



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

ATTENDANCE CUM ORDER SHEET OF THE HEARING
HELD ON **15.09.2025** THROUGH VIDEO CONFERENCE

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

Application No :
Petition No : CP(IB)/173(CHE)/2024
Name of Petitioner : Indo Shel Mould Ltd
& Vs
Name of Respondent : ISPT India Pvt Ltd
Section : 9 Rule 6 of IBC, 2016

ORDER

CP(IB)/173(CHE)/2024

Present: Mr. Pranav V Shankar, Ld. Counsel for the Petitioner.
Ms. Deepa Mariappan, Ld. Counsel for the Respondent.

Vide separate Order pronounced in open Court, the Petition is admitted. The
CIRP is initiated against the Company i.e. ISPT India Pvt Ltd.

Mr. Anil Kumar Kicha is appointed as IRP.

-sd-

**[VENKATARAMAN SUBRAMANIAM]
MEMBER (TECHNICAL)**

MS

-sd-

**[SANJIV JAIN]
MEMBER (JUDICIAL)**

Date: 15.09.2025



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

CP(IB)/173(CHE)/2024

(filed under Section 9 of the Insolvency and Bankruptcy Code, 2016)

In the matter of M/s. ISPT India Private Limited

Indo Shell Mould Limited

A-9, Sidco Industrial Estate

Kurichi Coimbatore

Tamil Nadu – 641 021

... Petitioner

-Vs-

ISPT India Private Limited,

1 / 490R, SF No. 186 / 2, Anna Nagar Road,

Near Kathir College, Neelambur,

Coimbatore, Tamil Nadu – 641 026

... Respondent / Corporate Debtor

For Petitioner : Shri. Pranav V Shankar, Advocate

For Respondents : Shri. B. Dhanaraj, Advocate

CORAM:

SANJIV JAIN, MEMBER (JUDICIAL)

VENKATARAMAN SUBRAMANIAM, MEMBER (TECHNICAL)

Order Pronounced on 15th September, 2025



ORDER

(Heard Through Hybrid Mode)

The Petitioner, **Indo Shell Mould Limited**, a Company incorporated under the Companies Act, 1956 being an Operational Creditor has filed the petition under Section 9 of IBC, 2016 against **ISPT India Private Limited**, the Corporate Debtor for initiating Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor.

2. **Part-I** of the petition sets out the details of the Petitioner i.e. Indo Shell Mould Limited. It has its Registered Office at A-9, SIDCO Industrial Estate, Kurichi, Coimbatore, Tamil Nadu, Pin-641 021. **Part-II** of the petition sets out the particulars of the Corporate Debtor i.e. ISPT India Private Limited. It was incorporated on 10.02.2015 with Authorised and Paid-up capital of Rs.1,00,000. Its Registered Office is at 1/490R, SF No. 186/2, Anna Nagar Road, Neelambur, Coimbatore, Tamil Nadu, Pin-641 026. In **Part-III** of the petition, the Petitioner has not proposed any name of the Interim Resolution Professional.

3. **Part-IV** of the petition provides the particulars of the operational debt as Rs.6,63,82,605.84. The amount in default as on 01.04.2024 is stated



as Rs.10,83,94,611 and date of default is stated as 31.03.2024. **Part-V** of the petition provides the list of documents attached with the petition to prove the existence of operational debt and the amount in default annexed as **Exhibit P1 to P19**.

4. As per the averments made, the Corporate Debtor placed Purchase Orders for supply of castings / pattern on the Petitioner from time to time. The Petitioner supplied the castings / patterns to the Corporate Debtor and raised the invoices. It received the payments in piecemeal.. It maintained a running account in respect of the supplies made and the payments received. As on 25.09.2019, there remained an unpaid principal amount of Rs.6,63,862,605.84 (Rs.49,12,374.00 being the dues in respect of invoices raised by SEZ unit and Rs.6,14,70,231.84 being the dues in respect of invoices raised by Plant No.2). The Corporate Debtor towards discharge of the debts, issued 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 sum of Rs.40,00,000/-, however, the cheques on presentation got dishonoured for the reason "payment stopped by drawer". It is stated that the parties reconciled the books of accounts and the Corporate Debtor confirmed the balance amounts payable as on



19.03.2019 as Rs.6,10,87,528.88. It is stated that the credit period for the supplies as per standard business practice was 90 days from the date of invoice. It is stated that a Demand Notice in Form-3 dated 25.09.2019 was issued to the Corporate Debtor but it evoked no response within a mandatory period of 10 days. Thereafter, Petitioner filed a suit O.S. No.712 of 2019 of recovery for a sum of Rs.7,37,39.427.76 together with interest before the District Court, Coimbatore. The suit was later transferred to the Commercial Court, Coimbatore and renumbered as COS No.36 of 2023. The Petitioner also filed a petition IBA No.820 of 2020 under Section 9 of IBC, 2016 which the Tribunal dismissed vide an order dated 31.03.2022 holding that there was pre-existing dispute between the parties. The Petitioner challenged the order before the Hon'ble NCLAT where the parties entered into a Compromise dated 25.08.2023. As per the Memorandum of Understanding, the Corporate Debtor undertook to pay to the Operational Creditor an upfront sum of Rs.25.0 Lakhs on the date of execution of Memorandum of Understanding, Rs.2.0 Crores on 31.10.2023, Rs.2.25 Crores on 31.12.2023 and Rs.2.75 Crores on or before 31.03.2024 (Total sum Rs.7.25 Crores). It was stipulated that any delay in making payment would attract interest @ 9% per annum on the amounts overdue



and in the event of default in repayment after 31.03.2024, the Petitioner would be entitled to revive action under IBC and recover the entire operational debt inclusive of interest waived off under the Memorandum of Understanding.

5. It is stated that the Petitioner only received Rs.25 Lakhs on the date of signing of the Memorandum of Understanding and did not receive the balance payment as was agreed upon. It is stated that the Petitioner continuously followed up the Corporate Debtor but the Corporate Debtor did not make the payment. This made the Petitioner issue fresh Demand Notice under Form-3. The notice was served on 08.04.2024 but the Corporate Debtor neither responded to the notice within the statutory period of 10 days nor made the payment. It is alleged that the Corporate Debtor sent a belated reply on 27.04.2024 disowning the Compromise after taking its benefit qua withdrawal of civil and criminal proceedings by the Petitioner.

6. **The Respondent** on getting notice of the petition, filed the reply alleging that the Petition is not maintainable. It is stated that the Petitioner was fully aware of pre-existing disputes when it filed the petition IBA/820/2020. It did not disclose in the petition that it has filed a suit in



O.S. No. 712 of 2019 before the District Court, Coimbatore. The Corporate Debtor placed on record the details of amounts owed by the Petitioner to the Respondent's holding company ISPT LLC USA relating to the Petitioner's obligation to pay for the purchase of 49% shares of the holding company to state that this failure caused significant financial difficulties not only to the holding company but also to the Respondent. It is stated that this Tribunal upon considering the materials on record, dismissed the petition vide an order dated 31.03.2022 on the ground that the reconciliation of accounts relied on by the Petitioner shows the existence of disputes between the parties in relation to invoices for the period from 15.06.2017 to 18.03.2019 which were raised prior to the issuance of Demand Notice. The Petitioner had purchased 49% of shares of ISPT LLC USA and executed two MOUs giving continuous assurances to make the payment in consideration thereof but till date no payments have been made. It is stated that against the dismissal of petition, the Petitioner preferred an appeal before the Hon'ble NCLAT. During the hearing, the Petitioner filed a memo dated 25.08.2023 stating that parties have resolved the dispute through the Memorandum of Understanding. It is stated that based on the submission of the Petitioner, Hon'ble NCLAT dismissed the



appeal as withdrawn vide an order dated 29.08.2023. It is alleged that the Compromise dated 25.08.2023 was brought into existence through coercion, fraud and misrepresentation. The Petitioner acting fraudulently made ISPT LLC USA a party to the Compromise without its knowledge or consent making the Compromise void insofar as the holding company is concerned. It is stated that Clause 1(e) of the Compromise permitting filing of a fresh claim in the event of breach by the Respondent is legally untenable as the Petitioner while withdrawing the appeal, did not seek liberty from the Hon'ble NCLAT to revive or file a fresh claim based on the original cause of action in case of breach of any of the terms of Compromise. It is stated that the appeal was unconditionally dismissed as withdrawn following the so-called Compromise. It is stated that the Petitioner is not seeking enforcement of the terms of Compromise but has filed the petition under Section 9 of IBC reverting to the original cause of action which was already the subject of suit O.S. No. 712 of 2019. The Hon'ble NCLAT in its order dated 20.11.2024 in the recall application filed by ISPT LLC USA in IA/913/2024, unequivocally observed that the withdrawal made by the Petitioner on the basis of an alleged compromise in the form of MOU dated 25.08.2023 would have a binding effect only on



the Petitioner and the Respondent (subject to it being a valid, lawful and enforceable agreement) and such withdrawal would not bind the holding company of the Corporate Debtor as it was neither a party to the appeal nor a signatory to the alleged Memorandum of Understanding. It is stated that this petition is an attempt of the Petitioner to overcome the findings of the Tribunal in IBA/820/2020 on the existence of pre-existing dispute between the parties. It is stated that the Petitioner cannot now circumvent the earlier findings or re-agitate the same issue before this Tribunal.

7. It is stated that it is a settled principles of law that a party cannot by its own volition withdraw a claim while reserving the right to re-litigate the same at a later stage. It ought to have preserved the liberty to file afresh as provided under Order XXIII Rule 1 of C.P.C. There is a distinction between a withdrawal simplicitor and a withdrawal with liberty to file afresh which goes to the root of the procedural fairness and judicial discipline. It is stated that in the present case, the Petitioner unilaterally conferred rights upon itself which are not expressly recognised by law or permitted by the Courts or Tribunals. The Memorandum of Understanding does not establish a fresh cause of action that could independently sustain the present petition. The Memorandum



of Understanding at best outlines a payment plan to settle certain amounts by the Respondent as well as the holding company with provision for revival or fresh action in the event of default. The Memorandum of Understanding does not create a new and independent cause of action but seeks to revisit a pre-existing dispute which was considered by the Tribunal. It is stated that as per Clause (b) of Memorandum of Understanding, the burden of making payment of Rs. 7.50 Crores is not only on the Respondent but also on its holding company ISPT LLC USA. It underscores that both Respondent and the holding company are equally responsible for ensuring compliance with the terms of the MOU. It is stated that the Hon'ble NCLAT in the recall application, has highlighted the inherent flaws in the MOU demonstrating its lack of enforceability.

8. It is stated that the petition is barred by limitation which started from the date when the cause of action first arose. Since the Petitioner failed to obtain leave to file a fresh claim, the petition is time-barred and deserves dismissal.

Arguments and Contentions

9. We have heard Ld. Counsels for the parties.



10. **Ld. Counsel for the Petitioner** argued on the lines of the petition. He referred to the dates and events filed with the written synopsis vide Sr. No. 1450 dated 08.04.2025 stating that in the AGM of the Corporate Debtor held on 30.09.2023, the accounts of the Corporate Debtor for FY: 2022-23 were passed and the withdrawal of NCLT proceedings in terms of the MOU was recorded as a positive turnout for the company. Ld. Counsel submits that on 05.01.2024, the representative of the Corporate Debtor through whatsapp assured the Petitioner that Mr. Ramakrishnan, Director has been working on the funds and would honour the Compromise. Ld. Counsel submits that the Corporate Debtor with fraudulent intention, filed a suit before the District Munsif, Sulur on 31.07.2024 in O.S. No.72 of 2024 seeking a declaration that MOU is not binding on the Corporate Debtor. Ld. Counsel submits that O. S. No. 72 of 2024 was dismissed on the ground that it is barred by law vide an order dated 31.01.2025. He submits that the holding company after one year of signing the Memorandum of Understanding, disowned the Compromise and filed the recall application on 09.08.2024.

11. Ld. Counsel submits that the entire payment of Rs.7.25 Crores is only towards the discharge of dues recoverable by the Petitioner against



the supplies and in terms of the Memorandum of Understanding. Any delay in the payment would attract interest @ 9% per annum. Ld. Counsel submits that in the present case, unpaid operational debt stood settled under the Compromise. The NCLT, Amaravathi in the case of *Lakshmi Srinivas Jute Mills Private Limited CP(IB)73/9/MAR/2020* on the similar issue initiated the CIRP vide an order dated 16.03.2022. Similar view was echoed by the Hon'ble NCLAT in *Company Appeal (AT) (CH) (Ins.) No.260/2021* in the case of *Keshav Kantamanel v. Kishan Chand Suresh Kumar* in its judgment dated 12.12.2022.

12. Ld. Counsel submits that the memorandum contemplated a global settlement which is binding on the Petitioner, Corporate Debtor and ISPT LLC USA. The Corporate Debtor enjoying the benefit under Memorandum of Compromise secured the withdrawal of Comp. App. 419 of 2022 and O.S. No. 712 of 2019. Ld. Counsel submits that Mr. Ramki Ramakrishnan, Director and Principal Shareholder of ISPT LLC USA, 100% holding Company of the Corporate Debtor is on the Board of the Corporate Debtor as its authorized representative. He is also a KMP as disclosed in the balance sheet of the Corporate Debtor. Therefore, ISPT



LLC USA cannot plead that the compromise was concluded behind its back.

13. Ld. Counsel submits that in terms of the compromise, the Corporate Debtor was obliged to pay a sum of Rs. 2.75 Crores on or before 31.03.2024 (1st tranche of payment) but it only paid Rs. 25.0 Lakhs. No reply to the demand notice dated 06.04.2024 was given by the Corporate Debtor and ISPT LLC USA. Ld. Counsel submits that the compromise is binding on all the parties to the proceeding. Ld. Counsel submits that aspect of pre-existing dispute was resolved after signing of Memorandum of Understanding. Ld. Counsel submits that ISPT LLC USA owed to the Petitioner a staggering sum of USD 8,90,000 towards the supplies made by the Petitioner to ISPT LLC USA. When ISPT LLC USA was taken over by TUCSON Manufacturing Company LLC, there was a pre-condition that the dues of the Petitioner be cleared. Further, in the minutes, ISPT LLC USA admitted its payment obligations to the Petitioner to the tune of USD 7,69,053 and paid the said amount. This fact was also recorded in the memorandum of understanding. Ld. Counsel submits that any argument on the disputed entries in the reconciliation statement taken by the Corporate Debtor does not survive given the fact that the memorandum of



understanding dated 25.08.2023 constitutes an acknowledgment of liability and the entire amount owed to the Petitioner constitutes an undisputed operational debt.

14. Ld. Counsel in support of his contention referred to the case of ***Priyal Kantilal Patel Vs. IREP Credit Capital Private Limited and Another 2023 SCC Online NCLAT 51*** where it was held :

12. Present is not a case where Section 7 Application has been filed only on the ground of default in the settlement agreement rather section 7 application has been filed on the basis of original financial debt which was extended by the Financial Creditor to the Corporate Debtor. The mere fact that in earlier company petition, consent terms was arrived, which consent terms was breached by the corporate debtor, the financial debt which was claimed by the financial creditor would not be wiped out nor the nature and character of financial debt shall be changed on account of breach of the consent terms.

13. It is relevant to notice that in clause 9 of the consent terms there was clear stipulation that financial creditor shall be entitled to revive the company petition, the mere fact that instead of reviving company petition, a fresh company petition has been filed under section 7 shall not be reason to reject the company petition and not to entertain the said company petition.

15. Ld. Counsel submits that in the present case, the memorandum of compromise was filed before the Hon'ble NCLAT which was taken note of with the following words:



“the Appellant / Operational Creditor has filed a Memo dated 25.08.2023 stating that the parties have compromised the subject matter of ‘Appeal’ as per ‘Memorandum of Understanding’ dated 25.08.2023, which fact is not disputed by the ‘Respondent’/ ‘Corporate Debtor’ side.”

16. Ld. Counsel submits that the Memorandum of Understanding provides that the party of the 1st part shall withdraw the appeal upon the execution of Compromise and in the event of default within the outer limit, 1st party shall have right to either revive or file a fresh application under IBC against the 2nd party for the sums claimed in the suit and in such event, entire claim amount shall be deemed as an undisputed operational debt. The waiver and concession as granted under the MoU shall stand withdrawn. Ld. Counsel submits that in terms of the MoU, the Petitioner has a right either to revive the earlier petition or file a fresh petition under Section 7. Ld. Counsel submits that the present petition is not for the revival of IBA/820/2020. A fresh petition has been filed based on the fresh cause of action i.e. Memorandum of Understanding. There is no prayer seeking revival of IBA/820/2020. The memorandum is an acknowledgment of debt and an undertaking to pay with a committed schedule of payment.



17. **Ld. Counsel for the Respondent per contra argued** that the present petition filed under Section 9 of IBC is an attempt to reagitate a claim which has already been adjudicated upon and withdrawn without any liberty to file afresh. This Tribunal had dismissed the petition on the ground that there existed a pre-existing dispute between the parties which was substantiated by the fact that the Petitioner had instituted Civil Suit O.S. No. 712 of 2019 before the District Court, Coimbatore for recovery of the same amount. Ld. Counsel submits that aggrieved by the dismissal of the petition, the Petitioner preferred an appeal. During its pendency, the Petitioner filed a memo stating that the dispute has been settled through a Compromise dated 25.08.2023. Based on the representation, Hon'ble NCLAT dismissed the appeal as withdrawn on 29.08.2023. At no point, did the Petitioner seek or obtain liberty from the Hon'ble NCLAT to re-agitate the claim under IBC. It is well settled principle of law that where a party withdraws its claim without reserving its right to file a fresh claim, such withdrawal operates as a bar to the subsequent proceeding on the same cause of action. Order XXIII Rule 1 CPC also applies in Section 9 petition. The Hon'ble NCLAT in the case of *Krishna Garg 2021 SCC OnLine NCLAT 81* has explicitly held that withdrawal of an application



under IBC without reserving the right to file afresh bars the Creditor from initiating a second application for the same claim. Ld. Counsel referred the case of *Florex Tiles Vs. Greenstone Granite Pvt. Ltd., Comp. Appeal (AT) (Insolvency) No. 1487 of 2024 dated 13.08.2024, NCLAT, New Delhi* where it was held that permission to withdraw a Section 9 application does not automatically grant right to file a fresh application unless explicitly provided. Mere withdrawal does not permit an Applicant to re-litigate the same claim without specific leave of the Tribunal. In the case of *Permali Wallace Pvt. Ltd. Vs. Narbada Forest Industries Pvt. Ltd., (NCLAT) Company Appeal (AT) (Ins) No. 36 of 2023*, it was held that a claim that has lost its substratum due to a settlement agreement cannot be revived through a fresh Section 9 application. IBC is not a recovery proceeding. In the case of *M/s. Suri Rajendra Rolling Mills Vs. M/s. Bengani Udyog Pvt. Ltd., (2021) 3 BC 158*, Hon'ble NCLAT rejected a second Section 9 application where the first was withdrawn. In the case of *Godrej & Boyce Manufacturing Co. Ltd. Vs. Nayati Healthcare & Research Pvt. Ltd., (2023 SCC Online NCLT 3104)*, Hon'ble NCLAT has held that a settlement agreement does not create a new operational debt



unless it arises from a fresh supply of goods or services. The relevant portion of the judgment is extraced as under:

"11. On mere perusal of the order dated 05.08.2021, it is evident that the C.P.(IB)/226/2019 was allowed to be withdrawn on the submissions of the applicant only and further, no liberty was granted by this Adjudicating Authority to restore the application. From the documents on records, it is pertinent to note that pursuant to the settlement agreement dated 10.07.2021 entered between the parties, the parties had agreed to settle the outstanding operational debt amounting Rs. 4.11 Crores at a settlement amount of Rs. 3.35 Crores only. The moment the parties entered into a settlement agreement dated 10.07.2021, the nature of the debt being operational debt defined under Section 5(21) of the Code, 2016 is bygone as now the debt is not owed for the supply of goods or rendering of services. The amount outstanding pursuant to the settlement agreement is only a settlement amount which can merely be a debt as defined under Section 3(11) of the Code, 2016 but in no circumstances can be an operational debt as it has lost its substratum of operational debt and is only a debt pursuant to the settlement between the parties."

18. It is stated that above order was challenged before Hon'ble Supreme Court where Hon'ble Supreme Court in the order dated 04.10.2024 held as under.

"We do not find any good ground and justification to interfere with the impugned judgment and, hence, the present appeal is dismissed.

We, however, clarify that withdrawal of the proceedings under the Insolvency and Bankruptcy Code, 2016, will have no impact on the civil proceedings, if any, which may be initiated by the parties.

Pending application(s), if any, shall stand disposed of."



19. Ld. Counsel submits that the MoU which is the foundation of the present petition was obtained by fraud and misrepresentation. It improperly included ISPT LLC USA, the holding Company of the Corporate Debtor in a clandestine manner to avoid a legal liability to pay USD 890000 to ISPT LLC USA. The Hon'ble NCLAT in IA/913/2024 has unequivocally held that Memorandum of Compromise is not binding on the holding Company. Ld. Counsel submits that no terms of settlement were recorded in the order by the Hon'ble NCLAT dated 29.08.2023. It was a withdrawal simplicitor. Ld. Counsel referred the case of ***SRLK Enterprises LLP. Vs. Jalan Transolutions (India) Ltd. Company Appeal (AT) (Ins) No.294 of 2021*** where Hon'ble NCLAT in its order dated 08.04.2021 held as under.

"6 ... There is difference between Withdrawal Simplicitor making statement that Parties have settled. It is different when bringing the settlement on record, and making it a part of the order of withdrawal, liberty is taken and brought on record to restore the proceedings in case of default. IBC is not a recovery proceeding where because the money or part of it has not come, the party may repeatedly come to the Court. Adjudicating Authority has rightly observed that no liberty to revive was there and so declined to interfere. The Appellant would be at liberty to pursue other remedies in law."

Analysis and Findings

20. We have given our thoughtful consideration to the rival contentions and perused the record.



21. The Petitioner had filed the petition IBA/820/2020 under Section 9 of IBC to initiate CIRP against the Corporate Debtor. This Tribunal after hearing the parties, vide an order dated 31.03.2022 dismissed the petition holding that there existed a dispute between the parties which was much prior to the issuance of Form-3 Demand Notice by the Operational Creditor to the Corporate Debtor. The dispute relates to not investing the amounts in the share capital of the Corporate Debtor, not honouring the financial and contractual commitments and the differences in their accounts, which are evident from the reconciliation statement filed alleging that invoices are disputed. From the mails exchanged between the parties and by perusing the documents filed by the parties, it is manifestly clear that the Corporate Debtor raised disputes much prior to issuance of Form-3 Demand Notice and filing of this application.

22. Against the order dated 31.03.2022, the Petitioner preferred an appeal before the Hon'ble NCLAT in Comp. App.(CHE)/419/2022. During the pendency of the appeal, the parties entered into a Memorandum of Understanding (MoU) dated 25.08.2023. It was signed by the Managing Director of the Petitioner and the authorized signatory of the Corporate Debtor (2nd party). It was stated



that the expression 2nd party shall mean and include its legal representatives, successors in office, Assigns and parent holding company ISPT LLC USA and its members, Managers, Officers and legal representatives.... . It was recorded that 1st party is holding 49000 membership units representing 49% of the membership interest in ISPT LLC USA. ISPT LLC USA is holding 9999 shares and Mr. Krishnasamy Jagadeesan, Director of 1st party is holding one share in ISPT India Private Limited. The 1st party had executed a letter of undertaking on 15.02.2012 and MoC dated 09.09.2017 where 1st party agreed to invest 2 Million USD as capital infusion towards 49% equity holding in ISPT. It was recorded that the 1st party did not make the promised investment and caused a demand notice under Section 9 on 25.09.2015 to the 2nd party which was not replied by the 2nd party. The 1st party thereafter proceeded with filing of recovery suit in the District Court on 18.10.2019 claiming a sum of Rs. 7,37,39,427.76 together with interest. Thereafter, the 1st party filed Section 9 application IBA/820/2020 which was dismissed by the NCLT vide order dated 31.03.2022 observing pre-existing dispute between the parties with regard to business transactions. In the interregnum period, the Principal Company ISPT LLC USA sold substantially all of its operating assets



located in USA to Tuson Manufacturing Company LLC and remitted USD 769053.23 to the 1st party towards its dues. Now, in order to have cordial relationship, they resolved the disputes amicably on the terms and conditions as below:-

I. UNDERTAKING FROM THE PARTY OF FIRST PART

- a. The party of the first part and subject to payment in terms hereof by the party of the second part, shall surrender, release and relinquish all its rights, title and financial interest including ownership, membership and creditor rights in parent company namely, **ISPT LLC, USA** to **ISPT LLC, USA** by executing this Memorandum of Understanding, and any and all documents requested by the legal counsel of **ISPT LLC, USA** for transfer of its 49,000 membership units in **ISPT LLC, USA**; provided that this Memorandum of Understanding shall also serve as sufficient evidence of the transfer.
- b. The party of the first part shall not make any claim, interest or title over the business interest of **ISPT LLC, USA, ISPT India and Mr.Ramki Ramakrishnen** subsequent to the receipt of INR Rs.7.25 crores which shall be full and final settlement from any and all claims, actions, causes of action, suits, debts, agreements, promises, damages, judgement, liabilities, losses, expenses and demands whatsoever, direct or indirect, in law or in equity, whether known or



unknown, which ISML Parties may have had, presently has, or may have in the future against ISPT LLC, USA, ISPT India and Mr.Ramki Ramakrishnen arising from or relating to ISPT LLC USA or ISPT India. The party of the second part and its holding company have represented that the entire sum of INR 7.25 crores is paid only towards discharge of dues on receivable and that there is no value attributable to the equity holding of the party of the first part in ISPT LLC, USA since the enterprise sold all its operating assets and the net worth of the said entity is in the Negative.

- e. The party of the first part shall execute the necessary documents including transfer of equity interests only upon receipt of the agreed amount of INR Rs.7.25 crores from the party of the second part in the manner set out in this Memorandum of Understanding.
- d. The party of the first part shall promptly record this Memorandum of Understanding through appropriate proceedings before the District Legal Services Authority either through a Lok Adalat or mediation under its auspices, by getting the suit pending before Hon'ble Commercial Court, Coimbatore referred to such authority and get an appropriate order having force as a Decree of Court.
- e. The party of the first part shall withdraw the appeal on the file of Hon'ble NCLAT, Chennai upon execution of this MoU and in the event of default of total amount within the outer time limit, the party of the first part shall have the right to either revive or file a fresh action under Insolvency and Bankruptcy Code against the party of the second part, for the sums as claimed in the suit filed before the civil/commercial court and in such event, the entire suit claim amount shall be deemed entirely an undisputed operational debt due from the party of the second part. The waivers, concessions etc., as granted under this MOU shall stand withdrawn in the event of such default, and credit shall be given to the



party of the second part for only such sums as are factually received under this MOU.

- f. The part of the first part shall withdraw its complaint before ROC, Coimbatore forthwith against the party of the second part and its directors, upon execution of MOU.
- g. The party of the first part shall provide ISPT USA with a signed membership interest transfer form acknowledging ISML is transferring its membership interests in ISPT USA and all of its rights, title and interests to ISML's ISPT Equity without additional compensation than the Settlement Payment of INR Rs.7.25 crores and the releases contained herein. The party of the second part shall cause ISPT LLC,USA (CPA Firm) & ISPT India (CA Firm) to certify the Negative Net worth details of the company and ISPT USA, whereupon ISPT LLC, USA shall cancel on its financial records the party of the first part's equity interests in ISPT USA. There shall remain no obligation on the party of the first part to pay \$890,000 in unpaid equity claimed by ISPT LLC, USA.
- h. At the time of receipt of last payment of Rs.2.75 crores, Mr.Krishnaswamy Jagadeesan shall execute and handover a signed share transfer form and such other documentation required by the India Registrar of Companies acknowledging Mr.Krishnaswamy Jagadeesan is surrendering to ISPT India all of his rights, title and interests to his one (1) share of the equity interest in ISPT India without additional compensation other than the Settlement Payment and the releases contained herein.
- i. At the time of receipt of the last payment of Rs.2.75 crores, Mr. Krishnaswamy Jagadeesan shall submit a signed resignation declaration in such form acceptable to the Registrar of Companies, reiterating that he has already resigned from the Board of Directors. Mr.Krishnaswamy Jagadeesan and Party of the First Part will



be kept completely indemnified and harmless against any and all claims relating to Party of Second Part and ISPT, LLC USA.

- j. At the time of receipt of the last payment of Rs.2.75 crores, all existing contracts, and agreements between any member of the ISML Parties with a member of the ISPT Parties will terminate and shall be null and void.
- k. At the time of receipt of last payment of Rs.2.75 crores, ISML Parties, expressly including Mr.Krishnaswamy Jagadeesan, Mr. Balaji Jagadeesan and Mr. Rajesh Jagadeesan, in their individual capacity and as managers, members, shareholders, directors and any other business fiduciary on behalf of the ISML Parties and their divisions, subsidiaries, parent companies, affiliates, predecessors, assigns, owners, managers, members, successors, officers, officials, directors, board members, club members, employees, stockholders, agents, attorneys, servants, insurance companies, sureties, and heirs shall release, remise, and forever discharge all ISPT Parties and their divisions, subsidiaries, parent companies, affiliates, predecessors, assigns, owners, managers, members, successors, officers, officials, directors, board members, club members, employees, stockholders, agents, attorneys, servants, insurance companies, sureties, heirs, and each of them, from any and all claims, actions, causes of action, suits, debts, agreements, promises, damages, judgment, liabilities, losses, expenses and demands whatsoever, direct or indirect, in law or in equity, whether known or unknown, which ISML Parties may have had, presently has, or may have in the future against ISPT Parties arising from or relating to ISPT USA or ISPT India, including but not limited to the Unpaid Equity, Supplier Claims, the Unpaid ISML Accounts Receivable; Collection Action, the Fraud Action, and Other Claims, any and all other claims or issues asserted or that could have been asserted by the Parties in the Unpaid Equity, Supplier Claims, the Unpaid ISML Accounts Receivable; Collection Action, the



Fraud Action, and Other Claims, from the beginning of time up through the Effective Date of this Agreement.

II. UNDERTAKING FROM THE PARTY OF SECOND PART

- a. The party of the second part shall pay an upfront sum of INR Rs.25 Lakhs on the date of execution of this MoU to prove its bonafide intention to resolve the disputes crept between the party of the first and second parts.
- b. The party of the second part shall pay a sum of INR Rs.2 crores on 31.10.2023. In the event of a delay in making the payment, the party of the second part shall pay interest at 9 % P.A.. At any rate, the total payment of Rs. 7.25 crores shall not exceed on or before 31.03.2024.
- c. The party of the second part shall pay a sum of INR Rs.2.25 crores on 31.12.2023. In the event of a delay in making the payment, the party of the second part shall pay interest at 9 % P.A. At any rate the total payment of Rs. 7.25 crores shall not exceed on or before 31.03.2024.
- d. The party of the second part shall pay a sum of INR Rs.2.75 crores on 31.03.2024.
- e. In the event of default of making the aforesaid payments within the outer time limit of 31.03.2024, the party of the first part is at liberty to enforce its claim as made in the recovery suit as prayed for.

III. Global Settlement.

The party of the first part and the party of the second part acknowledge and agree that this MoU, and the payment of the INR Rs.7.25 crores by the ISPT Parties to the ISML Parties as provided herein is intended to resolve and settle all claims, counterclaims, disputes, lawsuits and any other action between the ISML Parties and the ISPT Parties, and that after the Effective Date, none of the ISML Parties



and the ISPT Parties will have any right or obligation to the other parties arising or relating in any way to ISPT USA or ISPT India, except the ISPT Parties' obligation to make the INR Rs.7.25 crores payment in accordance with this MoU. Following the Effective Date, the ISML Parties will cease to have any claim, rights, title or interest in the ownership, equity, operations or business of ISPT USA or ISPT India, subject to payment by ISPT Parties of the sums in terms hereof.

23. It was undertaken that they will abide by the terms and conditions in strict sense. It was recorded that the 1st party shall withdraw the appeal before Hon'ble NCLAT upon execution of the MoU and in the event of default of total amount within the outer time limit, the 1st party shall have the right to either revive or file a fresh action under IBC against the 2nd party, for the sums as claimed in the suit filed before the Commercial Court and in such event, the entire suit claim amount shall be deemed entirely an undisputed operational debt due from the 2nd party. The waivers, concessions, etc., as granted under the MoU shall stand withdrawn in the event of such default and credit shall be given to the 2nd party for such sums as are factually received under the MoU. The MoU was placed before Hon'ble NCLAT vide a memo on 25.08.2023 with a prayer that Hon'ble NCLAT may take the Compromise on record and dispose of the appeal in terms of the compromise. The MoU was also



made part of the memo. Hon'ble NCLAT vide an order dated 29.08.2023 took the memo on record in the presence of the Counsels for the parties, factum of which was not disputed by the Corporate Debtor. It was ordered as under:-

"In view of the Settlement arrived at between the parties, the instant Appeal is dismissed as withdrawn. No costs."

24. The Memorandum of Understanding (MoU) which forms part of the Memo filed before Hon'ble NCLAT is very clear to the effect that in the event of default within the outer time limit, the 1st party shall have the right either to revive or file a fresh action under IBC against the 2nd party and the entire claim amount shall be deemed entirely an undisputed operational debt due from the 2nd party and the waivers as granted under the MoU shall stand withdrawn. In the instant case, the Corporate Debtor after making the initial payment of Rs. 25,00,000/- in terms of the MoU did not make further payments thus committed default within the outer time limit despite the fact that on the basis of the MoU, the Petitioner / 1st party withdrew the recovery suit pending before the Commercial Court. Admittedly, while disposing of the appeal, the Hon'ble NCLAT in specific words did not mention about the liberty to revive the appeal / petition in



case of default but had taken on record the Memo containing the MoU which clearly gave liberty to the Petitioner / 1st party to revive the petition or file fresh petition under IBC. It was also recorded in the MoU that in such event of default, the entire claim amount shall be deemed entirely an undisputed operational debt due from the 2nd party and all waivers / concessions shall stand withdrawn.

25. Considering the terms of the MoU, it is clear that the disputes if any between the parties got settled after they signed the MoU which is binding on both the parties.

26. Order XXIII, C.P.C. provides that at any time after the institution of a suit, the Plaintiff may as against all or any of the Defendants abandon his suit or a part of his claim and where the Court is satisfied that there are sufficient grounds for allowing the Plaintiff to institute a fresh suit for the subject matter of a suit or part of a claim, it may on such terms as it thinks fit, grant the Plaintiff, permission to withdraw such suit or claim with liberty to institute a fresh suit in respect of subject matter of the suit or such part of the claim. Where the Plaintiff withdraws a suit or part of a claim without the permission, he shall be precluded from instituting any fresh suit in respect of such suit or part of the claim.



27. In the present case, the memorandum of understanding which forms part of the memo gave liberty / right to the Petitioner to revive or file a fresh action under IBC against the 2nd party for the sums claimed in the suit and in such event, the entire claim amount shall be deemed entirely an undisputed operational debt from the 2nd party. Although, the Hon'ble NCLAT did not mention this fact in the order but has recorded that in view of the settlement arrived at between the parties, the instant appeal is dismissed as withdrawn. That being the position, the order of Hon'ble NCLAT would be read 'as liberty to revive or file a fresh action under IBC against the 2nd party for the sums claimed in the suit and the said withdrawal cannot be said to be a simplicitor withdrawal. Consequently, the unpaid operational debt stands settled under the MoU.

28. In the case of *Pooja Finlease Ltd Vs. Auto Needs (India) Private Limited & Anr, Company Appeal (AT) (Insolvency) NO. 103 of 2022*, based on consent terms, the company petition was dismissed as withdrawn. Since the Respondent committed the default, the Appellant filed an application seeking revival of CIRP in terms of clause 8 of the consent terms. The application was rejected by the NCLT. The Hon'ble NCLAT relied on the case of *Krishna Garg & Anr Vs. Pioneer Fabricators Private*



Limited, Company Appeal (AT) (Insolvency) Nos. 92 of 2021, where neither the settlement terms were filed nor the same were brought on record, held that the facts in the present case are distinguishable from the above case as consent terms were filed and also were taken on record by the NCLT. When the Tribunal allowed the application, the consent terms were also taken on record. It was held that the Financial Creditor was fully entitled to seek revival of Section 7 petition in the event of default of consent terms. In *Priyal Kantilal Patel Vs. IREP Credit Capital Private Limited & Anr, 2023 SCC Online NCLAT 51*, based on the consent terms, the Respondent agreed to withdraw the petition. It was stipulated that in case of default in the consent terms by the Appellant, the Respondent could revive the petition. The Respondent instead of reviving the petition filed a fresh petition. The Tribunal admitted the petition. In appeal, it was contended that the petition is not maintainable since the breach of consent terms does not give any right to initiate Section 7 petition as the same cannot be treated to be financial debt. Hon'ble NCLAT held as under:-

12. Present is not a case where Section 7 Application has been filed only on the ground of default in the settlement agreement rather section 7 application has been filed on the basis of original financial debt which was extended by the Financial Creditor to the Corporate Debtor. The mere fact that in earlier company petition, consent terms was arrived, which consent terms was breached by the Corporate Debtor, the financial debt which was



claimed by the financial creditor would not be wiped out nor the nature and character of financial debt shall be changed on account of breach of the consent terms. Permitting such interpretation shall be giving premium to the Corporate Debtor who breach the consent terms.

29. In the present case, the Petitioner had filed the petition under Section 9 of IBC which was dismissed on the ground that there were pre-existing disputes. The Petitioner filed the appeal where the parties entered into a compromise and filed the MoU recording the terms and conditions of the compromise. The MoU was taken on record and appeal was dismissed as withdrawn. When the Respondent breached the consent terms of the MoU, the Petitioner instead reviving the petition filed the fresh petition. As seen from the memo, the disputes between the parties got settled and the parties arrived at a final settlement amount. Respondent made the part payment and thereafter did not make the payment. Hence, following the judgments in this cases supra, the fresh petition filed by the Petitioner is maintainable.

30. In the present case, the character of the debt did not change. The debt admitted in the MoU was not paid and the default arose, thus gave rise to this petition. The MoU is an acknowledgment of debt and an



undertaking to pay with a committed schedule of payment and as such it is within limitation.

31. The case of *Florex Tiles supra*, *Permali Wallace Pvt Ltd supra* and *Suri Rajendra Rolling Mills supra* are distinguishable on facts. In the present case, the parties entered into a MoU in appeal which was taken on record in the form of a memo and thereafter the appeal was dismissed as withdrawn by Hon'ble NCLAT which clearly stipulated that the disputes are crystallized and the Petitioner could revive or file fresh petition under IBC in case of default. The default was committed by the Corporate Debtor / Respondent and fresh petition has been filed. Thus, the MoU gave right to the Petitioner to invoke insolvency proceedings for the debt against the Corporate Debtor. In the case of *Godrej & Boyce supra*, the CP was allowed to be withdrawn on the submission of the Applicant and no liberty was granted by the Adjudicating Authority to restore the application, but in this case, the MoU gave liberty to the Petitioner to revive / file fresh petition in case of default by the Corporate Debtor.

32. The Respondent has alleged that MoU was obtained by fraud, coercion and misrepresentation. Not a single document or material has been placed by the Respondent / Corporate Debtor to substantiate this fact.



It appears to be a mere assertions without any basis. It is pertinent to mention that the Corporate Debtor / Respondent had filed a suit before the District Munsif, Sulur on 31.07.2024 in O.S. No.72 of 2024 seeking a declaration that the MoU is not binding on the Corporate Debtor. The suit was dismissed by the District Munsif, Sulur vide an order dated 31.01.2025 holding that it is barred by law.

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 Manufacuring 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.

34. In the present case, as seen from the pleadings and the documents, the Petitioner had supplied the goods and raised the invoices. The Corporate Debtor did not make the payment. The disputes between the parties have been settled. The parties entered into a MoU on 25.08.2023 settling the debt amount and the terms of payment. The debt amount is more than Rs. 1.0 Crore. The Respondent breached the terms of MoU after making the initial payment. The MoU provided for revival or filing of the fresh petition under IBC. The acknowledgment made in the MoU brings the petition within limitation which has been filed on 19.07.2024.

35. For the foregoing reasons, we admit the petition, initiating CIRP against the Corporate Debtor ISPT India Private Limited.

36. The Operational Creditor has not proposed any name for the appointment of Interim Resolution Professional ("IRP"). We therefore appoint **Mr. Anil Kumar Khicha** with *Registration Number: IBBI/IPA-*



001/IP-P00422/2017-2018/10745, email ID: knpchennai@gmail.com, as the Interim Resolution Professional from the List of Panel Resolution Professionals where the Authorization for Assignment is valid till 31.12.2025. The IRP who is appointed shall take forward the process of Corporate Insolvency Resolution of the Corporate Debtor. The IRP appointed shall take in this regard such other and further steps as are required under the Statute, more specifically in terms of Section 15,17,18 of the Code and file his report within 20 days before this Bench. The powers of the Board of Directors of the Corporate Guarantor shall stand superseded as a consequence of the initiation of the CIRP in relation to the Corporate Debtor in terms of the provisions of IBC, 2016.

37. The Financial Creditor is directed to pay a sum of **Rs. 3,00,000/- (Rupees Three Lakhs Only)** to the Interim Resolution Professional to meet out the expenses and to perform the functions assigned to him in accordance to Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

38. As a consequence of the petition being **admitted** in terms of Section 9 of the Code, the moratorium as envisaged under the provisions of



Section 14(1) and as extracted hereunder shall follow in relation to the Corporate Debtor:

- a. The institution of suits or continuation of pending suits or proceedings against the respondent including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;
- b. Transferring, encumbering, alienating or disposing of by the respondent any of its assets or any legal right or beneficial interest therein;
- c. Any action to foreclose, recover or enforce any security interest created by the respondent in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;
- d. The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the respondent.

Explanation.-For the purposes of this sub-section, it is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a licence, permit, registration, quota, concession, clearance or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any



other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license or a similar grant or right during moratorium period;

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

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

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

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



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

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

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

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

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

41. Based on the above terms, the petition stands **admitted** in terms of Section 9 of IBC, 2016 and the moratorium shall come in to effect as of this date. A copy of the order be communicated to the Financial Creditor as well as to the Corporate Debtor above named by the Registry. In addition, a copy of the order be also forwarded to IBBI for its records. Further, the



Interim Resolution Professional above named who is figuring in the list of Resolution Professionals forwarded by IBBI be also furnished with copy of this Order forthwith by the Registry, who will also communicate the initiation of the CIRP in relation to the Corporate Debtor to the Registrar of Companies concerned.

-Sd-

VENKATARAMAN SUBRAMANIAM
MEMBER (TECHNICAL)

-Sd-

SANJIV JAIN
MEMBER (JUDICIAL)