2017-2018/11449** (Email: *manishbuchasiacs@gmail.com*) whose AFA is valid till **31.12.2026** as the "Interim Resolution Professional" (IRP) in respect of the Corporate Debtor. The IRP appointed shall take in this regard such other and further steps as are required under the Code, more specifically in terms of Section 15, 17, 18 of the Code and file the report within 20 days before this Bench. The powers of the Board of Directors of the Corporate Debtor shall stand superseded as a consequence of the initiation of the CIRP in relation to the Corporate Debtor in terms of the provisions of IBC, 2016.

36. As a consequence of the Petition is admitted in terms of Section 9 (5) of the Code, the moratorium as envisaged under the provisions of Section 14 shall apply in relation to the Corporate Debtor as under:

> *"(1) Subject to provisions of subsections (2) and (3) on the insolvency commencement date the Adjudicating Authority shall by order declare prohibiting all of the following namely:*
>
> *a. The institution of suits or continuation of pending suits or proceedings against the respondent 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 respondent 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 respondent in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;*
>
> *d. The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the respondent.*
>
> *Explanation.-For the purposes of this sub-section, it is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a licence, permit, registration, quota, concession, clearance or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license or a similar grant or right during moratorium period;*
>
> *(2) The supply of essential goods or services to the Corporate Debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.*
>
> *(2A) Where the interim resolution professional or resolution professional, as the case may be, considers the supply of goods or services critical to protect and preserve the value of the Corporate Debtor and manage the operations of such Corporate Debtor as a going concern, then the supply of such goods or services shall not be terminated, suspended or interrupted during the period of moratorium, except where such Corporate Debtor has not paid dues arising from*

such supply during the moratorium period or in such circumstances as may be specified.

(3) The provisions of sub-section (1) shall not apply to

(a) such transactions, agreements or other arrangement as may be notified by the Central Government in consultation with any financial sector regulator or any other authority;

(b) a surety in a contract of guarantee to a corporate debtor.

(4) The order of moratorium shall have effect from the date of such order till the completion of the Corporate Insolvency Resolution Process:

Provided that where at any time during the Corporate Insolvency Resolution Process period, if the Adjudicating Authority approves the Resolution Plan under sub-Section (1) of Section 31 or passes an order for liquidation of Corporate Debtor under Section 33, the moratorium shall cease to have effect from the date of such approval or Liquidation Order, as the case may be."

37. However, during the pendency of the moratorium period in terms of Section 14(2) (2A) and 14(3) as extracted hereunder:

"(2) The supply of essential goods or services to the Corporate Debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.

(2A) Where the interim resolution professional or resolution professional, as the case may be, considers the supply of goods or services critical to protect and preserve the value of the Corporate Debtor and manage the operations of such Corporate Debtor as a going concern, then the supply of such goods or services shall not be terminated, suspended or interrupted during the period of moratorium, except where such Corporate Debtor has not paid dues arising from such supply during the moratorium period or in such circumstances as may be specified.

(3) The provisions of sub-section (1) shall not apply to

(a) such transactions, agreements or other arrangement as may be notified by the Central Government in consultation with any financial sector regulator or any other authority;

(b) a surety in a contract of guarantee to a corporate debtor."

38. The duration of the period of moratorium shall be as provided in Section 14(4) of the Code and for ready reference reproduced as follows:

> *"(4) The order of moratorium shall have effect from the date of such order till the completion of the Corporate Insolvency Resolution Process:*
> *Provided that where at any time during the Corporate Insolvency Resolution Process period, if the Adjudicating Authority approves the Resolution Plan under sub-Section (1) of Section 31 or passes an order for liquidation of Corporate Debtor under Section 33, the moratorium shall cease to have effect from the date of such approval or Liquidation Order, as the case may be."*

39. The Operational Creditor is directed to pay a sum of **Rs.2,00,000/- *(Rupees Two Lakhs only)*** to the Interim Resolution Professional to meet out the expenses to perform the functions assigned to him in accordance to Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

40. Based on the above terms, the Petition stands **admitted** in terms of Section 9(5) of IBC, 2016 and the moratorium shall come in to effect as of this date. A copy of the Order shall be communicated to the Operational Creditor as well as to the Corporate Debtor above named by the Registry. In addition, a copy of the Order shall also be forwarded to IBBI for its records. Further, the Interim Resolution Professional above named be also furnished with copy of this Order forthwith by the Registry, who will also communicate the initiation of the CIRP in relation to the Corporate Debtor to the Registrar of Companies concerned.

41. Accordingly, Company Petition CP (IBC) / 314 (CHE) / 2025 is **allowed** and disposed of.

-Sd-	**-Sd-**
RAVICHANDRAN RAMASAMY	**JYOTI KUMAR TRIPATHI**
MEMBER (TECHNICAL)	MEMBER (JUDICIAL)