

IN THE NATIONAL COMPANY LAW TRIBUNAL, BENGALURU BENCH

[Through Physical hearing/VC Mode (Hybrid)]

ITEM No.07
IA(IBC) 635/2025 in
C.P. No. 21/2014
TP.(IBC) No. 05/2024

IN THE MATTER OF:

M/s. Schenker India Pvt. Ltd. ... Applicant
Vs.
M/s. Lapp India Pvt. Ltd. ... Respondent

Petition under Section 433(e), 434(i)(a) of I & B Code, 1956

Order delivered on: 11.12.2025

CORAM:

SHRI SUNIL KUMAR AGGARWAL
HON'BLE MEMBER (JUDICIAL)

SHRI RADHAKRISHNA SREEPADA
HON'BLE MEMBER (TECHNICAL)

COUNSELS PRESENT:

For the Petitioner : Appeared (*but not marked the attendance sheet*)
For the Respondent : Appeared (*but not marked the attendance sheet*)

ORDER

IA(IBC) 635/2025 is **dismissed** vide separate order.

List the main C.P on 16.02.2026.

-Sd-
RADHAKRISHNA SREEPADA
MEMBER (TECHNICAL)

-Sd-
SUNIL KUMAR AGGARWAL
MEMBER (JUDICIAL)

IN THE NATIONAL COMPANY LAW TRIBUNAL, BENGALURU BENCH

(HYBRID MODE)

IA(IBC) no 635 /2025

in

TP(IBC) no. 05/ 2024 in CP no 21/2014

(Application under Section 11
of the National Company Law Tribunal Rules, 2016)

IN THE MATTER OF:

M/s. Lapp India Pvt. Ltd.

Reg. Office at: 98, J&K Jigani Industrial Est.,
Phase II, Jigani Anekal Taluk,
Bangalore – 560105.

...Applicant/Respondent

AND

Schenker India Private Limited

Reg. Office at: 217, 2nd Floor Vardhman Crown Mall,
Plot No.02, Sector 19, Dwarka,
New Delhi – 110075.

Branch Office : No.101, Touch Down,

1st Floor, No.1 & 2, HAL Industrial Area,
Airport Road, Bangalore – 560037.

...Respondent/Petitioner

Order delivered on: 11.12.2025

Coram:

Shri Sunil Kumar Aggarwal, Hon'ble Member (Judicial)
Shri Radhakrishna Sreepada, Hon'ble Member (Technical)

COUNSELS PRESENT

For the Petitioner : Shri Nikhil Hegde and Ms. Jaya Mishra

For the Respondent : Shri Pavan Srinivas

O R D E R

Per: RADHAKRISHNA SREEPADA, Member (Technical)

1. The Company Petition is filed on 21.07.2025 with following prayers

- a) *allow the present application by dismissing the company petition in T.P.(IBC) No.05/2024 on the grounds that it is not maintainable for want of pecuniary jurisdiction*

under section 4 of the Insolvency & Bankruptcy Code, 2016, as a preliminary issue; and,

b) Pass any such necessary or further orders as may be fit and proper in the interest of justice and equity, including an order as to costs of this company application

2. Facts of the case & Submissions of the Petitioner:

The present application is filed on 21.07.2025 under Rule 11 of the NCLT, 2016, seeking disposal of the Petition in **TP(IBC) no. 05/ 2024 in CP no 21/2014** on preliminary issue of maintainability. It is stated that the Petition does not fall within the pecuniary jurisdiction of this Tribunal.

- a)** It is submitted that the submissions made in the Statement of Objections to the main Petition are repeated, reiterated, maintained, and adopted by the Applicants.
- b)** In the interest of brevity, it is submitted that the above T.P (IBC) No.05/2024 Petition is not maintainable before this Tribunal, as the debt claimed by Schenker to be owed by LAPP is only **Rs.15,74,546/-**, which falls below the pecuniary jurisdiction of Rs.1 Crore of this Tribunal.
- c)** It is submitted that though this case arises out of a Company Petition for winding up transferred by the Hon'ble High Court of Karnataka to this Tribunal, as per the Companies (Transfer of Pending Proceedings) Rules, 2016 (as amended in 2017), all such transferred petitions are required to be dealt with in accordance with Part II of the Insolvency and Bankruptcy Code, 2016, even though they may have originally been filed as petitions for winding up under Section 433(e) of the Companies Act, 1956 before a High Court. Part II of the IBC commences from Section 4, which reads as follows:

Section 4. Application of this Part.

This Part shall apply to matters relating to the insolvency and liquidation of corporate debtors where the minimum amount of the default is one crore rupees....

Therefore, the Applicant submits that though this Petition has been transferred by the Hon'ble High Court, it is liable to be dismissed as it falls below the pecuniary threshold prescribed for the exercise of jurisdiction by this Tribunal under the Insolvency and Bankruptcy Code, 2016.

- d) This position is supported by the decision of the High Court of Karnataka in **Nitesh Residency v. The Archdiocese, ILR 2022 KAR 201**, which reads as follows:

47. As pointed out by Amicus Curiae, in case of transfer, Rule

*5 (1) 2 of the Transfer Rules, 2016 and the proviso to Rule 5(1) would require that other information is to be furnished by the petitioner as may be required for admission of the petition under Rules 7, 8 or 9 of IBC. This needs to be kept in mind which if considered along with the observations at para-27 of **NAVIN CHANDRA'S** case would establish that the claim in the winding up petition must be the one that could be considered under the IBC.*

48. The pecuniary limit in terms of the claim is also an aspect that needs to be kept in mind as pointed out by the Amicus Curiae, the pecuniary threshold in terms of the claim under the IBC was rupees one lakh as mandated under Section 4 of IBC which has subsequently been enhanced to rupees one crore as per the Notification dated 24.03.2020 by the Central Government. This aspect of pecuniary threshold bar is also a relevant factor that ought to be kept in mind while considering the transfer petitions. (emphasis supplied)

Therefore, since this Petition would not be admitted to CIRP under Sections 7, 8, or 9 of the IBC for want of pecuniary jurisdiction, the Applicant submits that it is liable to be dismissed in limine.

- e) Further, in the context of transferred petitions, the Hon'ble Apex Court in **Forech (India) Ltd. v. Edelweiss Asset Reconstruction Co. Ltd., (2019) 18 SCC 549**, has held that the objective of the Code is to resuscitate corporate debtors who are in financial distress, which is fundamentally different from the object of winding up

proceedings that seek liquidation and closure of the company. In the present case, as the Petitioner has not even specified the proposed Interim Resolution Professional (IRP) in these proceedings, it is evident that Schenker is misusing the jurisdiction of this Tribunal as a substitute for a money recovery action.

- f)** As further held by the Hon'ble Supreme Court in Action ***Ispat and Power Pvt. Ltd. v. Shyam Metallics and Energy Ltd., (2021) 2 SCC 641***, winding up proceedings that were transferred while still at the pre-admission stage before the Hon'ble High Court must be dealt with in accordance with the provisions of the IBC under Sections 7, 8, or 9, keeping in view the Code's objective of revival and resolution. However, the prayer in the present Petition still seeks an order for the Respondent to be "wound up," which is not contemplated under the said provisions of the IBC. Hence, the Petition is also liable to be dismissed, as it seeks a relief that cannot be granted by this Tribunal in these proceedings.
- g)** It is also pertinent to note that when this matter came up for hearing before the Hon'ble High Court, the Petitioner was afforded adequate opportunity to explain why these proceedings should not be transferred. However, the Petitioner did not raise any objection in view of Section 434 of the Companies Act, 2013. Therefore, the Petitioner cannot now contend that this Tribunal must decide the case in accordance with the provisions of the Companies Act, 1956, as such a contention is contrary to the express provisions of law mandating that transferred proceedings be adjudicated as though they are proceedings under the IBC. Hence, the Petition is liable to be dismissed at the threshold.
- h)** Without prejudice to the foregoing submissions, the Applicant submits that there is no document on record authorizing the signatory to the transferred Petition to continue this claim. Schenker itself had apparently stopped pursuing the claim against LAPP; however, before this Tribunal, one Mr. A. Yesudoss, who has not even

produced an authorization letter from Schenker, has signed as "Authorised Signatory." Coupled with this lack of authorization, there is also a lack of bona fides in pursuing this case, as evidenced by the fact that the said Mr. A. Yesudoss has purportedly signed the affidavit verifying the Petition on 23.12.2024, while the same affidavit has been notarized on 19.12.2024 - four days prior to the date of signing by the deponent. This anomaly itself raises serious doubt about the veracity of the entire Petition. The Respondent submits that such casual conduct in the prosecution of a case warrants dismissal of the Petition at the threshold, as it is not maintainable and would otherwise result in unnecessary waste of precious judicial time on a dispute that cannot be entertained by this Tribunal.

3. Statement of Objections filed by the Respondent on vide Dy.No.4920 dated 08.09.2025 is following:

- 1) the Application filed by the Respondent under Rule 11 of the National Company Law Tribunal Rules, 2016, seeking dismissal of the Transferred Petition for want of pecuniary jurisdiction, is misconceived, untenable in law, and contrary to binding judicial precedents.
- 2) The Application is founded solely on Notification S.O. 1205(E) dated 24.03.2020 issued by the Ministry of Corporate Affairs under the proviso to Section 4 of the Insolvency and Bankruptcy Code, 2016 ("IBC"), which enhanced the minimum threshold for initiating corporate insolvency proceedings from Rs.1 Lakh to Rs.1 Crore. Such reliance is misplaced, as the Notification has only prospective application and cannot affect proceedings based on earlier defaults.
- 3) It is further submitted that the debt claimed in the Petition, amounting to Rs.15,74,546/-, cannot be treated as falling outside the jurisdiction of this Tribunal, since the alleged default and cause of action arose prior to the issuance of the said Notification.
- 4) It stands well-settled in law that any statutory amendment altering adjudicatory or jurisdictional powers operates prospectively unless

expressly made retrospective. Consequently, the Respondent's challenge to jurisdiction is devoid of merit and liable to be rejected outright.

- 5) The record reflects that the invoices forming the subject matter of the Petition were raised between December 2012 and April 2013, the last invoice being No. 20737290 dated 03.04.2013 for Rs.15,74,546/- . In view of the continued default, a statutory winding-up notice under Section 434 of the Companies Act, 1956 was duly issued on 02.12.2013. It is submitted that upon continued default, a winding-up petition, COP No. 21/2014, was filed before the Hon'ble High Court of Karnataka on 01.02.2014, following issuance of a statutory notice under Section 434 of the Companies Act, 1956, dated 02.12.2013. Subsequently, under the proviso to Section 434 of the Companies Act, 2013, the matter was transferred to this Tribunal vide order dated 15.11.2023. These undisputed dates clearly establish that both the default and the statutory demand predate the 2020 Notification by several years, rendering the Respondent's reliance on the enhanced pecuniary threshold wholly inapplicable to the present Transferred Petition does not arise in the first place. The relevant portion of the order dated 15.11.2023 by the Hon'ble High Court of Karnataka in COP No.21/2014 is extracted below:-

"4. In view of the dicta laid down by the Hon'ble Supreme Court, as noticed above, the present petition is transferred to the National Company Law Tribunal to be adjudicated in terms of the provisions of the Insolvency and Bankruptcy Code, 2016."

- 6) It is contended by the Respondent that the transferred petition must conform to the current pecuniary limit of Rs.1 Crore. However, such contention is contrary to Section 434 of the Companies Act, 2013 (as amended by Act 31 of 2016), which expressly mandates that transferred winding-up proceedings be treated as applications for initiation of Corporate Insolvency Resolution Process (CIRP) under

the IBC. Section 434(1)(c) of the Companies Act, 2013 provides as follows:

"434. Transfer of certain pending proceedings-

(c) all proceedings under the Companies Act, 1956 (1 of 1956). including proceedings relating to arbitration, compromise. arrangements and reconstruction and winding up of companies, pending immediately before such date before any District Court or High Court, shall stand transferred to the Tribunal and the Tribunal may proceed to deal with such proceedings from the stage before their transfer:

Provided that only such proceedings relating to the winding up of companies shall be transferred to the Tribunal that are at a stage as may be prescribed by the Central Government:

Provided further that any party or parties to any proceedings relating to the winding up of companies pending before any Court immediately before the commencement of the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018, may file an application of transfer of such proceedings and the Court may by order transfer such proceedings to the Tribunal and the proceedings so transferred shall be dealt with by the Tribunal as an application for initiation of corporate insolvency resolution process under the Insolvency and Bankruptcy Code, 2016 (31 of 2016).

Provided further that on such proceedings relating to cases other than winding-up for which orders for allowing or otherwise of the proceedings are not reserved by the High Courts shall be transferred to the Tribunal"

- 7) It is evident from the above provision that all disputes/petitions/applications shall be deemed to have been transferred. The jurisdiction and adjudication of such transferred proceedings are to be conducted de novo or from the very beginning. Such transferred matters are not to be treated as fresh cases, and shall be continued from the stage at which they were prior to their transfer. Accordingly, they are to be considered as pending before the concerned adjudicating body prior to the Notification of 2020.

8) It is further submitted that the applicable pecuniary jurisdiction is to be determined by the law that was in force at the time of default or at the time of dispute, and not at the time of transfer. It has been explicitly held by the Hon'ble NCLT, New Delhi, in ***BLS Polymers v. RMS Power Solutions (2022) 233 Comp Cas 310*** (Paras 22, 35, 40), and by the Hon'ble National Company Law Appellate Tribunal in ***Madhusudhan Tantia vs Amit Choraria, Company Appeal (AT) (Insolvency) No. 557 of 2020***, that the Notification does not apply retrospectively and cannot divest the vested rights accrued prior to its issuance. The relevant paragraph of the Judgment is reproduced below:

"57. In view of the upshot and also this Tribunal, on a careful consideration of respective contentions advanced on either side and considering the facts and circumstances of the instant case in a conspectus fashion holds unhesitatingly that the notification dated 24.03.2020 of the Ministry of Corporate Affairs, Government of India, is prospective in nature and it is not retrospective or retroactive in nature. Further, the said notification will not apply to the pending applications filed before the concerned 'Adjudicating Authority (Authorities), under IBC (waiting for admission), prior to the issuance of the aforesaid notification, as opined by this Tribunal. Viewed in the above prospective, the conclusion arrived at by the Adjudicating Authority' in the impugned order to the effect that the notification dated 24.03.2020 of the Ministry of Corporate Affairs, Government of India, shall be considered as prospective and not retrospective and the finding that there was no payment on the side of 'Corporate Debtor after receipt of Demand Notice, no pre-existing dispute also alleged or proved and ultimately admitting the application filed by the 2nd Respondent/Operational Creditor are free from legal infirmities. Resultantly, the instant Appeal fails".

9) It is relevant to mention that it has been categorically held by the Hon'ble NCLT, in the abovementioned *BLS Polymers Ltd.* matter, that the enhanced threshold of Rs. 1 crore is applicable only to defaults

occurring on or after 24.03.2020. In the present case, the default is stated to have occurred in 2013, and the demand notice was issued in December 2013, much prior to the coming into effect of the said Notification. Therefore, the applicable pecuniary jurisdiction continues to be Rs. 1 lakh, and the petition is well within the pecuniary jurisdiction of this Tribunal. The relevant paragraphs of the judgment are reproduced below:

“Para-22 *A bare perusal of the notification dated March 24, 2020 shows that nowhere in the notification the date of enforcement of the notification is mentioned and it is a well-settled principle of law that if the date of enforcement/effectiveness of law is not shown in the notification, it shall have the prospective effect.*

Para-35 *Once the default has occurred prior to the issuance of notification dated March 24, 2020 and demand notice was also sent/delivered prior to that notification, the enhancement of the threshold limit from one lakh to one crore rupees is not applicable in such matters*

Para-40 *The notification is applicable only in respect of the default which has occurred on or after March 24, 2020 and not prior to that.”*

- 10) It is submitted that it has been held by the Hon’ble NCLT, New Delhi, while dealing with an identical objection that in the absence of any express provision to the contrary, the Notification operates prospectively. Since both the default (2013) and the statutory notice (2013) in the present case predate the said Notification dated 24.03.2020, the enhanced threshold cannot be applied retrospectively. In furtherance of the same, as the default and demand occurred prior to 24.03.2020, the Rs.1 crore limit has no application to the present dispute. The present matter squarely falls within this category. The Tribunal has further observed that the Notification governs only defaults occurring on or after 24.03.2020, and therefore, defaults of 2013 continue to be governed by the earlier threshold of Rs. 1 lakh.

- 11) It is submitted that the vested right to proceed under the law as it stood at the date of default cannot be divested by delegated legislation, and that the right to initiate proceedings is deemed to have accrued upon default; in the present case, that date is considered to be 2013, when the Rs. 1 lakh threshold was applicable.
- 12) The averments made by the Respondent in the Application are found to have been made by taking frivolous and malicious aid through an erroneous interpretation of the cases mentioned therein. It has been clarified by the Hon'ble Supreme Court in ***Forech India Ltd. v. Edelweiss, (2019) 18 SCC 549*** and ***Action Ispat v. Shyam Metalics, (2021) 2 SCC 641***, that while transferred matters are to be adjudicated within the framework of the IBC, the rights and circumstances as they existed prior to transfer are required to be respected and considered. It is further observed that the legislative object of the IBC is intended to be the resolution of insolvency, and not the defeat of otherwise valid claims by the retrospective application of procedural changes not mandated by law. The relevant paragraph of the Judgment is reproduced below:

"17. The resultant position in law is that, as a first step, when the Code was enacted, only winding up petitions, where no notice under Rule 26 of the Companies (Court) Rules was served, were to be transferred to the NCLT and treated as petitions under the Code. However, on a working of the Code, the Government realized that parallel proceedings in the High Courts as well as before the adjudicating authority in the Code would stultify the objective sought to be achieved by the Code, which is to resuscitate the corporate debtors who are in the red. In accordance with this objective, the Rules kept being amended, until finally Section 434 was itself substituted in 2018, in which a proviso was added by which even in winding up petitions where notice has been served and which are pending in the High Courts, any person could apply for transfer of such petitions to the NCLT under the Code, which would then have to be transferred by the High Court

to the adjudicating authority and treated as an insolvency petition under the Code. This statutory scheme has been referred to, albeit in the context of Section 20 of the SICA, in our judgment which is contained in Jaipur Metals & Electricals Employees Organization Through General Secretary Mr. Tej Ram Meena vs. Jaipur Metals & Electricals Ltd. Through its Managing Director & Ors., being a judgment by a Division Bench of this Court dated 12.12.2018."

- 13) It is also pertinent to note that the other averments and submissions made by the Respondent challenging the validity of the Petition are untenable and devoid of legal merit. The issue raised by the Respondent regarding the suggestion for appointment of an IRP holds no legal ground for dismissal of the Transferred Petition. While Rule 5 of the Transfer Rules requires parties to furnish necessary information for admission of a petition under the IBC, it does not mandate the suggestion of an IRP at the stage of transfer. Hence, such omission cannot constitute a ground for dismissal of the present petition.
- 14) It is submitted that the Notification dated 24.03.2020, enhancing the pecuniary threshold to Rs. 1 crore, is prospective in nature and does not apply to defaults or statutory demands that occurred prior to its issuance. The right to maintain the present proceedings crystallized in 2013 under the then prevailing Rs. 1 lakh threshold and constitutes a vested legal right, which cannot be divested by subsequent delegated legislation.
- 15) In addition, the contentions raised by the Respondent concerning the bona fides of this case are frivolous. The date mentioned on the verifying affidavit represents the date of filing of the Petition, while the notarial attestation was completed earlier. Such clerical irregularities do not constitute grounds for dismissal. Furthermore, the Board Resolution authorizing Mr. A. Yesudoss was filed along with the Vakalathnama. The Respondent's objections are, therefore,

misconceived both on facts and in law and are liable to be rejected in entirety.

4. We have heard the Learned Counsels for the Petitioner and the Respondent in this Petition. We have also gone through the written submissions and the Judicial decisions cited by both the Parties. For the purpose of proper appreciation, the undisputed facts are mentioned below.

- a. Bax Global India amalgamated with Schenkar India Pvt Ltd as per the Orders dated 05.09.2007 passed by Hon'ble Delhi High Court.
- b. Schenkar India Pvt Ltd is incorporated under the Provisions of Companies Act,1956.
- c. The Petitioner Company and the Respondent Company entered in to an Agreement for Warehousing Services on 25.06.2012. For the Services rendered, the petitioner raised invoices for Rs 23,38,594/- and out of this an amount of Rs 15,74,536/- remained unpaid in respect of Invoice no 20737290.
- d. Letter dated 25.10.2013 and reminder dated 12.11.2013 yielded no result. Several reminders were sent for payment and finally a legal notice was issued on 02.12.2023. Ultimately, Company Petition no 21 of 2014 before the Hon'ble Karnataka High Court on 01.02.2014 seeking Winding up of the Respondent Company.
- e. From the Daily Order position of the Hon'ble Karnataka High Court, it was clear that the Matter was Considered by the Hon'ble Court and an Opportunity for settling it was provided by sending it for mediation and when that exercise did not yield any result, the case was posted for hearing.
- f. At that stage, the matter was transferred to NCLT by virtue of the notification issued and the directions of the Hon'ble Supreme Court. Hence it is incorrect to contend that the petition has to be treated as a fresh petition and the monetary limits as on today need to be applied to determine maintainability of the petition.

5. Since the Petition was filed in 2014 before the Hon'ble High Court and the Monetary threshold at the time of introduction of the IBC,2016 was only One Lakh, the Petition on which certain proceedings had already Commenced in the Hon'ble High Court and subsequently transferred to NCLT in 2024, the threshold as in 2016 is Applicable and Consequently We hold that the petition under consideration now is maintainable.
6. In view of the above Conclusion, the Application in **IA(IBC) 635/BB/2025 is DISMISSED.**
7. No Order as to Costs.

-Sd-
RADHAKRISHNA SREEPADA
MEMBER (TECHNICAL)

-Sd-
SUNIL KUMAR AGGARWAL
MEMBER (JUDICIAL)