

IN THE NATIONAL COMPANY LAW TRIBUNAL
ALLAHABAD BENCH, PRAYAGRAJ

CP (IB) NO.45/ALD/2021 WITH IA NO.438/2025

(Application filed under Section 9 Read with Rule 6 of the Insolvency and Bankruptcy Code, 2016)

IN THE MATTER OF:

EMPIRE TRANSPORT SERVICES LIMITED

2nd Floor, Chiranjeev Apartment,
Karve Road S. No. 41/5A/5B,
Erandawana, Pune, Maharashtra - 411004

.....Operational Creditor

Versus

NOIDA METRO RAIL CORPORATION LIMITED,

Block-III, 3rd Floor,
Ganga Shopping Complex,
Sector-29, Gautan Buddha Nagar,
Noida, U.P.-201301

.....Corporate Debtor

AND IN THE MATTER OF:

NOIDA METRO RAIL CORPORATION LIMITED,

Block-III, 3rd Floor,
Ganga Shopping Complex,
Sector-29, Gautan Buddha Nagar,
Noida, U.P.-201301

.....Applicant/Corporate Debtor

Versus

EMPIRE TRANSPORT SERVICES LIMITED

2nd Floor, Chiranjeev Apartment,
Karve Road S. No. 41/5A/5B,
Erandawana, Pune, Maharashtra - 411004

.....Respondent/Operational Creditor

Order pronounced on: 04.06.2026

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Coram:

Sh. Praveen Gupta : Member (Judicial)
Sh. Ashish Verma : Member (Technical)

Appearances:

Sh. Gaurav Mitra with Sh. Anubhav : For the Operational Creditor
Goel, Ms. Preeti Goel, Ms. Lavanya
Pathak, Ms. Rashmi Mishra & Ms.
Priyanka Dhyani, Advs.

Sh. Sunil Fernandes, Sr. Adv. assisted : For the Corporate Debtor
by Sh. Abhishek Prasad, Sh.
Kaushlendra Nath Singh & Sh.
Vedant Sharma, Advs.

ORDER

1. This present application has been filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 (“IBC”/“Code”) read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 by Empire Transport Services Limited, (hereinafter referred to as “Operational Creditor”/ “Applicant”) seeking to initiate Corporate Insolvency Resolution Process (hereinafter referred to as “CIRP”) against Noida Metro Rail Corporation Limited (hereinafter referred to as “Corporate Debtor”/ “NMRC”). This petition has been filed on 16.06.2021 in Form-5, consisting of parts I to V.
2. Part-I of the Application sets out the details of the Operational Creditor. It is averred that the Operational Creditor is engaged in the business of transport activities. Operational Creditor is an Unlisted Public Company, having its

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registered office situated at 2nd Floor, Chiranjeev Apartment, Karve Road, S No. 41/5A/5B Erandawana, Pune, Maharashtra, India - 411004.

3. Part-II of the Application sets out the details of the Corporate Debtor, Noida Metro Rail Corporation Limited, as a company engaged in the business of freight transport by road, incorporated on 05.11.2014, having its registered office at Block III, 3rd Floor, Ganga Shopping Complex, Sector-29, Noida, Uttar Pradesh, India - 201301.
4. In Part III of the Application, the Operational Creditor has not proposed any name of any Insolvency Professional to be appointed as a Resolution Professional.
5. Part-IV of the Application states that the total outstanding Debt is Rs. 7,09,90,774 (Seven Crore Nine Lakhs Ninety Thousand Seven Hundred and Seventy-Four Only), being the principal amount due and payable as of 16.03.2020 along with an amount of Rs. 350,00,00,000/- (Three Hundred and Fifty Crores) towards interest as on 03.02.2020 and it is submitted that the first date of default occurred on 01.06.2019.
6. Part-V of the Application describes the particulars of the Operational Debt, documents, records and evidence of the default as below:
 - a. Copy of the Demand Notice dated 07.02.2020 in Form 3 of the Insolvency and Bankruptcy (Application to Adjudicating Authority)

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Rules, 2016 served on the Corporate Debtor, including the copy of the delivery receipt, is enclosed as Annexure- 1.

- b.** Copy of the Request for Proposal dated 18.06.2015, along with Pre-Bid Clarification Compilation issued by NMRC/Corporate Debtor for selection of Operator for Procurement, Operation and Maintenance of Bus Services for Noida, Greater Noida and Noida-Greater Noida Connectivity, Uttar Pradesh, India is enclosed as Annexure 2.
- c.** Copy of the Bus Operators Agreement dated 15.01.2016 between NMRC/Applicant and ETSL/Corporate Debtor is enclosed as Annexure-3.
- d.** Copy of the minutes of the meeting held on 03.06.2016 between ETSL/Applicant and NMRC/Corporate Debtor is enclosed as Annexure-4.
- e.** Copy of the letter dated 14.06.2016 sent by NMRC/Corporate Debtor to ETSL/Applicant is enclosed as Annexure-5.
- f.** Copies of all invoices raised from 18.04.2018 to 30.03.2020 by ETSL/Applicant are enclosed as Annexure-6 (Colly).
- g.** Copies of relevant letters from 21.09.2019 to 16.04.2020, seeking payment of the invoices are enclosed as Annexure-7 (Colly).
- h.** Copy of letter dated 17.12.2019 sent by NMRC/Corporate Debtor to ETSL/Applicant is enclosed as Annexure-8.
- i.** Copy of letter dated 26.12.2019 sent by ETSL/Applicant to NMRC/Corporate Debtor is enclosed as Annexure-9.
- j.** Copy of letters dated 31.12.2019 and 18.03.2020 sent by ETSL/Applicant to NMRC/Corporate Debtor is enclosed as Annexure-10 (Colly).

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- k.** Copies of the show cause notices issued by NMRC/Corporate Debtor to ETSL/Applicant from 03.01.2020 to 12.03.2020 are enclosed as Annexure-11 (Colly).
- l.** Copies of the replies sent by ETSL/Applicant to NMRC/Corporate Debtor from 07.01.2020 to 19.03.2020 are enclosed as Annexure-12 (Colly).
- m.** Copy of letter dated 08.02.2020 sent by NMRC/Corporate Debtor to ETSL/Applicant is enclosed as Annexure-13.
- n.** Copy of letter dated 10.02.2020 sent by ETSL/Applicant to NMRC/Corporate Debtor is enclosed as Annexure-14.
- o.** Copy of letter dated 13.02.2020 sent by ETSL/Applicant to NMRC/Corporate Debtor acknowledging receipt of Rs.3,02,70,150/- is enclosed as Annexure-15,
- p.** Copy of letter dated 15.02.2020 sent by NMRC/Corporate Debtor to ETSL/Applicant regarding non-stoppage of bus is enclosed as Annexure-16.
- q.** Copy of letter dated 20.02.2020 sent by ETSL/Applicant in response to NMRC/Corporate Debtor letter dated 15.02.2020 is enclosed as Annexure-17.
- r.** Copy of letter dated 25.02.2020 sent by NMRC/Corporate Debtor to ETSL/Applicant asking ETSL/Applicant to execute the draft Bus Depot License Agreement enclosed in the letter and pay the water bill is enclosed as Annexure-18.
- s.** Copy of letter dated 17.03.2020 sent by ETSL/Applicant in response to NMRC's/Corporate Debtor letter dated 25.02.2020 is enclosed as Annexure-19.

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- t. Copy of letter dated 31.03.2020 addressed by NMRC/Corporate Debtor to ETSL/Applicant is enclosed as Annexure-20.
 - u. Details of the buses being deployed during the months of April and May, 2020, for food and other essential items distribution and transportation of COVID-19 helpline control centre staff are enclosed as Annexure-21(Colly.).
 - v. Copies of the Bank Statements of ETSL/Applicant for the dates of 09.03.2020, 20.04.2020 and 28.05.2020 is enclosed as Annexure-22(Colly).
7. As per the averment in the present application, the Operational Creditor submits that it was selected as an Operator pursuant to a competitive bidding process undertaken by the Corporate Debtor, for the purpose of selecting an operator for undertaking procurement, operation, and maintenance of bus services on city bus routes or other routes as directed by the Corporate Debtor Corporate Debtor. As a result, a Bus Operators Agreement dated 15.01.2016 was executed between both the parties.
8. Under the aforesaid Operators Agreement, the Operational Creditor in its capacity as an Operator was required to undertake the commercial operation, maintenance, and day-to-day running of 100 low-floor AC CNG buses on city bus routes in Noida, Greater Noida and the Noida–Greater Noida connectivity routes. Although the bus service commenced on 14.12.2016 but only 50 buses were started running instead of the agreed 100 buses. Further,

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for the remaining 50 buses, the Applicant vide letters dated 31.12.2019 and 18.03.2020 sought deployment timelines; however, no response was received from the Corporate Debtor.

9. The Operational Creditor submitted that the payment terms were mentioned in Clause 11(b) of the said agreement, wherein it was agreed that the Corporate Debtor shall make payments of the invoices raised by the Applicant in the following manner:

(i) 50% (fifty percent) of the amount specified in the invoice was to be paid within 7 (seven) business days of the receipt of the invoice by NMRC, and

(ii) balance 50% (fifty percent) of the invoiced amount was to be paid within 15 (fifteen) business days from the date of receipt of invoice by NMRC.

10. Subsequently, as per Clause 11(m) of the said agreement, it was agreed that in the event the Corporate Debtor fails to pay the Applicant within the aforesaid stipulated timelines, the Corporate Debtor will be liable to pay compound interest at the rate of 9% per day.

11. In compliance with the Agreement, the Applicant provided the services and maintained appropriate service standards up to the satisfaction of the Corporate Debtor. Thereafter, the Applicant raised invoices from 25.04.2019 to 16.03.2020; however, no payment was released to date by the Corporate Debtor. Despite the persisting default, the Applicant, through various

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communications made between 21.09.2019 -16.04.2020, sought the payment of the outstanding dues. In response, no payment was made; however, the Corporate Debtor vide its letter dated 17.12.2019 asserted that no delay in payment had been made on its part.

12. Aggrieved by the default of outstanding dues, the Applicant issued a Demand Notice on 07.02.2020 under Section 8 of the IBC; however, neither any payment nor any reply was received within the prescribed time period of 10 days. Subsequently, on 31.03.2020, Corporate Debtor submitted a response to the Demand Notice dated 07.02.2020, stating that all undisputed contractual obligations have been honoured and further denied all the demands made in the said notice.
13. The Applicant, however, submits that apart from the false claims made by the Corporate Debtor in its response dated 31.03.2020, the Corporate Debtor has, in fact, acknowledged and admitted the operational debt by unequivocally admitting to having partially cleared the debts. The Applicant also submits that at present, no amount has been released by the Corporate Debtor since the first invoice within the stipulated timeframe. Further, the Corporate Debtor denials as to the interest component being a clerical error cannot be accepted as interest on delayed payments has been calculated in accordance with the terms of Clause 11(m) of the Operators Agreement. The Corporate

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Debtor, in its response, has further failed to raise any existence of pre-existing dispute as defined under Section 5(6) of the Code.

- 14.** The Applicant states that despite failure of the Corporate Debtor to clear the outstanding dues, the Applicant Operational Creditor assured the Corporate Debtor vide its letter dated 16.04.2020, that it would continue its bus services during the COVID-19 pandemic and also provide relief measures and help to the Corporate Debtor to combat the pandemic. The Applicant further highlighted the perilous situation faced by it, including non-payment of salary to staff, maintenance issues, etc., which happened due to non-payment of outstanding dues. Pursuant to the same, the buses of the Applicant had been utilised during the months of April and May, 2020, for the distribution of food and other essential items as well as transportation of the staff of the COVID-19 helpline control centre.
- 15.** As a result, it is the case of the Applicant that even after the issuance of the demand notice, various letters dated 10.02.2020, 20.02.2020, 05.03.2020, 12.03.2020, 18.03.2020 and 16.04.2020 were addressed for payment of outstanding dues; however, neither any response nor any payments were received. It has been further submitted by the Applicant that the Corporate Debtor has made the following partial payments:

- a. Rs. 3,02,70,150 on 12.02.2020

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- b. Rs. 1,37,00,189 on 09.03.2020
- c. Rs. 2,15,69,926 on 20.04.2020
- d. Rs. 1,59,35,462 on 28.05.2020

- 16.** Irrespective of the above repayments, still an amount of Rs. 7,09,90,774/- stands outstanding as of 16.03.2020. The Applicant has also taken into account the impact of the COVID-19 pandemic and keeping into consideration the provisions of Section 10A of the Code, the debt in default has been taken only on account of the outstanding dues till 16.03.2020.
- 17.** The Applicant also submits that instead of releasing the outstanding payments due to be paid to it under the Operators Agreement, the Corporate Debtor, with a view to evade its payment obligations, issued around 41 show cause notices between 03.01.2020 and 12.03.2020, alleging deficiencies in the standard of services provided and threatened for taking penal action. It is further submitted that such inspections of running of buses and issuance of show cause notices were initiated only from January 2020 onwards, i.e., after the Applicant had started issuing demand letters from 21.09.2019 seeking release of outstanding dues. As alleged by the Applicant Operational Creditor that these notices were issued by the Corporate Debtor as an afterthought to circumvent payment obligations under the Operators Agreement.
- 18.** The Applicant avers that it consistently maintained satisfactory operational standards, as verified by the Corporate Debtor, and that no service

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deficiencies were raised prior to January 2020; rather, the bus services had received three national/international awards. It is further submitted that any disruption in services was solely due to non-payment of legitimate dues by the Corporate Debtor under the Operators Agreement. Vide letter dated 18.03.2020, the Applicant informed to the Corporate Debtor that due to financial constraints arising from such non-payment, only 32 buses remained operational, while the remaining buses were stationed at the depot for want of repairs and spares. However, instead of clearing the admitted outstanding dues, the Corporate Debtor continued issuing frivolous show cause notices.

19. In the light of the aforesaid facts and circumstances, it is the case of the Applicant Operational Creditor that the Applicant had duly discharged and fulfilled all its roles, responsibilities, and obligations as an operator to the satisfaction of the Corporate Debtor since the commencement of operations under the Agreement, which was periodically acknowledged and verified by the Corporate Debtor at regular intervals but despite satisfactory performance of the contractual obligations by the Applicant, the Corporate Debtor allegedly failed to release the payments due and payable under the Agreement from the year 2018 onwards.

20. It is further the case of the Applicant that the first default occurred on 01.06.2019 and continued in respect of various invoices raised during the period from 25.04.2019 to 16.03.2020. The Applicant submits that several

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letters and communications dated between 21.09.2019 and 16.04.2020 were addressed to the Corporate Debtor requesting for the release of the outstanding payments due under the Bus Operators Agreement. It is stated that the Applicant received an aggregate sum of Rs. 8,14,75,727/- only through payments made on 12.02.2020, 09.03.2020, 20.04.2020, and 28.05.2020 against the amounts claimed. However, according to the Applicant, a principal amount of Rs. 7,09,90,774/- remained outstanding and payable as on 16.03.2020. It is further alleged that the Corporate Debtor neither cleared the aforesaid outstanding dues nor responded to the repeated communications issued by the Applicant seeking payment of the same, resulting in filing of the present application.

REPLY OF THE CORPORATE DEBTOR

21. The Corporate Debtor, in its reply filed on 25.11.2021, denied all the allegations made by the Applicant Operational Creditor and thereafter, submitted that at the outset, the Corporate Debtor is a joint venture entity, wherein 50% shareholding is held by the Government of India and the remaining 50% by the Government of Uttar Pradesh, and therefore, the allegation that the Corporate Debtor is financially unsound is farfetched.
22. The Corporate Debtor contends that, within the meaning of “default” as defined under the Code, no default has occurred towards the payment to be made to the Applicant. It is further contended that, under the Bus Operators

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Agreement, the Applicant had failed to render services in accordance with the prescribed specifications and had continuously breached various clauses of the Agreement. Such deficiencies and breaches were duly communicated to the Applicant Operational Creditor through various show cause notices dated 03.01.2020, 06.01.2020, 09.01.2020, 13.01.2020, 15.01.2020, 16.01.2020, 17.01.2020, 20.01.2020, 21.01.2020, and 28.01.2020, which were admittedly issued prior to the alleged demand notice dated 07.02.2020.

23. The Corporate Debtor further submits that the aforesaid show cause notices were also placed on record in proceedings initiated by the Applicant before the Hon'ble High Court of Allahabad (W.P. (C) No. 10658 of 2021), which came to be dismissed vide judgment dated 14.07.2021 after taking note of the disputes between the parties and consequent initiation of the Arbitration Proceeding through an Application bearing No. 20 of 2021, wherein orders were passed by the by the Hon'ble High Court of Allahabad for appointment of nominee arbitrators by the respective parties to the Bus Operators Agreement.

24. The Corporate Debtor further contends that the Applicant had earlier filed an application under Section 9 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as "A&C Act") before the Ld. Commercial Court, inter alia, seeking directions for the release of various amounts allegedly due and payable. It is further submitted that the Applicant had also invoked the

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arbitration clause contained in the Operators' Agreement and, pursuant thereto, vide order dated 19.08.2021 passed by the Hon'ble High Court of Allahabad, arbitrators came to be appointed. The Corporate Debtor submits that arbitral proceedings were commenced thereafter and notices dated 25.08.2021 were issued, wherein the Applicant appeared and made its presentation. The Corporate Debtor, thus, contends that the Applicant had already approached multiple forums seeking recovery/release of the alleged dues and has failed to disclose the same before this Tribunal.

25. The Corporate Debtor contends that, as per Section 9 of the A&C Act, the application filed by the Applicant contains similar prayers and similarly, even in the statement of claim filed by the Applicant before the pending arbitration proceedings also, it prays for payment of the same debt in default as claimed in the present application. The said position stands notified in the order dated 25.08.2021 of the arbitral proceedings. Thus, it is quite evident that the Applicant has initiated parallel proceedings for realization of the alleged debt, and the dispute is pre-existing as it has occurred prior to the date of issuance of notice of demand under section 8 of the Code for initiation of the present IBC proceedings.

26. The Corporate Debtor submits that, as per the law laid down in *Mobilox Innovations Private Limited v. Kirusa Software Private Limited* (Civil Appeal No. 9405 of 2017) by the Hon'ble Supreme Court, it is only to be

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ascertained whether there is a dispute. In the present case, as contended by the Corporate Debtor, there is serious dispute with respect to the alleged debt and because of such disputes only, the Applicant had initiated the arbitration proceedings. As a result, in the present matter, this Tribunal is not required, at this stage, to go into the merits and to see if the defence is likely to succeed. Above all, in this case, the process for recovery of the alleged dues has already been initiated before the Arbitral Tribunal. In these special circumstances, the existence of a serious dispute between the parties on the alleged Operational Debt is beyond an iota of doubt.

27. The Corporate Debtor vehemently contends that the Applicant Operational Creditor is indulging in forum shopping, having initiated multiple proceedings, namely arbitration application before the Commercial Court (Arbitration Petition No.22 / 2020), an Arbitration Application (No. 20/2021) before the Allahabad High Court, Writ - C No.10658 / 2021 also before the Allahabad High Court and the Arbitral Tribunal. Moreover, the Hon'ble Allahabad High Court, while dismissing the said Writ Petition, has noted the default and breaches on the part of the Applicant, which had been persistent and continuous, and the Applicant failed to submit a satisfactory response to the Show Cause Notices issued from time to time. Thus, having proceeded before the Arbitral Tribunal, the relief of recovery of money alleged based on

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the same Invoice as is raised in the present proceedings is liable to be dismissed with costs.

- 28.** The Corporate Debtor contends that the Applicant's claim is highly disputed and untenable. It is submitted that, under the terms of the Agreement, the invoices raised by the Applicant were subject to verification and certification by the Consultant of the Corporate Debtor, namely the U.P. State Road Transport Corporation (UPSRTC), and only such amounts as were verified by UPSRTC became due and payable. This procedure had been followed since the inception of the Agreement, and, therefore, the amount payable was not the invoice amount raised by the Applicant, but only the amount certified by UPSRTC.
- 29.** The Corporate Debtor further contends that the Applicant continued to demand payments even during the pandemic period when, owing to the lockdown, no services could allegedly be rendered, even though the present claim has been restricted only to the pre-pandemic period in view of Section 10A of the Code.
- 30.** The Corporate Debtor further contends that the transactions between the parties were maintained through a running account and, therefore, the alleged outstanding amount of approximately Rs. 7.09 Crores does not pertain to any one specific invoice. It is submitted that even after 29.06.2020, a sum of Rs.

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3,70,54,665/- was released to the Applicant, which, according to the Corporate Debtor, demonstrates that the said claim amount is disputed. The Corporate Debtor also alleges that the Applicant committed persistent deficiencies and failed to render services in terms of the Agreement, pursuant to which deductions were effected from time to time on the recommendations of UPSRTC, resulting in amounts payable and released being lesser than the invoice amounts raised by the Applicant. However, the Applicant had never previously raised any objection to such deductions.

REJOINDER FILED BY THE APPLICANT

31. In response to the reply of the Corporate Debtor, the Applicant filed its rejoinder on 05.02.2022, denying all the contentions of the Corporate Debtor. The Applicant submits that a demand notice under Section 8 of the Code was issued on 07.02.2020 and contends that the Corporate Debtor's plea that it was not in a financially unsound condition is contrary to its own audited financial statements for the year ending 31.03.2020, which record losses of Rs. 9,247.32 lakhs. It is further submitted that Note 21 to the Annual Report 2019-20 reflects revenue of Rs. 891.04 lakhs from the operation of city bus services, while Note 22 records grant income of Rs. 2,956.68 lakhs towards the said bus services, thereby demonstrating that the Corporate Debtor continued receiving revenue and grant funding while withholding payment of the Applicant's invoices.

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- 32.** Further Note 28 to the financial statements of FY 2019-20 has been referred, which records that city bus operations were suspended only due to the suspension of metro services during the Covid-19 lockdown, thereby disproving the Corporate Debtor's contention that services were not provided or that there were deficiencies in performance. The Applicant further points out that the segment assets and liabilities in the audited annual report specifically record total income of Rs. 3,847.72 lakhs from city bus operations and liabilities of Rs. 840.91 lakhs towards such operations as on 31.03.2020, which, according to the Applicant, constitutes acknowledgement of liability under the Bus Operators Agreement and negates the existence of any pre-existing dispute regarding the operational debt.
- 33.** The Applicant Operational Creditor further submits that even after filing of the Section 9 application, the Corporate Debtor released certain payments without identifying the invoices towards which such payments were made, thereby evidencing absence of any dispute regarding the invoices. It is contended that examination of allegations relating to breach or default under the Bus Operators Agreement are outside the scope of proceedings under the Code and, in any event, do not constitute a "pre-existing dispute" within the meaning of Sections 5(6) and 8(2) of the Code, as explained by the Hon'ble Supreme Court in *Mobilox Innovations Pvt. Ltd (Supra)*, wherein it was held

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that the dispute must be real and supported by evidence and not a feeble or unsupported assertion.

34. The Applicant also denies allegations of forum shopping and submits that the demand notice dated 07.02.2020 preceded the arbitration notice dated 12.12.2020 and that the claims before the Arbitral Tribunal did not include the invoice amounts forming subject matter of the present proceedings. It is submitted that the writ petition challenging the termination notice dated 09.02.2021 sought entirely different reliefs relating to restoration of operations under the Bus Operators Agreement and was dismissed without adjudication on merits owing to the commencement of arbitration proceedings. The Applicant, therefore, contends that there is no overlap between the proceedings before different forums and no suppression of documents, particularly since the show cause notices relied upon by the Corporate Debtor were already annexed by the Applicant along with inspection reports in the Section 9 application.

35. The Applicant further counters the Corporate Debtor's contention that only amounts verified by UPSRTC are payable, submitting that the Bus Operators Agreement contains no provision requiring verification by UPSRTC, which is not even a party to the agreement. It is nevertheless contended that even on the assumption that UPSRTC certification is necessary, the certified amount payable exceeds the threshold under the Code.

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- 36.** The Applicant states that the demand notice dated 07.02.2020 identified eight unpaid invoices and that three additional invoices were raised prior to filing of the Section 9 application, taking the total amount claimed under eleven invoices to Rs. 15,24,66,501/-. Out of the same, an amount of Rs. 12,61,95,338/- stands certified by UPSRTC as payable, as reflected in Annexure-2 (Colly.) annexed with its rejoinder. On the aforesaid basis, the Applicant submits that the Corporate Debtor has not demonstrated in its reply any valid ground to reject the instant Application and prays for admission of the Application under Section 9 of the Code
- 37.** During the course of the proceeding, the Corporate Debtor has further filed an interlocutory application under Rule 11 of the NCLT Rules, 2016, to place on record certain additional documents including letters dated 14.08.2020 and 26.10.2020 issued by the Corporate Debtor, letters dated 18.04.2019 and 19.07.2019 issued by the Operational Creditor and invoice wise payments details to substantiate its submissions of the existence of a pre-existing dispute and the fact that there is no outstanding debt of Rs. 7 crores approx. as claimed by Operational Creditor.
- 38.** Further, the Applicant, in response to the said interlocutory application, filed a counter, taking objection to the additional documents sought to be placed on record. The Applicant Operational Creditor points out with respect to the invoice-wise payment details, that the Corporate Debtor has deliberately

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neither mentioned the amount of each invoice nor disclosed some of the outstanding invoices raised by the Operational Creditor, especially aggregating to Rs. 18.48 crores. Hence, in total, an outstanding amount payable by the Corporate Debtor is of Rs. 33,51,38,956/-.

39. The Applicant also submits that the final amount due against each invoice was determined by the Corporate Debtor after considering the reply of the Applicant Operational Creditor proposing certain deductions. Further, the Applicant also prepared invoice-wise reconciliation based on the information furnished by the Corporate Debtor, which as per the Operational Creditor shows the undisputed liability as admitted by the Corporate Debtor being for a total outstanding of amount of Rs. 15.03 crores.
40. Further, in compliance with the order dated 21.02.2025 of this Tribunal, the Applicant Operational Creditor, through an affidavit dated 28.03.2025, has placed on record all the orders passed during the arbitration proceedings from 26.09.2021 to 25.08.2023. The Corporate Debtor, also in compliance with the said order, through an affidavit dated 27.03.2025, has placed on record the copies of all the orders passed by the Ld. Arbitral Tribunal, year-wise status of the outstanding dues payable to the Applicant in its books of accounts for the past three years, tabulated summary of the payments made to the Applicant and its comment on the “invoice-wise reconciliation” as per the assertion made by the Applicant in its counter.

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- 41.** We find that the documents placed on record by the Corporate Debtor through its affidavit dated 27.03.2025 have been disputed by the Applicant Operational Creditor, stating that the ledger accounts of the Corporate Debtor cannot be relied upon as they are self-serving documents prepared by the Corporate Debtor itself. The Applicant has further submitted that the audited financial statements relied upon by the Corporate Debtor pertain to a period subsequent to the issuance of the demand notice by the Applicant and are therefore irrelevant for the purposes of the present proceedings. It has also been contended that the tabulated summary of payments made to the Applicant serves no purpose, and that the comments on invoice-wise reconciliation furnished by the Corporate Debtor are merely matters of argument rather than evidence.
- 42.** The Corporate Debtor vide a separate application bearing IA No. 438 of 2025 filed, on 15.07.2025, under Rule 11 of the NCLT Rules, 2016 has further placed on record additional documents comprising year wise status of the dues payable to the Applicant in the books of accounts of Corporate Debtor for the past three financial years with the relevant extracts of (a) the Ledger and (b) the audited balance sheet of the Corporate Debtor along with a certificate dated 15.04.2025 issued by the Statutory Auditor, a tabulated summary of the payments made to the Applicant and tabulation of its comments on the “invoice wise reconciliation” prepared by the Applicant. As

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per the submissions of the Corporate Debtor, the said documents are essential to be placed on record for establishing the fact that there are no dues payable to the Applicant, much less the debt of Rs.7 crores. approx, as has been claimed by the Applicant in its Section 9 Application. The said application has been duly been taken on record and considered thoroughly while perusing the matter by us.

43. On conclusion of the present proceedings, both the Applicant Operational Creditor and the Corporate Debtor, have filed their respective written submissions, and the same have been taken on record and considered by us but the contents thereof are not being reproduced herein for the sake of brevity as being repetitive in nature presenting the summary of their pleadings as we have already discussed in foregoing paras of this order.

FINDINGS AND ORDER

44. We have heard the submissions advanced by the Learned Counsel appearing for the Applicant/Operational Creditor and the Respondent/Corporate Debtor and have carefully perused the pleadings, documents placed on record, written submissions and annexures filed by the respective parties in support of their contentions.
45. Upon consideration of the material available on record, it is observed that the present application arises out of claim of certain outstanding dues made by

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the Applicant Operational Creditor as per the Bus Operators Agreement dated 15.01.2016 executed between the parties, whereby the Operational Creditor was engaged for operation, maintenance and management of 100 low-floor AC CNG buses on routes in Noida, Greater Noida and the Noida–Greater Noida connectivity corridor. The Applicant claims to have commenced operations on 14.12.2016 and to have continuously rendered services in terms of the Agreement. It is the case of the Applicant that invoices raised during the period between 25.04.2019 and 16.03.2020 remained unpaid despite repeated communications seeking release of outstanding dues, while the Corporate Debtor, vide communication dated 17.12.2019, denied any delay in payment. Thereafter, the Applicant issued a demand notice dated 07.02.2020 under Section 8 of the Code, alleging default in payment of operational debt. According to the Applicant, no genuine dispute was raised within the statutory period prescribed under the Code and, accordingly, the present application under Section 9 has been preferred seeking initiation of CIRP against the Corporate Debtor.

- 46.** Per contra, the Corporate Debtor has opposed the present application primarily on the ground that there existed a genuine and substantial pre-existing dispute between the parties much prior to issuance of the demand notice dated 07.02.2020. The Corporate Debtor contends that the Applicant had persistently failed to maintain the prescribed standards of service as per

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the requirement of the Bus Operators Agreement and had committed repeated operational and contractual defaults, pursuant to which several show cause notices dated between 03.01.2020 and 28.01.2020 were issued highlighting the deficiencies in service, operational lapses and non-compliance with contractual obligations. It is further contended that disputes between the parties have already been pending before various judicial fora including proceedings under the Arbitration and Conciliation Act, 1996 before the Commercial Court, arbitration proceedings before the Hon'ble High Court of Allahabad, writ proceedings also initiated before the Hon'ble High Court of Allahabad and proceedings before the Arbitral Tribunal, wherein substantially similar claims had been raised by the Applicant. The Corporate Debtor further submits that the invoices raised by the Applicant were not automatically payable and were subject to verification and certification by UPSRTC in accordance with the contractual mechanism under the Agreement, and deductions were imposed on account of deficiencies in services rendered by the Applicant. It is also the case of the Corporate Debtor that the transactions between the parties were recorded in a running account and payments continued to be released from time to time, including an amount of Rs. 3,70,54,665/- after 29.06.2020, thereby demonstrating that the alleged operational debt remained disputed and unascertained and it is also

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contended that as per the record of the Corporate Debtor, no amount is payable to the Operational Creditor now.

47. In light of the aforesaid rival submissions, apart from other issues required to be examined for consideration of admissibility of an application under section 9, the principal issue which in our considered opinion first arises for consideration before us is whether there existed a “pre-existing dispute” between the parties prior to issuance of the demand notice dated 07.02.2020 within the meaning of Section 5(6) of the Code.
48. For examining the aforesaid issue, it is relevant to note that as reflected from Part IV of the present application, the Applicant Operational Creditor claims an operational debt of approximately Rs. 7.09 crores in respect of invoices raised during the period from 25.04.2019 to 16.03.2020, with the alleged date of default being 01.06.2019. Since the demand notice under Section 8 of the Code was issued on 07.02.2020, the relevant examination is confined to whether disputes contemplated under Section 5(6) of the Code existed between the parties prior to the issuance of the said notice. Section 5(6) defines “dispute” to include suit or arbitration proceedings relating to the existence of the amount of debt, quality of goods or services, or breach of representation or warranty. The relevant excerpts of the said section is as follows:

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“5. Definitions. –

(6) “dispute” includes a suit or arbitration proceedings relating to–

(a) the existence of the amount of debt;

(b) the quality of goods or service; or

(c) the breach of a representation or warranty;”

49. The above definition is an inclusive definition, however, now it is settled law that dispute regarding amount of debt or quality of goods or services may exist by way of correspondences between the Operational Creditor and the Corporate Debtor made through emails or letters exchanged between them prior to issuance of the Demand notice. In the landmark judgment of ***Mobilox Innovations Private Limited vs Kirusa Software Private Limited (2017) 1 SCC297*** also, the Hon’ble Supreme Court held that definition of dispute in Section 5(6) is an inclusive definition, rather than exhaustive term and a dispute is not limited solely to pending court suits or arbitration proceedings. It encompasses any real, legitimate disagreement or correspondence between parties regarding payment. It is held, however that a dispute must genuinely exist prior to the Operational Creditor issuing a demand notice and it must be prima facie legitimate, plausible and real and not spurious, hypothetical, illusory, or a mere bluster, fabricated just to deny insolvency proceedings. Mere existence of a plausible dispute which requires further investigation and dispute is not patently feeble legal arguments or an assertion of fact not supported by evidence, is sufficient to show that a dispute exists and the court

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does not need to be satisfied that the defence is likely to succeed and the court at this stage is also not required to examine the merits of the dispute except to see that a real dispute between parties exists about existence of debt or quality of goods or services.

50. In the light of the present legal position as it has been settled by a catena of judgements of the Courts including the Hon'ble Supreme Court as discussed above regarding pre-existing dispute, we examined all the facts and documents of the present case presented before us.

51. Upon a prima facie consideration of the objections raised by the Corporate Debtor, we have observed that the disputes sought to be raised pertain substantially to the quality and standard of services rendered by the Operational Creditor under the Bus Operators Agreement, thereby squarely falling within the ambit of Section 5(6)(b) of the Code. In such circumstances, it becomes necessary to examine the contractual framework governing the parties, particularly the provisions relating to prescribed service standards, inspections, penalties and deductions. Clauses 12 and 13 of the Bus Operators Agreement specifically obligate the Operator to maintain the buses in accordance with the prescribed standards of service and confer upon NMRC/Corporate Debtor the authority to inspect, audit, monitor and impose penalties in case of operational deficiencies and contractual non-compliances. The Agreement further contemplates imposition of deductions

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and penalties upon failure to maintain the stipulated standards of service. The relevant clauses as well as the Schedule of the Bus Operator agreement are as follows:

“12. STANDARDS OF BUS SERVICE

12.1. The Operator shall ensure that the Bus Service is operated, maintained and managed so as to comply with the standards of service specified in Schedule 5 of the Agreement or that may subsequently be provided to bidder(s) in documentary form by or on behalf of NMRC.

12.2. The Operator will be required to ensure that the Buses are maintained in a road worthy condition as per Standards of Service given in Schedule 5 that would ensure safe and efficient operation of the Buses on the roads at all times.

12.3. The Operator shall ensure that the personnel and staff who are employed for the purposes of the implementation of the Project have the necessary qualifications and credentials. This shall include but not limited to on-going, re-certification or newly mandated qualifying requirements. The Operator shall be solely and exclusively responsible for all such personnel and staff employed (including sub-contractors) for the purposes of implementing the Project.

12.4. The Operator shall provide operational and maintenance training at regular intervals to all personnel and staff in relation to implementation of the Project.

12.5. The Operator shall enforce a dress and appearance code approved by NMRC. The operator shall provide at its own cost and expense uniforms and shall ensure that clean uniforms shall be worn by drivers, conductors and any other personnel and staff employed at all times when they are on duty and doing any act in relation to providing the Bus Service under the Bus Operators Agreement.

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SCHEDULE-5**STANDARDS OF SERVICE FOR BUS OPERATIONS**

Minimum service quality levels (average per month per quality parameter) in respect of the Bus Service shall be maintained as under:

<i>S No.</i>	<i>Quality Parameter</i>	<i>Formula</i>	<i>Specified Service Quality Level</i>
<i>1</i>	<i>Fleet utilization/ Assured Fleet Availability</i>	<i>No. of buses operated*100/ No. of scheduled buses</i>	<i>Bidders are required to make available a fixed proportion of each type of Contracted Buses upon the during the term of operation of any Lot of the Contracted Buses, for maintaining continued and uninterrupted operations of Bus Services. It shall also be termed as Assured fleet Availability. Assured fleet availability for all type of buses shall be 93% of each category of Contracted Buses on a shift basis from 1-3 years, of the Contract Period, and 90% thereafter up-to the end of the Contract Period for each Category of Contracted Buses. ("Assured Fleet Availability");</i>
<i>2</i>	<i>Reliability of buses</i>	<i>Total no. of breakdowns 10000/Total Kms operated</i>	<i>Less than 3</i>
<i>3</i>	<i>Safety of operations</i>	<i>No. of accidents*100000/Tot al Kms operated</i>	<i>Preferably 0</i>

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4	<i>Punctuality (adherence to the Time Schedule)</i>	<i>No. of trips on time at start 100/ Total no. of trips operated</i>	<i>98 or better</i>
5	<i>Cleanliness of buses</i>	<i>No. of buses observed or reported uncleaned 1000/ Total no. of bus trips operated</i>	<i>Nil</i>
6	<i>Stoppage at Designated Points</i>	<i>No. of stops where the bus stopped*100/Total number of stops on the route</i>	<i>Nil</i>
7	<i>Completion of entire trip</i>	<i>Total Km operated per trip*100/total route length</i>	<i>Nil</i>

13. Penalties

13.1. NMRC shall verify compliance of all parameters, requirements, obligations and responsibilities enforceable against the Operator by virtue of the provisions of the Bus Operators Agreement. The Operator shall allow NMRC representatives, personnel and contractors of NMRC, complete access to the Operator's facilities (including equipment, material, and personnel) and Buses to enable NMRC to inspect, audit and monitor the performance of the Operator. If the Operator is in default of the provisions of the Service Standards and/or Schedule of Operation, then NMRC shall impose the applicable penalties as stipulated in Schedule 6 till such time as the default has been cured to the satisfaction of NMRC. If the Operator does not rectify the default within the stipulated cure period or if the default is of a nature that is not capable of rectification, it shall be treated as a Material Breach and NMRC shall have the right to terminate the Bus Operators Agreement in accordance with the terms hereof.”

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52. Further on perusal of the material placed on record reveals that prior to issuance of the demand notice dated 07.02.2020, the Corporate Debtor had issued several show cause notices dated 09.01.2020, 13.01.2020, 15.01.2020, 16.01.2020, 17.01.2020, 20.01.2020 and 21.01.2020 raising specific allegations regarding deficiencies in operation, maintenance and performance of the bus services being rendered by the Operational Creditor. The said notices referred to inspection reports and assessments conducted by UPSRTC/Consultants regarding defects such as inadequate fleet availability, defective passenger information systems, malfunctioning GPS systems, cracked windshields, defective handicap ramps, non-functional stop buttons, torn seats, route deviations, failure to maintain designated stoppages, non-maintenance of staff and statutory registers, non-deposit of EPF and ESI dues, defective air-conditioning systems, absence of valid public transport licences and other operational lapses affecting the quality of services contemplated under the Agreement. The notices further recorded that deductions and penalties were proposed and imposed in terms of the contractual framework governing the parties. For ready reference a tabulated summary of the deficiency of services raised are given below:

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Date of Show Cause notice	Date of Inspection Report	Remarks of deficiency of services raised
16.01.2020	06.01.2020	<i>“Contractual violations on account of these deficiencies are as follows: -</i> <i>1. As per Schedule- 2 (Technical Bus Specifications), the buses plying on the routes should have aesthetically pleasing exterior and interior design. However, it was noticed during inspection that most of the buses have scratches, dent marks, faded exterior colour, torn markings and labellings etc. which is sheer violation of the contractual provisions. Also, the buses plying should provide ease of accessibility to persons with disabilities. But, while inspecting it was observed that most of the buses were having defective/broken ramp hooks rendering it unfit for intended use. The driver also was not able to open the ramp which shows that proper maintenance of buses is not being done as per schedule and in totality.</i> <i>2. Defective Passengers' Information System, non-functional GPS etc. are in non-conformity to the Schedule-6 of the Agreement.</i> <i>3. Deviation from assigned routes, skipping of stoppages etc.</i> <i>4. Front wing screen of the bus was found cracked.</i> <i>5. The First Aid Kit kept in the bus was also not replenished. It was containing only a few items.</i> <i>Detail report pertaining to the above mentioned contractual violations are attached herewith.”</i>
13.01.2020	03.01.2020	<i>“Discoloration, alteration of the bus Colour scheme, logo, peeling off of paint, painting of any repaired work inside the bus etc prescribed by NMRC- Photographs of the same enclosed herewith</i> <i>It has been observed all most all the buses have scratch/dent.</i> <i>Driving defective buses (mechanical, electrical and major assemblies)- Handicapped ramp is not upto the comfort level and it was very difficult to open easily and use it. The driver is not carrying a proper driving license- Driver was with valid driving license but</i>

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		<i>driver fails to show endorsement badge regarding driving of the passenger vehicle.”</i>
15.01.2020	07.01.2020	<i>“a) Discoloration, alteration of the bus colour scheme, logo, peeling off of paint, painting of any repaired work inside the bus etc prescribed by NMRC- Photographs of the same enclosed herewith</i> <i>It has been observed all most all the buses have scratch/dent.</i> <i>Driving with a Defective Number Plate/PIS -CCTV display in front of Driver was showing the route from ADITYA BIRLA HOSPITAL to ADITYA BIRLA HOSPITAL which was not appropriate.</i> <i>Driving defective buses (mechanical, electrical and major assemblies)-Handicapped ramp is not upto the comfort, level and it was very difficult to open easily and use it.</i> <i>The driver is not carrying a proper driving license-Driver was with valid driving license but driver fails to show endorsement badge regarding driving of the passenger vehicle.”</i>
17.01.2020	13.01.2020	<i>“Driving defective buses (mechanical, electrical and major assemblies)-Driver entry gate inside the bus was in broken condition. Handicap ramp was in stuck position and driver failed to open it. Bus route chart was not available.”</i>
17.01.2020	13.01.2020	<i>“Driving defective buses (mechanical, electrical and major assemblies)-Front wind shield was in broken condition. Side window glass film was remove condition. Bus route chart was not available.”</i>
17.01.2020	06.01.2020	<i>“Discoloration, alteration of the bus colour scheme, logo, peeling off of paint, painting of any repaired work inside the bus etc prescribed by NMRC- Photographs of the same enclosed herewith</i> <i>It has been observed all most all the buses have scratch/dent.</i> <i>Driving defective buses (mechanical, electrical and major assemblies)-Both side wind shield was cracked.</i>

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		<i>Passenger stop button was in damage condition. Wrong route chart was available in the bus."</i>
17.01.2020	13.01.2020	<i>"Driving defective buses (mechanical, electrical and major assemblies)-Fire extinguisher expiry date not available. First Aid Box was incomplete. Bus route chart was not available"</i>
17.01.2020	13.01.2020	<i>"Driving defective buses (mechanical, electrical and major assemblies)-Driver entry gate inside the bus was in broken condition. Passenger stop button near handicap ramp was not working. Bus route chart was not available."</i>
17.01.2020	11.01.2020	<i>"Discoloration, alteration of the bus colour scheme, logo, peeling off of paint, painting of any repaired work inside the bus etc prescribed by NMRC- Photographs of the same enclosed herewith It has been observed all most all the buses have scratch/dent. Driving with a Defective Number Plate/PIS-CCTV display in front of Driver was showing the route from ADITYA BIRLA HOSPITAL to ADITYA BIRLA HOSPITAL which was not appropriate. Driving defective buses (mechanical, electrical and major assemblies)- Handicapped ramp is not upto the comfort level and it was very difficult to open easily and use it. Passenger seats was dirty."</i>
17.01.2020	11.01.2020	<i>"Discoloration, alteration of the bus colour scheme, logo, peeling off of paint, painting of any repaired work inside the bus etc prescribed by NMRC- Photographs of the same enclosed herewith It has been observed all most all the buses have scratch/dent. Driving with a Defective Number Plate/PIS-CCTV display in front of Driver was showing the route from ADITYA BIRLA HOSPITAL to ADITYA BIRLA HOSPITAL which was not appropriate. Driving defective buses (mechanical, electrical and major assemblies)- Handicapped ramp is not upto the</i>

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		<i>comfort level and it was very difficult to open easily and use it. Crack in the front windshield.”</i>
17.01.2020	11.01.2020	<i>“Discoloration, alteration of the bus colour scheme, logo, peeling off of paint, painting of any repaired work inside the bus etc prescribed by NMRC- Photographs of the same enclosed herewith</i> <i>It has been observed all most all the buses have scratch/dent.</i> <i>Driving with a Defective Number Plate/PIS- CCTV display in front of Driver was showing the route from ADITYA BIRLA HOSPITAL to ADITYA BIRLA HOSPITAL which was not appropriate.</i> <i>Driving defective buses (mechanical, electrical and major assemblies)- Handicapped ramp is not upto the comfort level and it was very difficult to open easily and use it. and use it. First Aid box is incomplete. Passenger stop button was non-functional.”</i>
09.01.2020	03.01.2020	<i>“Discoloration, alteration of the bus colour scheme, logo, peeling off of paint, painting of any repaired work inside the bus etc prescribed by NMRC- Photographs of the same enclosed herewith.</i> <i>It has been observed all most all the buses have scratch/dent/dicol our/lose taping (helpline number)/projected guard, sheets on outer facia/side of the buses.</i> <i>Driving with a Defective Number Plate/PIS- PIS System not Working.</i> <i>Not operating, causing it to not operate any passenger information system, gadgets, devices etc.- PIS System not Working.</i> <i>The driver is not carrying a proper driving license- Public Transport Licence is not available with Driver. Hence, it may attract penalty from the beginning of the contract period.</i>

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09.01.2020	03.01.2020	<i>Discoloration, alteration of the bus colour scheme, logo, peeling off of paint, painting of any repaired work inside the bus etc prescribed by NMRC- Photographs of the same enclosed herewith.</i> <i>It has been observed all most all the buses have scratch/dent/discolour/lose taping (helpline number)/projected guard, sheets on outer facia/side of the buses.</i> <i>Driving with a Defective Number Plate/PIS- PIS System not Working.</i> <i>Air conditioning not up to specified temperature range and to the satisfaction of NMRC- A/c not working.</i> <i>Not operating, causing it to not operate any passenger information system, gadgets, devices etc.- PIS System not Working.</i>
09.01.2020	04.03.2019	<i>Front Glass of Bus Cracked (Wind Shild)- Front Glass of following bus is Multi Cracked but no corrective action taken till date and the buses are used for operation:</i> <i>1. UP16ET1410</i> <i>2. UP16ET2402</i> <i>3. UP16ET2404</i> <i>4. UP16ET1586</i> <i>Old Tyre Installed- Tyre of Bus number UP16ET1794 manufactured 47th week of 2017 installed in Bus</i> <i>Seat of Driver/Passengers- Sheet of following Buses are torn but no corrective action taken since months:</i> <i>a) UP16ET2402</i> <i>b) UP16ET1416</i> <i>Side Mirror- Side mirror stand is broken of Bus no. UP16ET1801but the bus is being used for operation.</i> <i>Reflecting Tap- Reflecting Tap of most of Buses is damaged.</i> <i>Bus Body Paint- Bus body paint of most of buses is damaged.</i> <i>GPRS System- GPRS system not working properly.</i> <i>Uniform/Safety- Mechanic is not wearing uniform and Safety material inside the workshop.</i>

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17/20.01.2020	11.01.2020	<i>Discoloration, alteration of the bus colour scheme, logo, peeling off of paint, painting of any repaired work inside the bus etc prescribed by NMRC- Photographs of the same enclosed herewith.</i> <i>It has been observed all most all the buses have scratch/dent.</i> <i>Driving with a Defective Number Plate/PIS- CCTV display in front of Driver was showing the route from ADITYA BIRLA HOSPITAL to ADITYA BIRLA HOSPITAL which was not appropriate.</i> <i>Driving defective buses (mechanical, electrical and major assemblies)-Fire extinguisher was without date. Route chart was not available.</i>
17/20.01.2020	11.01.2020	<i>Discoloration, alteration of the bus colour scheme, logo, peeling off of paint, painting of any repaired work inside the bus etc prescribed by NMRC- Photographs of the same enclosed herewith.</i> <i>It has been observed all most all the buses have scratch/dent.</i> <i>Driving with a Defective Nurnber Plate/PIS- CCTV display in front of Driver was showing the route from ADITYA BIRLA HOSPITAL to ADITYA BIRLA HOSPITAL which was not appropriate.</i> <i>Driving defective buses (mechanical, electrical and major assemblies)- Handicapped ramp is not upto the comfort level and it was very difficult to open easily and use it. Fire extinguisher without was date. Passenger stop button was non-functional.</i>
17/20.01.2020	11.01.2020	<i>Discoloration, alteration of the bus colour scheme, logo, peeling off of paint, painting of any repaired work inside the bus etc prescribed by NMRC- Photographs of the same enclosed herewith.</i> <i>It has been observed all most all the buses have scratch/dent.</i> <i>Driving with a Defective Number Plate/PIS- CCTV display in front of Driver was showing the route from ADITYA BIRLA HOSPITAL to ADITYA BIRLA HOSPITAL which was not appropriate.</i> <i>Driving defective buses (mechanical, electrical and major assemblies)- Handicapped ramp is not upto the</i>

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		<i>comfort level and it was very difficult to open easily and use it. Driver fails to open it. Crack in the front windshield. Conductors seats sticker removed. First Aid box is incomplete.</i>
17/20.01.2020	15.01.2020	<i>Wages Register (Staff, Driver and Sub-Contractor)-</i> <i>1. Wages Register has not been maintained properly, signature of representative is not found in the register.</i> <i>2. Wage register is available up to the period of October, 2019 months.</i> <i>3. EPF And ECSI is deposited upto the month of October, 2019</i> <i>4. EPF and ECSI is not deposited for the month of November and December, 2019 till date.</i> <i>5. November, 2019 month's Salary released to staff 16.12.2019, it should be realised 10th of the month.</i> <i>Deployment of Staff, Driver and Sub-Contractor-</i> <i>1. Prior approval for Deployment of Staff, Driver and Sub-Contractor are not taken from NMRC.(6.1(xiii))</i> <i>2. Police verification of Following driver's are not available:</i> <i>a. Sanjeev Kumar (1105)</i> <i>b. Mohan Lal (1142)</i> <i>c. Jitendra Kumar Bansal (1153)</i> <i>d. Sanjay Bhati(1159)</i> <i>e. Nakul Chandiwal (1173)</i> <i>f. Ajad singh (1174)</i> <i>g. Nagish Kumar Choubey(1177)</i> <i>h. Yatendra Kumar(1179)</i> <i>i. Anil Kumar (1181)</i> <i>j. Vishnu (1187)</i> <i>k. Anil (1189)</i>
20/21.01.2020	15.01.2020	<i>Discoloration, alteration of the bus colour scheme, logo, peeling off of paint, painting of any repaired work inside the bus etc prescribed by NMRC- Photographs of the same enclosed herewith.</i> <i>It has been observed all most all the buses have scratch/dent.</i>

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		<i>Driving defective buses (mechanical, electrical and major assemblies)- Some Stop button not working. First aid box was incomplete. Bus route chart was not available.</i>
20/21.01.2020	15.01.2020	<i>Discoloration, alteration of the bus colour scheme, logo, peeling off of paint, painting of any repaired work inside the bus etc prescribed by NMRC- Photographs of the same enclosed herewith. It has been observed all most all the buses have scratch/dent. Driving defective buses (mechanical, electrical and major assemblies)- Some Stop button not working. First aid box was incomplete. Bus route chart was not available.</i>
20/21.01.2020	15.01.2020	<i>Discoloration, alteration of the bus colour scheme, logo, peeling off of paint, painting of any repaired work inside the bus etc prescribed by NMRC- Photographs of the same enclosed herewith. It has been observed all most all the buses have scratch/dent. Driving defective buses (mechanical, electrical and major assemblies)- First aid box was incomplete. Bus route chart was not available.</i>
20/21.01.2020	15.01.2020	<i>Discoloration, alteration of the bus colour scheme, logo, peeling off of paint, painting of any repaired work inside the bus etc prescribed by NMRC- Photographs of the same enclosed herewith. It has been observed all most all the buses have scratch/dent. Driving defective buses (mechanical, electrical and major assemblies)- Front wind shield was in broken condition. Some Stop button not working. First aid box was incomplete. Bus route chart was not available.</i>
20/21.01.2020	15.01.2020	<i>Discoloration, alteration of the bus colour scheme, logo, peeling off of paint, painting of any repaired work inside the bus etc prescribed by NMRC- Photographs of the same enclosed herewith.</i>

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		<i>It has been observed all most all the buses have scratch/dent.</i> <i>Driving defective buses (mechanical, electrical and major assemblies)- Some Stop button not working. First aid box was incomplete. Bus route chart was not available.</i>
20/21.01.2020	15.01.2020	<i>Discoloration, alteration of the bus colour scheme, logo, peeling off of paint, painting of any repaired work inside the bus etc prescribed by NMRC- Photographs of the same enclosed herewith.</i> <i>It has been observed all most all the buses have scratch/dent.</i> <i>Driving defective buses (mechanical, electrical and major assemblies)- Crack in front wind shield. First aid box was incomplete. Bus route chart was not available.</i>
16.01.2020	06.01.2020	<i>Discoloration, alteration of the bus colour scheme, logo, peeling off of paint, painting of any repaired work inside the bus etc prescribed by NMRC- Most of the Buses have scratches and dents on outer area of the body.</i> <i>Driving with a Defective Number Plate/PIS- PIS (Radio) System not Working.</i> <i>Driving defective buses (mechanical, electrical and major assemblies)- Two LED lights not working, Ventilation cover is not opening.</i> <i>Not operating, causing it to not operate any passenger information system, gadgets, devices etc.- PIS (Radio) System, GPS system not Working.</i> <i>Deviation from route/trips issued by NMRC or its authorized representative time to time- On 6.01.2020 Bus starting point was Sec 52 instead of Sec 51 and No information available at sec. 51 stand (Enquiry booth was closed).</i> <i>No stoppage at Designated Points- Driver does not stop/ slower the speed of bus at many stoppage.</i>
20/21.01.2020	15.01.2020	<i>Discoloration, alteration of the bus colour scheme, logo, peeling off of paint, painting of any repaired</i>

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		<i>work inside the bus etc prescribed by NMRC- Photographs of the same enclosed herewith.</i> <i>It has been observed all most all the buses have scratch/dent.</i> <i>Driving defective buses (mechanical, electrical and major assemblies)- Two cracks visible in the front wind shield. Some Stop button not working. First aid box was incomplete. Bus route chart was not available.</i>
16.01.2020	14.01.2020	<i>Discoloration, alteration of the bus colour scheme, logo, peeling off of paint, painting of any repaired work inside the bus etc prescribed by NMRC- Photographs of the same enclosed herewith.</i> <i>It has been observed all most all the buses have scratch/dent/disco on outer facia/side of the buses.</i> <i>Driving with a Defective Number Plate/PIS- PIS Display of UP16 ET1063 not properly visible. Rear No. Plate of Buses is not according to Motor Vehicle Act 1988.</i> <i>Driving defective buses (mechanical, electrical and major assemblies)- Driver seat and passenger seat of most of the Bus found shredded, Stop Buttons not working, LED lights not working, Glass on partition provided B/w driver and passenger of many buses found broken, Bonnet (Front portion) of Bus 1419 found defected.</i> <i>Not operating, causing it to not operate any passenger information system, gadgets, devices etc.- GPS system not working.</i>

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16.01.2020	03.01.2020	<i>Discoloration, alteration of the bus colour scheme, logo, peeling off of paint, painting of any repaired work inside the bus etc prescribed by NMRC- Photographs of the same enclosed herewith.</i> <i>It has been observed all most all the buses have scratch/dent/discolour/lose taping (helpline number)/projected guard, sheets on outer facia/side of the buses.</i> <i>Driving with a Defective Number Plate/PIS- PIS System not Working.</i> <i>Driving defective buses (mechanical, electrical and major assemblies)- Driver seat of Bus UP16 ET2404 found shredded.</i> <i>Not operating, causing it to not operate any passenger information system, gadgets, devices etc.- PIS System not Working, GPS system not working.</i>
16.01.2020	03.01.2020	<i>Discoloration, alteration of the bus colour scheme, logo, peeling off of paint, painting of any repaired work inside the bus etc prescribed by NMRC- Photographs of the same enclosed herewith.</i> <i>It has been observed most of the buses have scratch/dent/discolour/lose taping (helpline number)/projected guard, sheets on outer facia/side of the buses.</i> <i>Driving with a Defective Number Plate/PIS- PIS System not Working (Radio at Bus Stoppage Points).</i> <i>Air conditioning not up to specified temperature range and to the satisfaction of NMRC- A/c not working properly.</i> <i>Not operating, causing it to not operate any passenger information system, gadgets, devices etc.- PIS (Radio) System not Working, GPS system not working.</i> <i>The driver is not carrying a proper driving license- Public Transport</i> <i>Licence is not available with Driver.</i> <i>Hence, it may attract penalty from the beginning of the contract period.</i> <i>No stoppage at Designated Points- Driver does not stop/slower the bus at many stoppage and does not run the bus inside lane.</i>

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15.01.2020	07.01.2020	<i>Discoloration, alteration of the bus colour scheme, logo, peeling off of paint, painting of any repaired work inside the bus etc prescribed by NMRC- It has been observed all most all the buses have scratch/dent/discolour/lose taping (helpline number)/projected guard, sheets on outer facia/side of the buses.</i> <i>Photographs of the same enclosed herewith.</i> <i>Unclean bus outside or inside at the start of the trip- Behind side of Bus floor are not cleaned and dust found on the floor.</i> <i>Driving with a Defective Number Plate/PIS- PIS System not Working.</i> <i>Air conditioning not up to specified temperature range and to the satisfaction of NMRC- A/c not working.</i> <i>Driving defective buses (mechanical, electrical and major assemblies)- One tube light is not working in bus.</i> <i>Not operating, causing it to not operate any passenger information system, gadgets, devices etc.- PIS System not Working.</i>
15.01.2020	08.01.2020	<i>Discoloration, alteration of the bus colour scheme, logo, peeling off of paint, painting of any repaired work inside the bus etc prescribed by NMRC- It has been observed all most all the buses have scratch/dent/discolour/lose taping (helpline number)/projected guard, sheets on outer facia/side of the buses.</i> <i>Reflecting tap was torn.</i> <i>Photographs of the same enclosed herewith.</i> <i>Driving with a Defective Number Plate/PIS- PIS System not Working.</i> <i>Air conditioning not up to specified temperature range and to the satisfaction of NMRC- A/C Compressor cover was not found.</i> <i>Driving defective buses (mechanical, electrical and major assemblies)- Two tubes light are not working in bus.</i> <i>Sheets of bus were torn.</i> <i>Reflecting tap was torn.</i>

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		<i>Front Glass was cracked.</i> <i>Not operating, causing it to not operate any passenger information system, gadgets, devices etc.- PIS System not Working.</i> <i>The driver is not carrying a proper driving license- Public Transport Licence is not available with Driver. Hence, it may attract penalty from the beginning of the contract period. Route permit, Hydro testing Certificates and Batch for public transport have not available with driver.</i> <i>Deviating from schedules/ time table/ dwell time issued by NMRC or its authorized representative time to time- Bus has come 5 minutes delay at Botanical garden stop.</i> <i>The driver is not carrying a proper driving license- Public Transport Licence is not available with Driver. Hence, it may attract penalty from the beginning of the contract period.</i> <i>No stoppage at Designated Points- Bus has not stopped on each stoppage as per agreement.</i>
15.01.2020	06.01.2020	<i>Discoloration, alteration of the bus colour scheme, logo, peeling off of paint, painting of any repaired work inside the bus etc prescribed by NMRC- Photographs of the same enclosed herewith.</i> <i>It has been observed all most all the buses have scratch/dent.</i> <i>Driving defective buses (mechanical, electrical and major assemblies)- Handicapped ramp is not upto the comfort level and it was very difficult to open easily and use it.</i>
15.01.2020	06.01.2020	<i>Discoloration, alteration of the bus colour scheme, logo, peeling off of paint, painting of any repaired work inside the bus etc prescribed by NMRC- Photographs of the same herewith enclosed</i> <i>It has been observed all most all the buses have scratch/dent.</i> <i>Driving defective buses (mechanical, electrical and major assemblies)- Handicapped ramp is not upto the comfort level and it was very difficult to open easily and use it.</i>

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CP (IB) No.45/ALD/2021 with IA No.438/2025

IN THE NATIONAL COMPANY LAW TRIBUNAL
ALLAHABAD BENCH, PRAYAGRAJ

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		<i>Deviating from schedules/ time table/ dwell time issued by NMRC or its authorized representative time to time- Bus did not slow down at stoppage and therefore reached destination before time scheduled.</i>
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53. Significantly, the record further reflects that the Operational Creditor had responded to the aforesaid show cause notices from time to time and had furnished explanations and assurances regarding rectification of deficiencies pointed out by the Corporate Debtor. The exchange of such communications clearly demonstrates that disputes concerning the quality and standard of services rendered, imposition of deductions and the corresponding amounts payable were already subsisting between the parties during the relevant period and prior to issuance of the demand notice under Section 8 of the Code.

54. Further, the payment details and documents placed on record by the Corporate Debtor through IA No. 149 of 2024 prima facie indicate that the invoices raised by the Operational Creditor were not mechanically accepted in entirety but were subject to scrutiny, verification and certification by UPSRTC in accordance with the mechanism contemplated under the Bus Operators Agreement. The documents further indicate that deductions were effected towards penalties attributable to service deficiencies and payments were thereafter released accordingly. The material placed on record,

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therefore, prima facie establishes that the disputes raised by the Corporate Debtor were not a mere bald denial of liability simpliciter, but arose out of performance-related issues and contractual adjustments by way of making deduction concerning the quality of services rendered by the Operational Creditor and then determining the amount payable, which as per the reconciliation of accounts produced by the Corporate Debtor, no amount is found payable as against the default amount mentioned by the Operational Creditor in its Application, which itself is sufficient to show that a dispute exists and it is further evidenced by the pendency of arbitral proceeding in this regard for determining of the outstanding amount if any payable by the Respondent Corporate Debtor to Applicant Operational Creditor .

- 55.** We do not find any merit in the contention advanced by the Operational Creditor that the aforesaid show cause notices were merely an afterthought and have been issued with a view to evade payment obligations. From the record, it appears that concerns regarding deficiencies in service standards and operational performance had been raised by the Corporate Debtor even prior to the communications relied upon by the Operational Creditor. Correspondence dated 23.03.2017, 25.03.2017, 20.04.2017, 02.02.2018 and 18.05.2018 placed on record further indicate that issues relating to operational deficiencies, service standards and contractual compliance had been raised periodically during the subsistence of the Agreement. It is also

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evident that in response thereto, the Applicant had furnished explanations and undertaken rectification measures. Further the show cause notices sent prior to issuance of the Section 8 notice are supported by inspection reports along with photographs which clearly shows the deficiency of services arising on the part Applicant in accordance with the operators agreement Thus, the disputes raised by the Corporate Debtor cannot be characterised as illusory, sham, hypothetical or a mere bluster raised solely as a defence to the Section 8 demand notice. Rather, the material placed on record demonstrates a continuing and subsisting dispute regarding performance of contractual obligations and determination of amounts payable thereunder and for determination of amounts if any payable, proceedings at present is pending in arbitral court and for such dispute , we need not to be satisfied that the defence is likely to succeed in arbitral court and we at this stage is also not required to examine the merits of the dispute except to see that a real dispute between parties exists about existence of debt or quality of goods or services as held by the Hon'ble Supreme Court in *Mobilox Innovationa(supra)*.

56. In this regard, reference may also be made to the decision of the Hon'ble NCLAT in *Law & Kenneth Saatchi & Saatchi Pvt. Ltd. v. Patanjali Paridhan Pvt. Ltd. (Company Appeal (AT) (Insolvency) No. 1033 of 2023)*, wherein it was held that correspondence exchanged between the parties prior to issuance of the demand notice, evidencing disputes regarding quality of

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services and payment obligations, constitutes sufficient material to establish the existence of a genuine pre-existing dispute under the Code. The Hon'ble Appellate Tribunal observed that where emails and communications exchanged prior to issuance of notice reflect a genuine dispute requiring adjudication, the same disentitles an Operational Creditor from invoking the insolvency process under Section 9 of the Code.

57. Further as we have already discussed while dealing with the facts of this case that the legal position on the aspect of pre-existing dispute has been authoritatively settled by the Hon'ble Supreme Court in the matter of ***Mobilox Innovations Private Limited (Supra)***, wherein it has been held that while exercising jurisdiction under Section 9 of the Code, the Adjudicating Authority is not required to examine the merits of the dispute in detail or determine the likelihood of success of the defence, but only to ascertain whether there exists a plausible contention requiring further investigation and that the dispute raised is not a patently feeble legal argument or unsupported assertion. Applying the aforesaid test to the facts of the present case, we are satisfied that the material placed on record sufficiently demonstrates the existence of a genuine and substantial pre-existing dispute between the parties concerning the quality of services rendered by the Operational Creditor, the deductions and penalties imposed thereon and the consequent

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amounts payable under the Bus Operators Agreement, all of which existed prior to issuance of the demand notice dated 07.02.2020.

58. Accordingly, in view of the existence of a real and bona fide pre-existing dispute within the meaning of Section 5(6) of the Insolvency and Bankruptcy Code, 2016 and as has been settled by various judgments of the Courts discussed in paras above, the present application filed under Section 9 of the Code does not merit admission and is, therefore, dismissed.

59. Therefore, CP (IB) No. 45 of 2021 stands dismissed and IA No. 438 of 2025 stands disposed of.

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**(Ashish Verma)
Member (Technical)**

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**(Praveen Gupta)
Member (Judicial)**

Date: 04.06.2026