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 07.08.2026 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	**: IA(I.B.C)/730(CHE)2026**
PETITION NUMBER	**: C.P. (IB)/100(CHE)2023**
NAME OF THE APPLICANT	**: Poompuhar Shipping Corporation Ltd**
NAME OF THE RESPONDENT(S)	**: Nan Lian Ship Management LLC**
UNDER SECTION	**: Sec 60(5) R/w Sec 9(5)(ii) (d) of IBC, 2016**

ORDER

Vide separate order pronounced in open court, **IA(IBC)/730(CHE)2026** is allowed and **C.P.(IB)/100(CHE)2023** is dismissed.

-SD-	**-SD-**
RAVICHANDRAN RAMASAMY	**JYOTI KUMAR TRIPATHI**
Member (Technical)	**Member (Judicial)**

kg

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

CP(IBC)/100(CHE)/2023

(Filed under Section 9 of the Insolvency and Bankruptcy Code, 2016, R/w, Rule 6 of the Insolvency and Bankruptcy Rules, 2016)

In the matter of ***Poompuhar Shipping Corporation Limited***

NAN LIAN SHIP MANAGEMENT LLC,
Rep.by its Ravindra Koli, Authorised Signatory
Having office at:
#305, The Atrium Centre, Khalid Bin Al Waleed Road,
Dubai, United Arab Emirates.

… Petitioner/ Operational Creditor

V/s

POOMPUHAR SHIPPING CORPORATION LIMITED
Having office at: IV Floor, South Wing, MHU Complex,
No 692, Anna Salai, Nandanam, Chennai – 600 035, Tamil Nadu.

… Respondent/ Corporate Debtor

Along with

IA(IBC)/730(CHE)/2026 in CP(IBC)/100(CHE)/2023

(Filed under Section 60(5) of the Insolvency and Bankruptcy Code, 2016,)

In the matter of ***Poompuhar Shipping Corporation Limited***

POOMPUHAR SHIPPING CORPORATION LIMITED
Having office at: IV Floor, South Wing, MHU Complex,
No 692, Anna Salai, Nandanam, Chennai – 600 035, Tamil Nadu.

… Petitioner/ Corporate Debtor

V/s

NAN LIAN SHIP MANAGEMENT LLC,
Rep.by its Ravindra Koli, Authorised Signatory
Having office at:
#305, The Atrium Centre, Khalid Bin Al Waleed Road,
Dubai, United Arab Emirates.

… Respondent/ Operational Creditor

Order pronounced on 7th August 2026

CORAM:

***SHRI.* JYOTI KUMAR TRIPATHI, MEMBER (JUDICIAL)**

***SHRI.* RAVICHANDRAN RAMASAMY, MEMBER (TECHNICAL)**

Present:
For Applicant: Ashwin Shankar, Advocate
For Respondent: Edwin Prabakar & Athi Seshan, Advocates

O R D E R

(Heard through Hybrid Mode)

This Application under Section 9 of IBC filed by **Nan Lian Ship Management LLC**, represented by its Authorised Signatory, Ravindra Koli, Petitioner/ Operational Creditor herein against **Poompuhar Shipping Corporation Limited**, Respondent / Corporate Debtor herein for initiating Corporate Insolvency Process (CIRP) against the Corporate Debtor.

2. SUBMISSIONS OF THE APPLICANT

2.1. Part I of the Application contains the particulars of the Applicant Nan Lian Ship Management LLC, represented by its Authorised Signatory, Ravindra Koli. Part II of the Application sets out the details of the Corporate Debtor. It was incorporated on 11.04.1974 with authorized share capital of Rs. 22,00,00,000/- and paid up share capital of Rs. 20,53,00,000/- and address at IV Floor, South Wing, MHU Complex, No 692, Anna Salai, Nandanam, Chennai – 600 035, Tamil Nadu, within the jurisdiction of this Tribunal. In Part III of the application, the Operational Creditor has not proposed anyone as the IRP. Part IV of the application sets out the details of the debt being 404,691 USD (United States Dollars Four Hundred Four Thousand Six Hundred Ninety-One and Cents

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Three) (approximately Rs.3,34,94,877.89/- Rupees three crore thirty four lakhs ninety four thousand eight hundred and seventy seven and eighty nine paise only), with date of default as 19.04.2022. This application has been filed on 13.06.2023.

2.2. It is submitted that the Applicant/ Operational Creditor is engaged in the business of ship management and chartering. The Corporate Debtor, Poompuhar Shipping Corporation Limited, entered into a Time Charterparty dated 20.12.2019 with the Operational Creditor in respect of the vessel MV Silver Star, whereby the vessel was chartered to the Corporate Debtor on agreed terms and conditions. Pursuant to the said Charterparty, the Operational Creditor duly performed its contractual obligations and, from time to time, raised invoices towards charter hire charges and bunker expenses payable by the Corporate Debtor.

2.3. It is submitted that despite receipt of the invoices and continuous utilisation of the vessel, the Corporate Debtor failed to honour its payment obligations, resulting in an outstanding operational debt of USD 404,691.03 (approximately Rs. 3,34,94,877.89). According to the Operational Creditor, the debt became due and payable towards charter hire under the Time Charterparty, the last date for payment being September 2020.

2.4. It is further submitted that the vessel was redelivered to the Operational Creditor without any contemporaneous protest or demur from the Corporate Debtor, thereby evidencing that there was no dispute regarding the services rendered or the debt due.

2.5. It is further submitted that upon the Corporate Debtor's failure to clear the outstanding dues, the Operational Creditor issued notices dated 12.04.2022 and 19.04.2022 by email calling upon the Corporate Debtor to make payment of the outstanding charter hire. As the Corporate Debtor failed to comply with the said demands, the Operational Creditor, issued a demand notice under Section 8 of the Insolvency and Bankruptcy Code, 2016, dated 06.12.2022.

2.6. It is submitted that the Corporate Debtor sent a reply to the demand notice only on 23.01.2023, which was received by the Operational Creditor on 24.01.2023, well beyond the period of ten days prescribed under Section 8 of the Code.

2.7. It is submitted that the said reply does not disclose any particulars of any pending suit, arbitration proceedings or any other pre-existing dispute between the parties in relation to the operational debt. Hence, according to the Operational Creditor, the alleged reply cannot constitute a valid notice of dispute within the meaning of Sections 8 and 9 of the Code.

2.8. It is further submitted that the Operational Creditor has placed on record the Time Charterparty dated 20.12.2019, invoices raised from time to time, statement of account, email correspondence, demand notices, proof of service, and the reply issued by the Corporate Debtor in support of the claim.

2.9. It is contended that the operational debt has remained unpaid despite repeated demands and that all the requirements prescribed under Section 9 of the Insolvency and Bankruptcy Code, 2016 and the relevant Rules have been duly complied with.

2.10. It is finally submitted that the petition under Section 9 of the Insolvency and Bankruptcy Code, 2016 be admitted, and that the Corporate Insolvency Resolution Process be initiated against the Corporate Debtor for the total outstanding debt of USD 404,691.03 (approximately Rs. 3,34,94,877.89) along with further interest as applicable till realization.

3. SUBMISSIONS OF THE RESPONDENT

3.1. The Respondent/ Corporate Debtor stated that the present application filed under Section 9 of the Code is not maintainable as the claim of the Operational Creditor is seriously disputed and, therefore, cannot form the basis for initiation of the Corporate Insolvency Resolution Process.

3.2. It is contended that the Corporate Debtor had invited tenders for the time charter of one self-trimming Panamax geared vessel for transportation of thermal coal from Paradip to Ennore for a period of nine months with an option of one month and variation of ten days. The Operational Creditor emerged as the successful bidder, and after negotiations, the Corporate Debtor accepted the vessel MV Silver Star at a charter hire rate of USD 12,900 per day, together with applicable Royalty Tax at 11.96% and GST at 5%. Pursuant thereto, the parties executed a Charter Party Agreement dated 20.12.2019.

3.3. It is further stated that the vessel was delivered on 28.12.2019 after joint on-hire/ condition/ bunker survey and was redelivered on

27.09.2020 at Karaikal Port after completion of the joint off-hire/condition/bunker survey.

3.4. It is stated that although the Operational Creditor has claimed an amount of USD 404,691.03 by way of demand notice, the Corporate Debtor had rejected the said claim by issuing a reply notice.

3.5. It is contended that the Operational Creditor has suppressed the material fact that it is itself liable to pay a sum of USD 264,195 to the Corporate Debtor towards liquidated damages arising out of another Charter Party relating to the vessel MV Marine Fortuner. According to the Corporate Debtor, the Operational Creditor has not approached this Tribunal with clean hands by concealing the said liability.

3.6. It is further stated that the Corporate Debtor had, by letter dated 01.02.2021, informed the Operational Creditor that the liquidated damages pertaining to MV Marine Fortuner would be adjusted against the balance amount payable under the present Charter Party dated 20.12.2019. Therefore, according to the Corporate Debtor, the amount claimed by the Operational Creditor is the subject matter of a bona fide dispute and is not recoverable by invoking the summary insolvency mechanism under the Code.

3.7. The Corporate Debtor relied upon the judgment of the Hon'ble Supreme Court in ***Mobilox Innovations Private Limited v. Kirusa Software Private Limited***, contending that where a notice of dispute has been received by the operational creditor or there exists a record of dispute, the Adjudicating Authority is required to reject an application under Section 9 of the Code.

3.8. It is lastly stated that Clause 16 of the Charter Party Agreement contains an arbitration clause providing that all disputes arising between the parties shall be referred to arbitration at Chennai before a panel of three arbitrators. In view of the existence of the contractual arbitration mechanism and the pre-existing disputes relating to the claim, the Corporate Debtor contended that the Operational Creditor ought to invoke arbitration instead of initiating proceedings under the Insolvency and Bankruptcy Code.

4. SUBMISSIONS OF THE APPLICANT IN REJOINDER

4.1. The Applicant/ Operational Creditor, through its rejoinder, reiterated and reaffirmed the averments made in the main petition and denied the contentions raised by the Respondent/ Corporate Debtor in its counter affidavit.

4.2. It is submitted that the Corporate Debtor has unequivocally admitted the execution of the Charter Party Agreement dated 20.12.2019, the agreed charter hire rate of USD 12,900 per day, the delivery of MV Silver Star on 28.12.2019, and its redelivery on 27.09.2020 after completion of joint surveys. According to the Operational Creditor, these admissions establish the contractual relationship and impliedly acknowledge the liability to pay the outstanding charter hire.

4.3. It is further pointed out that the Corporate Debtor's assertion that the bid was opened on 11.01.2021 is self-contradictory, as the Charter Party had been executed more than a year earlier and the vessel had already been redelivered before the alleged opening of the bid, thereby demonstrating that the reply contains contradictory and misleading statements.

4.4. It is further submitted that the averments regarding the demand notice are factually incorrect. It is contended that no demand notice dated 06.12.2020, as alleged by the Corporate Debtor, was ever issued. The only statutory demand notice was issued on 06.12.2022 under Section 8 of the Code claiming USD 404,691.03, and prior thereto an email demand dated 19.04.2022 had also been addressed to the Corporate Debtor, to which no reply was furnished.

4.5. It is submitted that the alleged reply dated 23.02.2023 referred to by the Corporate Debtor does not exist, whereas the only communication received was the letter dated 23.01.2023, already produced along with the petition. According to the Operational Creditor, these incorrect dates and references further demonstrate an attempt by the Corporate Debtor to mislead the Tribunal.

4.6. It is submitted that the plea regarding adjustment of USD 264,141.95 towards alleged liquidated damages in respect of another vessel is wholly untenable. The Operational Creditor contends that there is no vessel by the name "MV Marine Fortuner", and the Corporate Debtor appears to refer to MV Marine Fortune I.

4.7. It is further submitted that no suit, arbitration or any legal proceedings have ever been initiated by the Corporate Debtor for recovery of the alleged liquidated damages, nor has any judgment, decree or arbitral award been produced in support thereof. The alleged letter dated 01.02.2021, on which the Corporate Debtor relies, has also not been produced.

4.8. It is submitted that, even assuming the alleged adjustment to be correct without admitting the same, an amount of USD 140,549.08, equivalent to approximately Rs. 1,16,82,439.53, would still remain payable by the Corporate Debtor, which is well above the statutory threshold under the Code.

4.9. It is further submitted that the Operational Creditor has neither owned nor managed MV Marine Fortune I, as is evident from the Equasis report produced along with the rejoinder. The ownership and management history of the said vessel demonstrates that the Operational Creditor has never been its registered owner or ship manager. Accordingly, the Corporate Debtor's attempt to link the alleged liquidated damages arising out of another vessel with the present Charter Party concerning MV Silver Star is stated to be wholly misconceived and unsupported by any material.

4.10. It is submitted that the Corporate Debtor has wrongly relied upon the judgment in ***Mobilox Innovations Pvt. Ltd. v. Kirusa Software Pvt. Ltd.***, as the dispute raised by it is neither genuine nor supported by evidence. The Operational Creditor contends that the alleged dispute is a mere assertion devoid of any documentary proof and constitutes only a spurious defence.

4.11. It is further argued that the existence of an arbitration clause in the Charter Party Agreement does not bar the maintainability of proceedings under the Insolvency and Bankruptcy Code, as the Adjudicating

Authority is required to examine whether a real dispute exists and cannot refer the parties to arbitration merely because such a clause is contained in the contract. Reliance is also placed upon the decisions of the Hon'ble Supreme Court and the Hon'ble NCLAT to contend that the arbitration clause cannot be invoked as a device to delay insolvency proceedings where default is otherwise established.

5. SUBMISSIONS OF THE RESPONDENT IN ADDITIONAL REPLY

5.1. The Respondent has reiterated and supplemented the objections raised in the main counter affidavit and submitted that the present petition filed under Section 9 of the Code is not maintainable either in law or on facts.

5.2. It is stated that the outstanding amount claimed by the Operational Creditor has been incorrectly computed. It is submitted that, after effecting deductions towards the 8th hire, 9th hire and final hire, the amount originally payable to the Operational Creditor stood at USD 386,573.23, comprising USD 382,778.02 towards the 8th hire and USD 132,852.21 towards the 9th and final hire, after accounting for part payments already made. It is further submitted that the Corporate Debtor had made a part payment of USD 68,861 towards the 8th hire on 05.04.2020 and a further part payment of USD 60,196 on 02.02.2022.

5.3. It is stated that the Operational Creditor had also participated in another tender floated by the Corporate Debtor in respect of the vessel MV Marine Fortuner, pursuant to which the charter hire rate was negotiated and fixed at USD 11,650 per day. However, according to the Corporate Debtor, the Operational Creditor failed to deliver the said vessel on the ground that it was engaged under a prior charter, compelling the Corporate Debtor to procure a substitute vessel from another company to perform the contractual obligations.

5.4. It is contended that the substitute vessel operated for 112 days, resulting in an additional expenditure quantified at USD 264,141.95, which, according to the Corporate Debtor, was liable to be adjusted against the amounts payable under the present Charter Party.

5.5. It is further stated that after adjusting the aforesaid amount of USD 264,141.95 from the amount otherwise payable to the Operational Creditor, the balance payable was only USD 122,431.28. It is submitted that the said balance amount was remitted to the Operational Creditor through SWIFT No. 0505623TS0003426 dated 28.11.2023, thereby fully discharging the Corporate Debtor's liability. According to the Corporate Debtor, the Operational Creditor has suppressed these material facts and has wrongly claimed USD 404,691.03 in the present petition, whereas the amount allegedly due as on the date of filing of the petition was only USD 122,431.28.

5.6. It is stated that no amount presently remains due and payable to the Operational Creditor and that the only surviving controversy relates to the correctness of the deductions effected by the Corporate Debtor, which gives rise to disputed questions of fact requiring adjudication before an arbitral forum. The Corporate Debtor contends that such disputes cannot be resolved in proceedings under the Insolvency and Bankruptcy Code, 2016 and are liable to be decided only through

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arbitration in terms of the arbitration clause contained in the Charter Party Agreement.

5.7. It is lastly stated that the Corporate Debtor has already filed an application under Section 8 of the Arbitration and Conciliation Act, 1996 before this Tribunal on 04.08.2023, seeking reference of the disputes to arbitration.

6. SUBMISSIONS OF THE APPLICANT IN ADDITIONAL REJOINDER

6.1. The Applicant, through its additional rejoinder, has reiterated its position that the present company petition is maintainable both in law and on facts, and has specifically rebutted the contentions raised in the additional counter affidavit filed by the Respondent.

6.2. It is submitted that the Corporate Debtor has incorrectly stated that only nine hire invoices were raised. According to the Operational Creditor, a total of ten hire invoices were issued under the Charter Party Agreement, and the outstanding operational debt has been computed on the basis of the 8th, 9th and 10th (final) hire invoices, after adjusting the value of bunkers on redelivery, bank charges and the payment subsequently received from the Corporate Debtor.

6.3. It is contended that after giving credit to the payment of USD 122,431.28 received on 04.12.2023, a sum of USD 282,259.75 still remains due and payable by the Corporate Debtor. It is further submitted that the invoices and the Chartered Accountant's certificate already placed on record substantiate the said computation.

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6.4. It is further submitted that the Corporate Debtor has incorrectly stated the dates of the part payments made towards the 8th hire invoice. While admitting receipt of part payments aggregating USD 129,037, the Operational Creditor contends that the remittances were actually made on 05.04.2021 and 07.02.2022, and not on the dates mentioned in the Additional Reply Affidavit.

6.5. It is submitted that the allegations relating to the vessel MV Marine Fortune are wholly misconceived. According to the Operational Creditor, it had merely participated in the tender process and quoted a base hire of USD 12,000 per day, and there was never any concluded Charter Party Agreement in respect of the said vessel.

6.6. It is contended that the vessel was withdrawn during the negotiation stage itself and, therefore, the allegation that the Operational Creditor failed to deliver the vessel after acceptance of the tender is false. The Operational Creditor further submits that the Corporate Debtor has not produced any Letter of Award or concluded contract evidencing acceptance of the bid.

6.7. It is submitted that the claim for adjustment of USD 264,141.95 towards the alleged replacement vessel is unsustainable. It is contended that the Corporate Debtor has not disclosed complete particulars of the alleged substitute vessel except producing a letter referring to MV Chola Harmony. According to the Operational Creditor, the hire actually paid for the substitute vessel demonstrates that the difference in hire charges would only be USD 134,223.04 and not USD 264,141.95 as claimed by the Corporate Debtor.

6.8. It is further submitted that, even assuming without admitting that such difference could be adjusted, the amount still payable under the Charter Party concerning MV Silver Star would be USD 148,036.71, which is well above the statutory threshold prescribed under Section 4 of the Insolvency and Bankruptcy Code, 2016.

6.9. It is also submitted that the documents filed by the Corporate Debtor themselves establish that no concluded contract ever came into existence in respect of MV Marine Fortune, as the correspondence relied upon by the Corporate Debtor merely refers to negotiations and not to any concluded Charter Party Agreement.

6.10. It is contended that the alleged claim represents, at best, an unliquidated claim for damages and cannot be characterised as liquidated damages capable of being set off against the admitted dues under the independent Charter Party relating to MV Silver Star. It is also submitted that the Corporate Debtor has failed to explain the basis of the amount sought to be adjusted or the difference between the operational debt outstanding and the amount allegedly set off.

6.11. It is further submitted that, in terms of Clauses 70(a) and 70(b) of the Charter Party governing MV Silver Star, the Corporate Debtor was contractually entitled to withhold only the final fifteen days' charter hire and was required to raise any dispute within 60 days from completion of the charter. Since the alleged claim was raised beyond the contractual limitation period, the Corporate Debtor is not entitled to claim any adjustment or set-off.

6.12. It is submitted that by claiming a set-off, the Corporate Debtor has itself admitted that amounts are otherwise payable under the Charter Party concerning MV Silver Star. The Operational Creditor also points out that the Earnest Money Deposit furnished during the tender process for MV Marine Fortune has not been refunded by the Corporate Debtor, and there is no contractual provision permitting further adjustment of alleged damages.

6.13. It is finally submitted that the dispute sought to be raised by the Corporate Debtor is merely illusory and a sham defence intended to avoid payment of an admitted operational debt. According to the Operational Creditor, there exists a clear operational debt of USD 282,259.75, and even on the Corporate Debtor's own case, an amount of USD 148,036.71 remains payable, which exceeds the statutory threshold for initiation of the Corporate Insolvency Resolution Process.

7. SUBMISSIONS OF THE APPLICANT (CORPORATE DEBTOR) IN I.A.(IBC)730/(CHE)2026

7.1. The Applicant/ Corporate Debtor submitted that the present Interlocutory Application has been filed under Section 60(5) read with Section 8(2)(d) of the Insolvency and Bankruptcy Code, 2016, seeking rejection of the Company Petition filed under Section 9 of the Code as being not maintainable.

7.2. It is submitted that the Applicant had floated a Global Tender dated 09.12.2020 for long-term time charter of one self-trimming Panamax gearless/geared vessel, namely MV Marine Fortune, for transportation of thermal coal from Paradip/ Dhamra to Ennore. The

Operational Creditor participated in the tender process by submitting its technical bid, price bid and Earnest Money Deposit of USD 17,000, while expressly accepting all the terms and conditions of the tender documents.

7.3. According to the Applicant, the Operational Creditor quoted a charter hire rate of USD 12,000 per day, exclusive of applicable taxes, and thereby agreed to be bound by the tender conditions, including the provisions relating to withdrawal of the offer, delivery obligations and liquidated damages.

7.4. It is further submitted that after participating in the negotiations and being considered for the charter, the Operational Creditor, by email dated 21.01.2021, unilaterally withdrew from the tender on the ground that the vessel was engaged elsewhere and could not be delivered within the stipulated lay days.

7.5. It is contended that such withdrawal constituted a breach of the tender conditions, compelling the Applicant to engage a substitute vessel at a substantially higher charter hire, thereby causing considerable financial loss to the Applicant. According to the Applicant, the Operational Creditor became liable to compensate the Applicant towards the additional expenditure incurred in securing the substitute vessel.

7.6. It is submitted that the tender conditions specifically entitled the Applicant to recover liquidated damages and the differential charter hire in the event of failure of the successful bidder to deliver the vessel or withdrawal after acceptance.

7.7. It is contended that the Operational Creditor, having expressly accepted all the tender conditions, cannot now dispute its liability arising therefrom. It is further submitted that the Applicant was therefore justified in adjusting the losses suffered by it against the amounts otherwise payable under the independent Charter Party concerning MV Silver Star.

7.8. It is submitted that the claim arising out of the withdrawal from the MV Marine Fortune tender had been communicated to the Operational Creditor even prior to issuance of the statutory demand notice and, therefore, there existed a genuine and bona fide pre-existing dispute between the parties.

7.9. It is contended that the alleged operational debt is intrinsically connected with the Applicant's right of adjustment and set-off arising out of the contractual obligations accepted by the Operational Creditor under the tender conditions. Consequently, the dispute is not illusory or moonshine but a real dispute requiring adjudication in appropriate proceedings.

7.10. It is further submitted that the Operational Creditor has deliberately omitted to disclose its participation in the subsequent tender process, its acceptance of the tender conditions, the subsequent withdrawal from the tender and the consequential losses suffered by the Applicant.

8. WRITTEN SUBMISSIONS OF THE APPLICANT

8.1. It is reiterated that the present application satisfies all the requirements under Sections 8 and 9 of the Insolvency and Bankruptcy Code, 2016, as the operational debt remains due and payable and the

Corporate Debtor has failed to establish the existence of any genuine pre-existing dispute.

8.2. It is submitted that the Corporate Debtor has admitted the execution of the Charter Party Agreement dated 20.12.2019, the delivery and redelivery of MV Silver Star, and the contractual relationship between the parties. The only defence projected by the Corporate Debtor is an alleged set-off based on an entirely independent transaction relating to MV Marine Fortune, which has no nexus with the operational debt arising under the Charter Party concerning MV Silver Star.

8.3. It is further submitted that the alleged claim of the Corporate Debtor does not constitute a pre-existing dispute within the meaning of Section 8(2) of the Code. The alleged claim is based on an unliquidated demand for damages arising out of a separate tender process, in respect of which no concluded contract, arbitral award, decree or adjudication exists.

8.4. It is contended that such an unadjudicated claim for damages cannot be set off against an admitted operational debt payable under an independent contract. Reliance is placed on the decisions of the Hon'ble Supreme Court in ***Union of India v. Raman Iron Foundry, Gangotri Enterprises Ltd. v. Union of India, and Mobilox Innovations Pvt. Ltd. v. Kirusa Software Pvt. Ltd.***, to contend that a mere assertion of damages or a speculative counterclaim cannot defeat a petition under Section 9 of the Code.

8.5. It is submitted that the documents relied upon by the Corporate Debtor themselves demonstrate that no concluded Charter Party ever came into existence in respect of MV Marine Fortune, as the correspondence only evidences negotiations and not a binding agreement.

8.6. It is further submitted that even the computation of alleged damages is unsupported by contractual provisions or contemporaneous records. The Operational Creditor also contends that the Corporate Debtor has failed to establish any contractual or legal right to adjust the alleged damages against the outstanding charter hire payable under the MV Silver Star Charter Party.

8.7. It is submitted that the arbitration clause contained in the Charter Party does not bar the jurisdiction of this Adjudicating Authority under the Insolvency and Bankruptcy Code, 2016, nor can it be invoked to defeat insolvency proceedings where default stands established and further relied upon the judgments of the Hon'ble Supreme Court and the Hon'ble NCLAT, including ***Indus Biotech Private Limited v. Kotak India Venture (Offshore) Fund, S.S. Engineers v. Hindustan Petroleum Corporation Ltd., and M. Suresh Kumar Reddy v. Canara Bank,*** in support of the proposition that only a genuine and substantial pre-existing dispute can warrant rejection of a petition under Section 9, whereas a spurious or illusory defence cannot.

8.8. It is finally submitted that the Corporate Debtor's defence is merely an afterthought intended to avoid payment of the admitted operational debt. The alleged set-off is founded upon an independent, unadjudicated claim for damages which cannot extinguish the operational debt arising under the Charter Party dated 20.12.2019.

9. WRITTEN SUBMISSIONS OF THE RESPONDENT

9.1. The Respondent reiterated that the Operational Creditor has suppressed material facts relating to the subsequent tender process concerning MV Marine Fortune, which have a direct bearing on the maintainability of the present petition under Section 9 of the Insolvency and Bankruptcy Code, 2016.

9.2. It is stated that while the operational debt arises out of the Charter Party dated 20.12.2019 relating to MV Silver Star, the Operational Creditor had also participated in a subsequent tender floated by the Corporate Debtor for MV Marine Fortune, accepted the tender conditions, and thereafter failed to honour its contractual obligations.

9.3. It is stated that the Operational Creditor had accepted the negotiated charter hire of USD 11,650 per day for MV Marine Fortune and, after being declared the successful bidder, withdrew from the tender by email dated 21.01.2021 on the ground that the vessel was engaged elsewhere. Despite requests by the Corporate Debtor to provide a substitute vessel, no such vessel was made available. Consequently, the Corporate Debtor was compelled to engage an alternate vessel, MV Chola Harmony, for a period of 112 days, resulting in additional expenditure of USD 264,141.95, which, according to the Corporate Debtor, constituted liquidated damages recoverable from the Operational Creditor in terms of the tender conditions and the Charter Party Agreement.

9.4. It is further stated that by communication dated 01.02.2021, the Corporate Debtor had informed the Operational Creditor that the additional expenditure incurred in chartering the substitute vessel would be recovered from the outstanding charter hire payable under the MV Silver Star Charter Party.

9.5. It is contended that the Operational Creditor neither disputed nor replied to the said communication and, therefore, the Corporate Debtor was justified in adjusting the said amount in accordance with Clauses 37(f), 37(g) and 70(b) of the Charter Party Agreement. After effecting such adjustment, the balance amount of USD 122,431.28 alone remained payable, which was remitted to the Operational Creditor through SWIFT No. 0505623TS0003426 dated 28.11.2023. Accordingly, it is submitted that no further amount is due or payable to the Operational Creditor.

9.6. It is further stated that the Charter Party Agreement dated 20.12.2019 contains an arbitration clause providing that all disputes between the parties shall be referred to arbitration at Chennai before a panel of three arbitrators. The Corporate Debtor contends that the present dispute relates to the validity of the adjustment and the claim for liquidated damages, which involve disputed questions of fact requiring adjudication by the Arbitral Tribunal. It is therefore submitted that the insolvency mechanism cannot be invoked as a substitute for contractual dispute resolution where a bona fide pre-existing dispute exists between the parties.

9.7. The Respondent relied upon the judgments of the Hon'ble Supreme Court in ***Mobilox Innovations Private Limited v. Kirusa Software Private Limited*** and ***Indus Biotech Private Limited v. Kotak India Venture (Offshore) Fund***, contending that where a genuine pre-

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existing dispute exists and the parties have agreed to resolve their disputes through arbitration, proceedings under the Insolvency and Bankruptcy Code cannot be used as a debt recovery mechanism

10. FINDINGS OF THE TRIBUNAL

10.1. We have heard the Learned Counsel for both the parties and perused the documents placed on record.

10.2. The Operational Creditor seeks initiation of Corporate Insolvency Resolution Process against the Corporate Debtor on the ground that a sum of USD 404,691.03 was due and payable towards unpaid charter hire charges under the Time Charter Party dated 20.12.2019 relating to the vessel MV Silver Star. According to the Operational Creditor, despite rendering services and raising invoices, the Corporate Debtor failed to discharge the outstanding operational debt.

10.3. The Corporate Debtor, on the other hand, does not dispute the execution of the Charter Party Agreement dated 20.12.2019, the delivery and redelivery of MV Silver Star, or that charter hire became payable under the said agreement. The principal defence raised by the Corporate Debtor is that it was entitled to adjust an amount of USD 264,141.95 allegedly incurred towards engaging a substitute vessel after the Operational Creditor withdrew from a subsequent tender relating to MV Marine Fortune. According to the Corporate Debtor, after such adjustment only USD 122,431.28 remained payable, which has subsequently been remitted, and therefore no operational debt survives. It is also contended that the disputes are liable to be adjudicated through

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arbitration in view of the arbitration clause contained in the Charter Party.

10.4. The foremost issue that arises for consideration is whether there existed a pre-existing dispute within the meaning of Sections 8 and 9 of the Insolvency and Bankruptcy Code, 2016 prior to issuance of the demand notice. It is well settled by the Hon'ble Supreme Court in ***Mobilox Innovations Private Limited v. Kirusa Software Private Limited*** that the Adjudicating Authority is only required to examine whether there exists a plausible contention requiring further investigation and that the dispute is not a patently feeble legal argument or an assertion unsupported by evidence. The insolvency jurisdiction cannot be invoked where a real dispute exists between the parties.

10.5. From the materials placed on record, it is evident that the Corporate Debtor had, much prior to the issuance of the demand notice under Section 8 of the Code, asserted its claim arising out of the alleged failure of the Operational Creditor to honour the tender relating to MV Marine Fortune. The Corporate Debtor relies upon its correspondence dated 01.02.2021, subsequent communications, the tender documents and the additional reply to contend that it had consistently maintained its right to recover the additional expenditure incurred in chartering a substitute vessel and to adjust the same against the charter hire payable under the MV Silver Star Charter Party.

10.6. Equally, the Operational Creditor has seriously disputed the very foundation of the said claim. It has consistently maintained that no concluded contract ever came into existence in respect of MV Marine

Fortune; that there was only a tender process and negotiations; that no Letter of Award or executed Charter Party has been produced; that the alleged claim represents, at best, an unadjudicated claim for damages; and that the amount sought to be adjusted has no contractual basis. The Operational Creditor has also questioned the computation of the alleged damages, the identity of the vessel, and the contractual entitlement of the Corporate Debtor to effect such adjustment.

10.7. Thus, the defence raised by the Corporate Debtor is not confined merely to denial of liability but involves questions relating to the existence of a concluded contract concerning MV Marine Fortune, the contractual consequences of withdrawal from the tender process, the entitlement to claim damages, the quantification thereof, and the legality of adjustment against the dues arising under an independent Charter Party. These questions would necessarily require detailed examination of evidence and contractual interpretation, which cannot appropriately be undertaken in a summary proceeding under Section 9 of the Code.

10.8. It is also not in dispute that the Charter Party Agreement contains an arbitration clause providing for resolution of disputes through arbitration. While the mere existence of an arbitration clause by itself cannot defeat an application under Section 9 of the Code, where the disputes raised are substantial, genuine and arise out of contractual rights and obligations requiring adjudication, the insolvency process cannot be permitted to be employed as a substitute for adjudication of such disputes.

10.9. We are conscious of the contention of the Operational Creditor that the Corporate Debtor's claim is only an unliquidated claim for damages and that even after giving credit to the alleged adjustment, an amount exceeding the statutory threshold would remain payable. However, the rival pleadings themselves disclose serious disputes not merely regarding the quantum but also regarding the very basis of the adjustment, the existence of contractual rights, the computation of damages, and the amount, if any, legally recoverable by either party. These are matters which fall outside the limited scope of enquiry contemplated under Section 9 of the Code.

10.10. The Hon'ble Supreme Court has repeatedly held that the Insolvency and Bankruptcy Code is not a substitute for a debt recovery forum and that the Adjudicating Authority is not expected to adjudicate disputed contractual claims in proceedings under Section 9. Once the material on record demonstrates the existence of a genuine dispute which is neither hypothetical nor illusory, the application is liable to be rejected.

10.11. In the present case, having regard to the correspondence exchanged between the parties, the rival contractual claims, the plea of adjustment based upon the subsequent tender transaction, the detailed factual controversies raised by both sides, and the nature of the issues requiring adjudication, we are satisfied that there existed a real and bona fide pre-existing dispute between the parties prior to issuance of the statutory demand notice. Consequently, the Operational Creditor has failed to satisfy the jurisdictional requirement for admission of an application under Section 9 of the Insolvency and Bankruptcy Code, 2016.

10.12. The Hon'ble Supreme Court in ***Kay Bouvet Engineering Ltd. v. Overseas Infrastructure Alliance (India) Pvt. Ltd., (2021) 10 SCC 483***, after considering the law laid down in ***Mobilox Innovations Private Limited v. Kirusa Software Private Limited***, reiterated that the Adjudicating Authority, while exercising jurisdiction under Section 9 of the Code, is not expected to adjudicate the merits of rival contractual claims. It was held that where the material placed on record discloses a real dispute which is not spurious, hypothetical or illusory, the application under Section 9 is liable to be rejected, as the Insolvency and Bankruptcy Code is not intended to be used as a substitute for recovery proceedings or adjudication of contractual disputes.

10.13. In conclusion, this petition deserves to be dismissed. In view of the dismissal of the main Company Petition on the ground of existence of a pre-existing dispute, the reliefs sought in the interlocutory application filed under Section 60(5) of the Code stand answered and the same is disposed of. This order shall not preclude either party from pursuing such remedies as may be available to them in accordance with law, including arbitration or any other appropriate proceedings for adjudication of their contractual claims and counterclaims.

10.14. Accordingly, **IA(IBC)730/(CHE)2026** is **allowed** and **CP(IB)/100/(CHE)2023** is **dismissed**.

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