IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH (COURT– I) CHENNAI

ATTENDANCE CUM ORDER SHEET OF THE HEARING
HELD ON **07.10.2026** THROUGH VIDEO CONFERENCE

CORAM: HON'BLE SHRI. SANJIV JAIN, MEMBER (JUDICIAL)
HON'BLE SHRI VENKATARAMAN SUBRAMANIAM, MEMBER (TECHNICAL)

Application No	:	
Petition No	:	CP(IB)/265(CHE)/2025
Name of Petitioner	:	ISPT LLC
&		Vs
Name of Respondent	:	Indo Shell Mould Ltd
Section	:	9 Rule 6 of IBC, 2016

ORDER

CP(IB)/265(CHE)/2025

Present: None for the Petitioner.
Mr. Manoj Gopalakrishnan, Ld. Counsel for the Respondent / Corporate Debtor.

Vide separate order pronounced in the open Court, the Petition is dismissed.

File be consigned to records.

-sd-
[VENKATARAMAN SUBRAMANIAM]
MEMBER (TECHNICAL)

-sd-
[SANJIV JAIN]
MEMBER (JUDICIAL)

MS

Date: 07.10.2026

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

CP(IB)/265(CHE)/2025

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

In the matter of ***Indo Shell Mould Limited***

ISPT LLC
Represented by its Authorized Signatory
Mr. Ramki Ramakrishnan,
A Limited Liability company incorporated under the laws of the
State of Nevada, USA.,
3615, Whidbey Court,
Spring, Texas 77388, USA

… Petitioner/Operational Creditor

-Vs-

Indo Shell Mould Limited
CIN: U27310TZ1995PLC006101,
A-9, SIDCO Industrial Estate Kurichi,
Coimbatore-641 021
Tamil Nadu

... Respondent/Corporate Debtor

Present:

For Operational Creditor	:	*Shri.P.H. Arvindh Pandian, Sr. Advocate* *Shri. Vikram Veerasamy, Advocate*
For Respondent	:	*Shri. R. Vidya Shankar, Advocate* *Shri. Pranav V Shankar, Advocate*

CORAM:

SANJIV JAIN, MEMBER (JUDICIAL)
VENKATARAMAN SUBRAMANIAM, MEMBER (TECHNICAL)

Order Pronounced on 7th October, 2026

ORDER

(Heard through Hybrid Mode)

This petition CP(IB)/255(CHE)/2025 under Section 9 of the Insolvency and Bankruptcy Code, 2016 {"**IBC**") r/w Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 has been filed by ISPT LLC., Represented by its Authorized Signatory **(**hereinafter referred to as **"Petitioner/Operational Creditor"**) against **Indo Shell Mould Limited** (hereinafter referred to as ("**Respondent/Corporate Debtor"**) for initiating Corporate Insolvency Resolution Process ("**CIRP"**).

2. **Part-I** of the petition sets out the particulars of the Petitioner/Operational Creditor, ISPT LLC, represented by its Authorized Signatory, Shri. Ramki Ramakrishnan having its office at 3615, Whidbey Court, Texas 77566, USA. **Part-II** of the petition sets out the details of the Corporate Debtor, Indo Shell Mould Limited. It was incorporated on 03.05.1995 with Authorized Share

Capital of Rs.12,80,00,000/- and Paid-up Share Capital of Rs.12,45,00,000/-. Its Registered Office is situated at A9, SIDCO Industrial Estate, Kurichi, Coimbatore-641 021 within the jurisdiction of this Tribunal. In **Part-III** of the petition, the Petitioner has proposed the name of Mr. S. Kangayan as Interim Resolution Professional having Registration No. IBBI/IPA-002/IP-N00866/2019-2020/12770. **Part-IV** of the petition contains the particulars of 'operational debt' i.e., USD 890,000 and date of default i.e., 25.08.2023. This petition has been filed on 01.08.2025. In **Part-V** of the petition, the Petitioner has given the details of the documents, records and evidence of default.

Case of the Petitioner:

3. The Petitioner / Operational Creditor, ISPT LLC., USA was established in 2010 to acquire and operate a tool and dye machining business in Story City, Lowa, USA. The ownership structure was defined to an Operating Agreement with 51% of the total LLC interests held by Ramki Ramakrishnan and 49% by Indo Shell Mould Limited (Corporate Debtor). As per the agreement, Ramki Ramakrishnan was responsible for managing the company including

daily operations and financial planning while the Corporate Debtor had given a commitment to contribute USD 2.0 million in the capital.

4. It is stated that in connection with a binding obligation, the Corporate Debtor issued a Letter of Undertaking dated 15.02.2012 confirming its commitment to pay USD 2.0 million for its 49% share in the company. The Corporate Debtor agreed to make payment in monthly instalments of USD 50,000 over 40 months. It is alleged that despite the agreement, the Corporate Debtor made payments at irregular intervals i.e. USD 900,000 between February, 2012 to July 2013 and USD 210,000 between October, 2017 to November, 2017. As on now, the Corporate Debtor has paid USD 1.11 million, leaving an outstanding amount of USD 890,000.

5. It is alleged that failure of the Corporate Debtor to fulfil its financial obligations, severely impacted the operational creditors' ability to meet its own financial commitments, resulting in strained relations with other lenders. As per Nevada Revised Statutes 86.391, a member of Limited-Liability Company (LLC) is liable for the difference between its actual contributions to capital and the amount stated in the company's Operating Agreement.

6. It is alleged that the Corporate Debtor kept evading its obligations to make the payment citing alleged non-payment of invoice bills for supplies made to ISPT India Private Limited. It is stated that the Operational Ceditor was always assured that the Corporate Debtor would fulfill its outstanding debt payment obligation considering the pending IRS liabilities against Operational Creditor for which the amount owed by the Corporate Debtor is crucial.

7. In the meantime, the Corporate Debtor filed a petition IBA/820/2020 under section 9 of IBC, 2016 before the Tribunal for initiation of CIRP against ISPT India Private Limited which petition was resisted by ISPT India Private Limited contending that the Corporate Debtor has outstanding financial commitment towards the Operational Creditor. In the petition, the Corporate Debtor filed the rejoinder disputing the outstanding. However, the Tribunal vide an order dated 31.03.2022, rejected the contentions of the Corporate Debtor holding that Corporate Debtor is required to make some payments towards share capital and the same remained unpaid; that the Corporate Debtor has not denied its obligation to pay but withheld the same on the ground that outstanding dues were to be paid by ISPT India Private Limited to the Corporate Debtor.

8. It is stated that aggrieved by the same, the Corporate Debtor preferred Comp.App(AT)(CHE)419 of 2022 before the Hon'ble NCLAT, however, the same came to be dismissed as withdrawn on the ground of a fraudulent MOU which was allegedly entered into between the Corporate Debtor and ISPT India Private Limited.

9. It is stated that as the Operational Creditor, awaited payment, a scrutiny of documents filed by the Corporate Debtor before Hon'ble NCLAT revealed that the Corporate Debtor sought to evade its responsibilities by executing a fraudulent MOU with ISPT India Private Limited designed to release the Corporate Debtor from its obligation to pay the remaining balance of USD 890,000. Immediately, thereafter, the Operational Creditor filed IA/913/2024 in the appeal seeking recall of the order dated 29.08.2023 since the Corporate Debtor fraudulently included the name of the Operational Creditor as a party to the same. The Hon'ble NCLAT taking into account the contentions of the Operational Creditor vide its order dated 20.11.2024, observed that the Operational Creditor was neither the party to the appeal nor the signatory to the

compromise and the same will not have effect on the rights of the Operational Creditor.

10. It is stated that the Operational Creditor's financial position worsened leading to the sale of its assets to TUSON Manufacturing Company, LLC in 2022 to satisfy outstanding obligations. This left the Operational Creditor with no other option but to take a legal action by invoking the IBC to recover the outstanding amount.

Case of the Respondent

11. **On getting notice of the petition**, the Respondent/Corporate Debtor filed its reply/counter wherein it denied the allegations and the averments in the petition alleging that the petition is vexatious, fraudulent, an abuse of process of law making a demand when no monies are in fact due in respect of a claim which has already been determined by this Tribunal as not payable with an attempt to safeguard its wholly-owned subsidiary i.e. ISPT India Private Limited which has been admitted into CIRP. It is stated that no money is owed from the Respondent to the Petitioner, let alone USD 890,000.

12. It is alleged that it was the Petitioner who was in continuous default to the Respondent in respect of its payment obligations to the Respondent. The Respondent had made supplies to the Petitioner, in respect whereof, a staggering sum of USD 886,052 remained due and owing from the Petitioner to the Respondent. There was also agreed compensation, procurement commission etc. which were not paid to the Respondent by the Petitioner. The total outstanding of the Petitioner to the Respondent was in far excess of the financial commitment initially agreed by the Respondent. Vide mail dated 20.09.2017, it was stated that if the receivables then outstanding from the Petitioner were paid to the Respondent, the same could be infused as a equity in the holding company on the same day. This did not happen and the receivables ballooned. Vide mail dated 19.06.2019, the Respondent in the meeting, clearly recorded that there is a sum of Rs. 11.0 crores overdue to the Respondent as on date which included overdues from the Petitioner and ISPT. The Respondent sent another mail dated 20.09.2019 to Ramki Ramakrishnan recording in unequivocal terms that the Respondent has invested USD 1,111,000 in the Petitioner, that there is a receivable of USD 885,296 from the Petitioner and a further sum of

Rs.6,63,82,606/- from ISPT. The mail also records that there has been default both by the Petitioner and ISPT India Private Limited in paying the receivables.

13. It is stated that in the context of the prolonged default by the Petitioner in repayment of operational dues to the Respondent, the Petitioner entered into an Asset Purchase Agreement with TUSON Manufacturing Company LLC where there was a pre-condition that admitted dues of USD 769,053.23 be paid to the Respondent in full and final satisfaction of accounts payable to ISML by the company but not by its subsidiaries. This was recorded in the minutes dated 01.03.2022 signed by the Respondent and Ramki Ramakrishnan. This money was ultimately paid to the Respondent. The Petitioner also pocketed the money received from TUSON. In this regard, the parties recorded full and final settlement with no surviving reciprocal obligations. Having admitted that, Petitioner owes Respondent USD 769,053 and having admitted that payment of said amount to the Respondent was in full and final satisfaction of account due to ISML by the company, ISML (Respondent) is precluded and estopped from going back on this written document.

14. It is alleged that the demand notice and the petition failed to disclose the sequence of events that had happened between ISPT India Private Limited, Petitioner and the Respondent in the context of pending proceedings under IBC against ISPT India Private Limited.

15. The sequence in this regard is set out hereunder:

a) *Further to Purchase Orders placed from time to time, Respondent supplied castings/pattern to ISPT India Private Limited (hereinafter referred to as "ISPT"), Applicant's wholly-owned subsidiary India. Invoices raised by Respondent in respect of supplies made and payments were received from ISPT on a piece-meal basis. A running account has been maintained in respect of supplies made and payments received.*

b) *In respect of the above transactions, there remained an unpaid principal amount of Rs. 6,63,82,605.84/- (Rupees Six crore Sixty-Three lakh Eighty-Two thousand Six Hundred and Five) (Comprising of Rs. 49,12,374.00 due in respect of the invoices raised by SEZ unit and Rs. 6,14,70,231.84 due in respect of invoices raised by Plant 2) due from ISPT as on 25.09.2019.*

c) *The same was shown as outstanding due amount in the books of accounts of Respondent.*

d) *ISPT issued, towards discharge of the above referred debt, cheques bearing No. 504196 and 000358 dated 20.12.2018 and 18.01.2019 drawn on Canara Bank and Standard Chartered Bank respectively for a total of Rs. 40,00,000/- However, when presented for payment through Respondent's bankers, the same were dishonored for the reason 'Payment stopped by drawer*

e) *The parties had exhaustively reconciled the books of accounts and ISPT confirmed the balance amounts payable as on 19.03.2019 as Rs. 6,10,87528.88. Debt due was based on reckoning the sum of Rs. 6,10,87528.88/ from such conformation of balance as opening balance as on 19.03.2019 and reckoning the subsequent transactions.*

f) *In this regard, a Demand Notice in Form 3 dated under the Insolvency & Bankruptcy Code, 2016 was issued to ISPT and delivered on 28.09.2019 for which no response was received by Respondent within the mandatory period of ten days.*

g) *After issuance of the Demand Notice, Respondent filed a Suit in OS No. 712 of 2019 for recovery of Rs. 7,37,39,427.76 together with pendente lite and future interest on the sum of Rs. 6,63,82,605.84 from the date of filing the suit till realization, before the District Court Coimbatore. The Suit was transferred to the Commercial Court, Coimbatore and re-numbered as COS 36 of 2023.*

h) *Subsequent to the issuance of Demand Notice and subsequent to the filing of the Suit, Respondent filed an Application in IBA No. 820 of 2020 under Section 9 of the IBC, before this Tribunal for initiation of CIRP against the Corporate Debtor.*

i) *This Honourable Tribunal dismissed IBA 820 of 2020 holding that there was a pre-existing dispute between the parties on 31.03.2022. The said Order was challenged before the Honourable NCLAT, Chennai Bench in Comp App (AT)(CH) 419 of 2022.*

j) *Pending Appeal, after detailed negotiations in which Respondent, ISPT and Applicant participated, the Parties entered into a Memorandum of Understanding dated 25.08.2023, which was filed before the NCLAT, Chennai Bench vide Memo dated 25.08.20203. Per the MOU, ISPT undertook to:*

    i. *Pay Respondent an upfront sum of Rs. 25 lakhs on the date of execution of the MOU;*

ii. *Pay Respondent a sum of Rs. 2 crores on 31.10.2023;*

iii. *Pay Respondent a sum of Rs. 2.25 crores on 31.12.2023;*

iv. *Pay Respondent a sum of Rs. 2.75 crores on or before 31.03.2024;*

In all, Respondent under the MOU is entitled to the entire sum of Rs. 7.25 crores on or before 31.03.2024;

k) *It is pertinent to note that in the MOU the expression / party "ISPT India Private limited" was defined to include its parent holding Company i.e., Applicant herein and its members, managers, officers, legal representatives. Specifically reference to parties under the MOU was made as ISPT Parties. Mr. Ramki Ramakrishnen, authorised signatory to Applicant and Director of ISPT specifically*

1) *Naturally in light of the Minutes of Written Action of members of Applicant dated 01.03.2022, the MOU specifically records:*

> *"In the interregnum period, the principal company, ISPT, USA had sold substantially all of its operating assets located in USA to M/s Tuson Manufacturing Company LLC, a limited liability company organised under the laws of the state of Iowa, USA and remitted a sum of USD 769,053 to the party of the first part as and towards it's dues"*

m) *At the time of negotiating global settlement, since the Applicant entirely gave up its alleged claim towards investment obligations in March 2023, and instead it was the admitted position that monies have been paid from Applicant to Respondent, the MOU also records the remittance of USD 769,052 to Respondent towards payment of its dues.*

n) *It is pertinent to note that this MOU was contemplated as a global settlement. There was no whisper or understanding between the parties on any proposed payment to the Applicant and to the contrary, the sum of Rs. 7.25 crores*

represented the due from ISPT and the Applicant to the Respondent. In terms of the MOU, ISPT and the Applicant dropped and relinquished all claims and counter claims. The MOU in Clause I(g) specifically records:

> *"**.... There shall remain no obligation on the party of the first part to pay USD 890,000 in unpaid equity claimed by ISPT, USA**"*

o) *It is submitted that in terms of MOU dated 25.08.2023, Respondent agreed to release / transfer its membership in Applicant to the extent of 49,000 membership units subject to payment of sums promised to Respondent in terms of the MOU. It is pertinent to note that in terms of the MOU Clause I(b), Respondent relinquished further claims against Applicant and ISPT India. ISPT specifically represented that the Rs. 7.25 crores was paid only towards discharge of dues on receivable and that there was no value attributable to the equity holding in light of the fact that the entire operating assets of Applicant have been sold and that the net worth of Applicant was negative. When Respondent was to relinquish its shares in Applicant in exchange for nil consideration, and all liabilities had in march 2023 itself been discharged in a full and final settlement, it is absurd to suggest that the parties in terms of MOU dated 25.08.2023 contemplated any money to be paid to Applicant towards equity investment.*

p) *Applicant was always aware of the terms of the MOU and is bound by the terms thereof, including the undertaking releasing Respondent from its obligation to pay USD 890,000 towards equity investment. It is pertinent to note that this release in terms of MOU dated 25.08.2023 is subsequent and an additional acknowledgement following the fully and final settlement recorded in Minutes of Written Action of members of the Applicant dated 01.03.2022.*

16. It is stated that the parties after executing the MOU dated 25.08.2023, placed the MOU before the Hon'ble NCALT seeking disposal of the appeal in

terms of the compromise and the Hon'ble NCLAT vide an order dated 29.08.2023, dismissed the appeal as withdrawn in view of the settlement arrived at between the parties. A representation was made by ISPT before the Hon'ble NCLAT not disputing the MOU. So it is not possible that the Petitioner had no knowledge of the MOU having been executed or the terms thereof. The Petitioner is the sole shareholder of ISPT who approved the financial settlement. It is alleged that ISPT defaulted in its obligations under the MOU which caused the Respondent to initiate fresh proceedings under IBC against ISPT, fresh demand notice was issued on ISPT. It is stated that CP/173/2024 filed by the Respondent against ISPT India Private Limited has been allowed by this Tribunal vide order dated 15.09.2025 and it has been admitted into CIRP.

17. It is stated that Respondent has disputed the claim of USD 890,000 claiming to be not payable since 2017 as evident from the minutes of written action of members dated 01.03.2022 and MOU dated 25.08.2023. While negotiating settlement with ISPT, the Petitioner was aware of the negotiations and factum of signing MOU and after signing, the Petitioner dropped all claims as against the Respondent.

18. It is alleged that the Petitioner filed a recall application before Hon'ble NCLAT reading the story of alleged default in investing USD 890,000 which was opposed by the Respondent and thus the claim of the Petitioner stood disputed. There were multiple correspondences between the parties including on 20.09.2017, 19.06.2018, 20.09.2019, 12.11.2020 and 24.11.2020 prior to issuance of the demand notice where the Respondent has denied its obligations to the Petitioner under the Letter of Undertaking dated 15.02.2012 and MOU dated 09.09.2017. Factum of sale of Undertaking by the Petitioner, recording of negative net worth, agreement to cancel shares, payment by the Petitioner of USD 769,053 to the Respondent, agreement to pay further Rs.7.25 Crores to the Respondent under MOU dated 25.08.2023 recording of full and final settlement of accounts indicate a categorical understanding that the Petitioner was the debtor in default and there was no money whatsoever due from the Respondent to the Petitioner.

19. It is stated that the claim is also barred by limitation. The amount claimed is on the basis of Letter of Undertaking dated 15.02.2012 and MOU dated 09.09.2017. The MOU was executed on 25.03.2023 withdrawing all the claim

actions against the Respondent. This petition has been filed on 10.03.2026. It is stated that demand of USD 890,000 towards investment in shares of the Petitioner by no means is an unpaid operational debt within the meaning of section 5(21) of IBC. It is stated that the Corporate Debtor does not owe any obligation for contribution of capital to the Petitioner or there is a balance investment obligation of USD 890,000. It is a deliberate and wilful action initiated by the Petitioner.

ANALYSIS AND FINDINGS

20. We have heard Ld. Counsels for the parties who also filed their written synopsis and perused the record.

21. On the query raised by the Tribunal, the Petitioner filed a memo vide S.R. No. 4431 dated 21.09.2026 to state that ISPT LLC is a current active entity registered in the State of Neveda, USA. The company was previously registered in the State of Lowa where it maintained a manufacturing facility. This facility and the related business activity were sold with effect from March, 2022. Following the sale of business activities in Lowa, the company terminated its Lowa registration on 07.02.2023 and did not do further business dealings in

Lowa. The company intends to maintain its business status in Neveda until it can settle its debt including its tax obligations and formerly dissolve. The company does not currently have the funds to settle its debts and is reliant on collecting unpaid equity from its minority shareholder, Indo Shell Mould Limited to do so.

22. It is an admitted case of the parties that the Petitioner company was established in 2010 to acquire and operate a tool and dye machining business in Lowa, USA. As per the Operating Agreement, 51% of the total LLC interests were held by Ramki Ramakrishnan and 49% by the Respondent/Corporate Debtor. Ramki Ramakrishnan was responsible for managing the company including its daily operations and financial planning. The Corporate Debtor had given a commitment to contribute USD 2 million in the capital and also issued a Letter of Undertaking dated 15.02.2012 by making payments in monthly instalments of USD 50,000 over 40 months. It paid USD 1.11 million between February, 2012 to November, 2017 leaving an outstanding amount of USD 890,000.

23. Record shows that the Respondent had made the supplies to the Petitioner in respect whereof, a staggering sum of USD 886,052 remained due from the Petitioner to the Respondent. There was also agreed compensation, procurement commission etc. which was not paid to the Respondent by the Petitioner. The Respondent had sent a mail dated 20.09.2017 that if the receivables then outstanding from the Petitioner were paid to the Respondent, the same can be infused as equity in the holding company on the same day. This did not happen. Vide email dated 19.06.2018, the Respondent stated that there is a sum of Rs.11.0 Crores overdue to the Respondent as of date which includes overdues from the Petitioner and ISPT. Again a mail dated 20.0.2019 was addressed by the Respondent to Ramki Ramakrishnan recording in unequivocal terms that the Respondent has invested USD 1,111,000 in the Petitioner and there is a receivable of USD 885,296 and a sum of Rs.6,63,82,606/- from ISPT.

24. It is not in dispute that the Petitioner had entered into an Asset Purchase Agreement with TUSON where there was a precondition that the admitted dues of USD 769,053.23 be paid to the Respondent in full and final satisfaction of accounts payable amount due to ISML by the company, but not its subsidiaries.

This was recorded in the minutes of written action of the members of ISPT, LLC and signed by the Respondent and Ramki Ramakrishnan on behalf of ISML, LLC on 01.03.2022. This money was paid to the Respondent. The Petitioner also pocketed money received from TUSON and the parties recorded the full and final settlement with no surviving reciprocal obligations.

25. The minutes and the settlement clearly show that the Petitioner owed Respondent USD 769,053. Having admitted that the payment of the said amount to the Respondent was in full and final satisfaction of the amount due to ISML by the company, it is not understood how the Petitioner is claiming the payment as an operational debt. It is pertinent to mention that as per the binding obligation, the Petitioner had to invest USD 2.0 million in equity out of which, it invested USD 1.11 million. The Respondent had admitted to contribute the balance provided that the amount against the receivables be paid. The Petitioner did not pay and thereafter, the final settlement was arrived at on 01.03.2022 and the MOU was entered on 25.08.2023.

26. In the present case, the Respondent has highlighted the history of non-payment of monies by ISPT India Private Limited, MOU dated 25.08.2023 and

consequence thereof. It is pertinent to mention that ISPT India Private Limited is the wholly-owned subsidiary of the Petitioner. The Respondent had raised the invoices on ISPT India Private Limited on 25.09.2019 against which, ISPT issued cheques which on presentation, were dishonoured for the reason "payment stopped by drawer". The ISPT thereafter confirmed the balance amounts payable as on 19.03.2019 as Rs.6,10,875,528.88/-. The Respondent issued a demand notice in Form-3 to ISPT on 28.09.2019 and filed O.S. No. 712 of 2019 which was renumbered as C.O.S. No.33 of 2023l. The Respondent also filed IBA/820/2020 under section 9 of IBC which resulted into a compromise before Hon'ble NCLAT on the basis of the MOU dated 25.08.2023 in which the Respondent, ISPT and the Petitioner participated where it was agreed that the Respondent under the MOU, is entitled to a sum of Rs. 7.25 Crores on or before 31.03.2024. Although in the MOU the expression ISPT was defined to include its parent holding company i.e. the Petitioner but since the MOU was not signed by the Petitioner and it was contemplated as a global settlement, the Petitioner filed a Review Application before Hon'ble NCLAT which was allowed by the Hon'ble NCLAT holding that the settlement is not binding on the Petitioner. Since the ISPT did not make the payment pursuant to the settlement, the Respondent

issued a fresh demand notice and filed CP/173/2024 which this Tribunal allowed vide an order dated 15.09.2025 and admitted ISPT India Private Limited into CIRP.

27. It is pertinent to mention that the Tribunal had dismissed the petition IBA/820/2020 filed by the Respondent earlier vide an order dated 31.03.2022 holding that there existed a dispute between the parties which was much prior to issuance of Form-3 demand notice which dispute related to not investing of the amounts in the equity of the Corporate Debtor (Petitioner), not honouring the financial and contractual commitments and the differences in their accounts as evident from the mail correspondences. In the appeal, the parties entered into a settlement vide MOU dated 25.08.2023 recording the terms resolving the disputes amicably. It was stipulated in the MOU that in the event of default, the first party (Respondent) shall have the right to revive or file a fresh action including suit filed by the Commercial Court and the entire suit claim amount shall be deemed entirely undisputed operational debt due from ISPT. Although ISPT made initial payment of Rs.25.0 Lakhs in terms of the MOU but did not make further payments which made the Respondent file the petition CP/173/2024

against ISPT on which the CIRP was initiated. In that petition, it was alleged by ISPT that MOU was obtained by fraud, coercion and misrepresentation, however, the Tribunal did not find any material to substantiate this fact. The Tribunal recorded an observation at Para-33 which is relevant to be reproduced:

> *33. As regards inclusion of ISPT LLP USA in the MoU, Hon'ble NCLAT on an application IA/913/2024 filed by ISPT LLP USA in its order dated 20.11.2024 has held that under Order XXIII Rule 3, a withdrawal made by the parties to the proceedings based on a settlement will have only a binding effect interse between the parties and it will not bind the third party at all i.e. the Applicant who is neither the party nor is the signatory to the compromise. It was held that Order 29.08.2023 will only bind the parties to the appeal and not the third party. It is to note that ISPT LLC USA was taken over by Tuson Manufacturing Company LLC. At the time of take over, there was a pre condition that the admitted dues of ISPT LLC USA towards supplies made by the Petitioner be cleared in favour of the Petitioner. ISPT LLC USA made a payment of USD 769,053.23 to the Petitioner towards full and final satisfaction of the accounts payable amount, due to ISML by the ISPT LLC USA. Consequently, the claim that equity investment was not made by the Petitioner into ISPT LLC USA cannot be maintained rather it was ISPT LLC USA which owed money to the Petitioner.*

28. It is also to note that the amount alleged in the present petition is in regard to the balance contribution of USD 890,000 by the Corporate Debtor /Respondent in the equity of the Petitioner. The said amount is an investment and does not qualify the definition of 'operational debt' as defined under section 5(21) of IBC

which provides that 'operational debt' means a claim in respect of the provision of goods or services including employment or a debt in respect of the payment of dues arising under any law for the time being in force…… In the case of ***EPC Construction India Ltd. v. Matrix Fertiliser and Chemicals Ltd., (2025) ibclaw.in 443 SC***, Hon'ble Supreme Court has held that Cumulative Redeemable Preference Shares (CRPS), is a part of share capital and not debt. It does not create a creditor-debtor relationship. Non-redemption does not covert preference shareholders into creditors.

29. In this case, there are numerous correspondences which the Respondent has placed which show that there were pre-existing disputes as regards the claim of the Petitioner. Following facts, documents and proceedings are highlighted as under:

a. Emails dated 20.09.2017, 19.06.2018, 20.09.2019, 12.11.2020 and 24.11.2020;

b. Minutes of Written Action of members of the Applicant dated 01.03.2022;

c. Factum of payment of USD 769,053 to Respondent in full and final settlement of account with Respondent;

d. IBA/820/2020 and Counter filed by Respondent to IBA/820/2020 disputing alleged debt due to the Applicant;

e. Recording of MOU dated 25.08.2023 before the NCLAT;

f. Relinquishment of ISPT and Applicant's rights under MOU dated 25.08.2023 and agreement for a global settlement;

g. Agreement for Respondent to exit from the Applicant through extinguishment of shares in light of negative net worth of the Applicant;

h. Factum of payment of USD 769,053 from the Applicant to the Respondent towards unpaid operational dues;

i. Factum of agreement to pay Rs. 7.25 crores to Respondent in exchange for a full quits settlement of all claims and counter claims between all parties;

j. Participation and knowledge of Mr. Ramki Ramakrishnan both in respect of the MOU and in respect of benefits accrued to ISPT and the Applicant as a result of the MOU;

k. Factum of payment of Rs. 25 lakhs by ISPT to Respondent towards outstanding dues;

1. Demand Notice dated 06.04.2024 served on ISPT on 08.04.2024;

m. Reply Notice dated 27.09.2024 issued by ISPT in response to the Demand Notice dated 06.04.2024;

*n. CP(IB) / 173 * (CHE) / 2024 filed by Respondent against ISPT;*

*o. Counter filed by ISPT in CP(IB) / 173 * (CHE) / 2024*

p. IA No. 913 of 2024 filed by APPLICANT before NCLAT disclaiming the MOU dated 25.08.2023;

q. Counter filed by Respondent in IA No. 913 of 2024;

r. Specific contention raised by APPLICANT Before the NCLAT disclaiming the MOU dated 25.08.2023;

s. *OS No. 72 of 2024 filed by attempting to disclaim the MOU dated 25.08.2023;*

t. *IA 3 of 2024 in OS No. 72 of 2024 filed by Respondent for rejection of Plaint;*

u. *Order dated 31.05.2025 rejecting the Plaint in OS No 72 of 2024.*

30. Hon'ble Supreme Court in the case of ***GLS Film Industries Pvt. Ltd. Vs. Chemical Suppliers India Pvt. Ltd., 2026 SCC Online SC 551,*** referred the case of ***Mobilox Innovations Private Limited vs. Kirusa Software Private Limited, 2018 1 SCC 353*** wherein Hon'ble Supreme Court observed as under: -

> *It is clear, therefore, that once the operational creditor has filed an application, which is otherwise complete, the adjudicating authority must reject the application under Section 9(5)(i)(d) if notice of dispute has been received by the operational creditor or there is a record of dispute in the information utility. It is clear that such notice must bring to the notice of the operational creditor the "existence" of a dispute or the fact that a suit or arbitration proceeding relating to a dispute is pending between the parties. Therefore, all that the adjudicating authority is to see at this stage is whether there is a plausible contention which requires further investigation and that the "dispute" is not a patently feeble legal argument or an assertion of fact unsupported by evidence. It is important to separate the grain from the chaff and to reject a spurious defence which is mere bluster. However, in doing so, the Court does not need to be satisfied that the defence is likely to succeed. The Court does not at this stage examine the merits of the dispute except to the extent indicated above. So long as a dispute truly exists in fact and is not spurious, hypothetical or illusory, the adjudicating authority has to reject the application.' Thereafter, in S.S. Engineers vs. Hindustan Petroleum Corporation Limited and others3, this Court*

noted that when examining an application under Section 9 of the Code, the adjudicating authority has to examine (i) whether there was an operational debt exceeding ₹1 lakh (after 24th March, 2020, ₹1 crore); (ii) whether the evidence furnished with 2 (2018) 1 SCC 353 3 (2022) 234 COMP CAS 95, the application showed that the debt was due and payable and had not till then been paid; and (iii) whether there was in existence any dispute between the parties or the record of pendency of a suit or arbitration proceedings filed before the receipt of demand notice in relation to such dispute and in the event, any of the aforestated conditions was not fulfilled, the application of the operational creditor would have to be rejected.

31. In the light of above discussions, the petition fails. The debt claimed is not the operational debt within the meaning of section 5(21) of IBC. For the sake of arguments, even if it is presumed that the debt is the operational debt but in this case, there are correspondences prior to issuance of Form-3 demand notice under section 8 of IBC showing that there were pre-existing disputes between the parties which were not illusory or sham. As such, the petition filed under section 9 of IBC is not maintainable and is **dismissed** with no orders as to costs.

32. File be consigned to records.

Sd/-	**Sd/-**
VENKATARAMAN SUBRAMANIAM	**SANJIV JAIN**
MEMBER (TECHNICAL)	MEMBER (JUDICIAL)

Suguna