

S.No.3

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH – II
VC AND PHYSICAL (HYBRID) MODE
ATTENDANCE CUM ORDER SHEET OF THE HEARING HELD ON
14.05.2026 AT 10:30 A.M.**

CP (IB) No.92/9/HDB/2024
U/s 9 of IBC

IN THE MATTER OF:

G.S.B and Co. LL.P

...Petitioner

AND

S.P.Y. Agro Industries Ltd

...Respondent

C O R A M:-

**SHRI. RAJEEV BHARDWAJ, HON'BLE MEMBER (JUDICIAL)
SHRI. SANJAY PURI, HON'BLE MEMBER (TECHNICAL)**

ORDER

Orders pronounced, recorded vide separate sheets. In the result, this Petition is dismissed.

Sd/-
MEMBER (T)

Sd/-
MEMBER (J)

IN THE NATIONAL COMPANY LAW TRIBUNAL

HYDERABAD BENCH – II

(Under Section 9 of Insolvency and Bankruptcy Code 2016, read with Rule 6 of Insolvency and Bankruptcy (Application to Adjudication Authority Rules, 2016)

IN THE MATTER OF M/s S.P.Y. AGRO INDUSTRIES LIMITED.

CP (IB) No.92/09/HDB/2024

BETWEEN:

M/s. G.S.B. & Co. LLP,
8-2-602/1/C, Flat No. 111, "Hanging Gardens",
Road No. 10, Banjara Hills,
Hyderabad – 500034.
Represented by its Authorised Signatory,
Mr. Shailender Singh Bagga.

...Petitioner/Operational Creditor

AND

M/s. S.P.Y. Agro Industries Limited,
8-3-833/188, Plot No. 188,
1st Floor, Phase-II, Kamalapuri Colony,
Hyderabad – 500034.

.... Respondent/Corporate Debtor

Date of Order: 14.05.2026

CORAM:

Sri Rajeev Bhardwaj, Hon'ble Member (Judicial)

Sri Sanjay Puri, Hon'ble Member (Technical)

COUNSELS PRESENT:

For the Applicant : Dr. S.V. Rama Krishna, Ld. Counsel

For the Respondent : Mr. D. Gopala Krishna, along with Ms. D. Sri Devi,
Ld.Counsels.

1. The present application is filed by the Applicant, **M/s. G.S.B. & Co. LLP** (“Operational Creditor”), against the Respondent, **M/s. S.P.Y. Agro Industries Limited** (hereinafter referred to as the “Corporate Debtor”), under Section 9 of the IBC¹, seeking initiation of the CIRP² against the Corporate Debtor, for the non-payment of an amount of Rs. 31,28,60,549 as operational dues payable to the Operational Creditor.

THE APPLICATION

2. The Applicant submits that the Operational Creditor, M/s. G.S.B & Co. LLP is engaged in the business of manufacturing alcohol and allied products, and the Corporate Debtor, M/s. S.P.Y. Agro Industries Limited is engaged in the manufacture and supply of grain-based Extra Neutral Alcohol (ENA) and other by-products. It is further submitted that the parties entered into a series of Memoranda of Understanding (MOUs) during the period from 22.06.2015 to 18.04.2018 for the supply of ENA on agreed terms and conditions, including stipulations relating to quantity and penalties. It is submitted that the said MOUs were renewed from time to time to meet State requirements, and the transactions between the parties were continuous in nature and maintained as a running account.
3. The Applicant submits that copies of the MOUs forming part of the Form-3 Notice dated 25.05.2023 were sent to the Corporate Debtor and remained unresponded to. Thus, there is no dispute regarding the contents of the said statutory notice. It is further submitted that, as security for payment under the MOUs, the Corporate Debtor issued certain cheques duly signed by its authorized signatory, which, upon deposit, were dishonoured for the reasons “Account Closed” and “Insufficient Funds,” without any dispute at the time as to the signatures. It is further submitted that upon failure to supply the agreed quantities as per the MOUs, the Operational Creditor issued legal notices dated 14.02.2023 and 04.03.2023, to which the Corporate Debtor sent reply

¹ Insolvency and Bankruptcy Code, 2016.

² Corporate Insolvency Resolution Process.

notices wherein, for the first time, it denied the signatures of its authorized signatory on the said cheques.

4. The Applicant submits that vide orders dated 12.12.2022, this tribunal disposed of a previous case, i.e., CP(IB) No.102/09/HDB/2020 between the same Parties. It is further submitted that the same is not a bar to file the present case, as the earlier case pertains only to the refund of Rs. 3.00 crore given as advance, whereas the present case deals with the penalties due to default committed by the Corporate Debtor and agreed to be paid in terms of various MOUs.
5. The Applicant submits that the above-mentioned orders dated 12.12.2022 were challenged before the National Company Law Appellate Tribunal, Chennai Bench. However, as the earlier petition did not fully cover the entire claim and there was some delay in the appeal, the Operational Creditor/Appellant withdrew the appeal. The Hon'ble Tribunal, vide order dated 16.02.2024, allowed withdrawal of Company Appeal (AT) (CH) (Ins) No. 33/2024. It is further submitted that there is no embargo or res judicata, as the present petition covers the entire operational debt.
6. The Applicant submits that the Operational Creditor registered on 30.12.2023 with Information Utility (NeSL) the record of default committed by the Corporate Debtor in respect of Rs. 31,28,60,549/- as due as on 17.02.2023. It is further submitted that the same is not hit by limitation as the account is like a running account due to a series of MOUs entered into between the parties.
7. The Applicant submits that the Corporate Debtor has failed to pay Rs. 31,28,60,549/- as on 17.02.2023, being the date of dishonor of cheques. It is further submitted that the said amount, along with future interest/premium, is due, and hence the present application has been filed under Section 9 of IBC, 2016.

THE COUNTER

8. The Respondent submits that the averment of the Applicant that the Corporate Debtor has not responded to the Form-III Demand Notice dated 25.05.2023 and that there is no dispute is denied as false. It is further stated that the Form-III Demand Notice mentions the address of the Applicant as G.S.B. & Co., LLP, 8-2-602/C/111, Hanging Gardens, Road No.10, Banjara Hills, Hyderabad-500034, and the Respondent issued a reply to the said address on 04.06.2023, which was sent by Speed Post on 05.06.2023. The said postal article was returned with endorsements “addressee absent” dated 06.06.2023 and “insufficient address” dated 07.06.2023. It is therefore submitted that the assertion that no reply was issued or that no dispute was raised is incorrect. It is further stated that a dispute existed before the issuance of the Demand Notice.
9. The Respondent submits that, by the reply legal notice dated 26.02.2023 issued by the Respondent to the legal notice dated 14.02.2023 issued by the Petitioner, the Respondent denied liability, disputed the claim, and denied issuance of cheques dated 05.01.2023, stating that the cheques are fabricated, concocted, and created with an ulterior motive. It is further stated that in reply dated 11.03.2023 issued by the Respondent to the legal notice dated 04.03.2023 issued by the Petitioner, the Respondent denied liability and questioned the validity of the MOUs and cheques. It is further stated that the MOUs and cheques referred to in the legal notice dated 14.02.2023 issued by the Petitioner surfaced only after dismissal of CP (IB) No.102/9/HDB/2020 on 12.12.2022, i.e., within 25 days. Therefore, a clear pre-existing dispute existed before the Form-III Demand Notice dated 25.05.2023.
10. The Respondent submits that the averment in para 4 that this Respondent issued certain cheques as security under the alleged MOUs, duly signed by the authorized signatory with an understanding to put dates later, is false and contrary to the legal notice dated 14.02.2023 issued by the Operational Creditor, wherein it is stated that after regular persuasions and frequent reminders, the Corporate Debtor issued cheques amounting

to Rs. 12 Crores towards part refund of the dues. It is further stated that the said notice relies on four cheques dated 05.01.2023, whereas the present application relies on five cheques stated to have been issued with blank dates at the time of the MOUs, thereby showing inconsistent and self-contradictory stands.

11. The Respondent submits that cheque No. 001253, cheque No. 001753, and cheque No. 001276 dated 05.01.2023 are stated to bear the signature of Sri S.P.Y. Reddy, who had expired on 30.04.2019. It is further stated that cheque No. 096253 and cheque No. 006823 dated 05.01.2023 are stated to bear the signature of Sri S. Sridhar Reddy, who was not a director as on 05.01.2023. Therefore, issuance of such cheques on 05.01.2023 is not possible in law or on facts, showing mischief by use of blank cheques.
12. The Respondent submits that the alleged MOUs dated 22.06.2015, 24.06.2015, 30.06.2015, 07.11.2015, 15.07.2016, 16.07.2016, 16.12.2016, 04.07.2017, and 18.04.2018 are misconstrued. It is further stated that the contention regarding penalties, non-supplies, and deficient supplies is false and a created story, with no omissions or commissions on the part of the Corporate Debtor.
13. The Respondent submits that no documentary evidence has been placed regarding advance payments under the said MOUs. It is further stated that no demand was made by the Petitioner in respect of the alleged debt before the notices dated 14.02.2023, 04.03.2023, and the Form-3 Demand Notice dated 25.05.2023, despite the MOUs being entered into during 2015, 2016, 2017, and 2018. It is further stated that for a period of more than 5 to 8 years, no allegation of non-supply or deficient supply was raised, showing that the claim is an afterthought.
14. The Respondent submits that in CP (IB) No.102/9/HDB/2020, there was no reference whatsoever to the subject matter MOUs and no whisper about non-supply or deficient supply, which shows suppression of facts. It is further stated that the present application pertains to advanced amounts and penalty charges not claimed earlier, demonstrating that the present

claim is a fresh and afterthought claim arising from the same alleged transactions. It is further stated that the said notices were issued only after the dismissal of CP (IB) No.102/9/HDB/2020 on 12.12.2022. It is further stated that the petitioner, while withdrawing the appeal, has not taken permission/leave from the Hon'ble NCLAT to file the present application. It is further stated that the filing of the present application on 19.04.2024, within a few months from dismissal of the appeal as withdrawn, reflects a vengeance attitude, malicious intention, and misuse of the IBC, amounting to abuse of process.

15. The Respondent submits that the ledger extracts filed by the petitioner from pages 121 to 135 and 145 to 146 relate to the period 01.04.2014 to 31.03.2023 and were never placed before the Respondent at any point in time. It is further stated that the journal vouchers from pages 136 to 144 relating to interest receivable are not acknowledged by the Respondent, were never provided earlier, and are created only for the present petition.
16. The Respondent submits that the synopsis at para 7 of the application itself shows that the present case is filed for penalties, whereas Form V relates to various cheques and MOUs not relating to those covered under CP (IB) No.102/9/HDB/2020. It is further stated that the ledger accounts at pages 121 to 134 and 145 to 146 pertain only to the Operational Creditor and cannot be treated as a running account as most entries are journal postings from 2016 with no transactions between the parties, appear to have been made with an ulterior motive, and are not supported by any reconciliation of accounts between the Operational Creditor and the Corporate Debtor, and therefore do not establish any operational debt.
17. The Respondent submits that as per the MOU dated 22.06.2015, the Operational Creditor alleged payment of Rs. 2 Crores through RTGS, whereas the bank statement reflects only Rs. 1 Crore, thereby rendering the claim false. It is further stated that the alleged cheque No.001253 does not support the terms of the said MOU. It is further stated that in respect of cheque No.001753 under MOU dated 04.07.2017 and cheque No.001276 under MOU dated 16.12.2016, the alleged payments of Rs. 3

Crores each are denied, and the bank statement at page 23 does not support such payments, with no evidence placed. It is further stated that in respect of cheque Nos. 006823 and 096253, no MOUs or proof of consideration are placed, and the bank statement does not support any payments. It is further stated that the MOU dated 18.04.2018 and cheque No.096257 form part of earlier proceedings already dismissed, and that no default was committed, and that the statements relied upon are fabricated, thereby showing repetition of claims already adjudicated.

18. The Respondent submits that the present petition relates to non-supplies/deficient supplies and penalties under MOUs not claimed earlier and is filed with suppression of facts and fraudulent and malicious intentions. It is further stated that proceedings before NCLT relate to CIRP and not recovery, and that the claim is not an operational debt under Section 5(21) of the IBC and any claim for damages lies before the Civil Court. It is further stated that the claim based on the MOUs of 2015–2018 is barred by limitation and that the liability is disputed.
19. The Respondent submits that it is a running company employing more than 5,000 workers, having a turnover exceeding Rs. 700 crores, and paying taxes to the Government. It is further stated that the present application is filed only to exert undue pressure, to harass the Respondent, and by misusing the provisions of the IBC, and therefore is liable to be dismissed with costs.

WRITTEN SUBMISSIONS OF THE APPLICANT

20. The facts, averments, and submissions set out in the Application are reiterated herein in the present written submissions and are not reproduced herein to avoid repetition.

WRITTEN SUBMISSIONS OF THE RESPONDENT

21. The facts, averments, and submissions set out in the Counter are reiterated herein in the present written submissions and are not reproduced herein to avoid repetition.

FINDINGS & DECISION

22. We have heard the Learned Counsel for the Operational Creditor and the Learned Counsel for the Corporate Debtor at length and have carefully perused the pleadings and material placed on record. Upon perusal of the material on record, it is observed that the Operational Creditor, M/s. G.S.B & Co. LLP is engaged in the manufacture of alcohol and allied products, whereas the Corporate Debtor, M/s. S.P.Y. Agro Industries Limited is engaged in the manufacture and supply of grain-based Extra Neutral Alcohol (ENA) and allied by-products.
23. The record further reflects that the commercial relationship between the parties was governed by a series of Memoranda of Understanding executed between 22.06.2015 and 18.04.2018. Upon perusal of the said MOUs, it is observed that the same governed the supply of ENA on agreed commercial terms, including quantity, advance payment obligations, and the consequences arising from non-supply or deficient supply. Clause 5 of the MOUs dated 22.06.2015, 24.06.2015, 30.06.2015, 15.07.2016, 16.07.2016, 16.12.2016, 04.07.2017, and 18.04.2018, along with Clause 4 of the MOU dated 07.11.2015, stipulate that the Operational Creditor was required to remit advance amounts and that, in the event of failure to supply the agreed quantities, the Corporate Debtor would be liable to refund such advances together with the stipulated penalty.
24. Upon further examination of the record, it is observed that the Operational Creditor, in Part IV of the application, has claimed an amount of Rs. 31,28,60,549/-, comprising the alleged principal liability together with penalties and interest arising out of the various MOUs executed between the parties. The date of default has been stated as 17.02.2023, being the date of dishonour of the cheques relied upon by the Operational Creditor. It is the case of the Operational Creditor that the said cheques constitute evidence of default and acknowledgment of a subsisting liability and are, therefore, relied upon to establish the occurrence of default as well as to support the plea of limitation under the provisions of the IBC.

25. However, the manner in which the said cheques have been relied upon by the Operational Creditor is itself inconsistent. From the legal notice dated 14.02.2023, it is observed that the Operational Creditor stated that, upon regular persuasion and constant demand, the Corporate Debtor issued cheques in January 2023 towards part payment of the alleged outstanding dues, with an assurance that the same would be honoured upon presentation. The said stand was reiterated in the notice dated 04.03.2023.
26. In contrast, in the present proceedings, the very same cheques have been characterised as undated security instruments allegedly issued at the time of execution of the MOUs between 2015 and 2018. Thus, the foundational basis regarding the nature and timing of the cheques materially varies, without any coherent explanation reconciling the two versions.
27. Upon consideration of the material on record, it is observed that the reliance placed by the Operational Creditor on the aforesaid cheques has been specifically disputed by the Corporate Debtor, which contends that the said cheques neither constitute a valid acknowledgment of liability nor establish any legally enforceable debt. It is further contended that the issuance, execution, and authenticity of the said cheques are themselves disputed. In particular, certain cheques dated 05.01.2023 are stated to bear the signature of late Sri S.P.Y. Reddy, who expired on 30.04.2019, while other cheques are stated to bear the signature of Sri S. Sridhar Reddy, who was not a Director of the Corporate Debtor on the relevant date. These objections, prima facie, raise substantial disputed questions of fact relating to the authority, execution, and genuineness of the instruments relied upon by the Operational Creditor.
28. It is significant to note that, before the issuance of the statutory demand notice dated 25.05.2023, the parties had already exchanged detailed legal correspondence reflecting clear and contemporaneous disputes between them. The Operational Creditor issued a legal notice dated 14.02.2023, to which the Corporate Debtor replied on 26.02.2023, wherein the liability was categorically denied, and the execution as well as enforceability of the

Memoranda of Understanding were specifically disputed

29. In the said reply, the Corporate Debtor also referred to the pendency of proceedings under Section 138 of the Negotiable Instruments Act, 1881, before the VI Metropolitan Magistrate, Hyderabad, in STC (NI Act) No. 5580 of 2022. Thereafter, the Operational Creditor issued another legal notice dated 04.03.2023, to which the Corporate Debtor replied on 11.03.2023, reiterating its denial of liability and specifically questioning the validity of the alleged cheques as well as the underlying transactions. Thus, the exchange of legal notices and replies before the issuance of the statutory demand notice clearly demonstrates that disputes between the parties had arisen long before the initiation of the present proceedings.
30. In the considered view of this Adjudicating Authority, the stand of the Operational Creditor regarding the cheques is inconsistent, as the same are projected as instruments issued in January 2023 towards discharge of an existing liability, while simultaneously being described as security cheques issued earlier in connection with the MOUs, without any cogent explanation reconciling the said positions. Further, the Corporate Debtor has raised substantive disputes concerning the execution, authority, and authenticity of the cheques and has also referred to the pendency of proceedings under Section 138 of the Negotiable Instruments Act, 1881, in STC (NI Act) No. 5580 of 2022 before the VI Metropolitan Magistrate, Hyderabad. These issues are neither trivial nor illusory, but go to the root of the matter and cannot be adjudicated in summary proceedings under Section 9 of the IBC.
31. A further issue arises with respect to limitation. It is not in dispute that the claim of the Operational Creditor arises out of various Memoranda of Understanding executed between the parties during the period from 22.06.2015 to 18.04.2018. However, no material has been placed on record to demonstrate any continuous transactions or subsisting contractual performance between the parties beyond the said period.

32. The Operational Creditor has sought to contend that the account between the parties is like a running account and that the date of default is 17.02.2023, being the date of dishonour of certain cheques. This contention does not merit acceptance, as the material on record does not substantiate the existence of a running and mutual account. The ledger extracts relied upon appear to be unilateral entries, unsupported by any acknowledgment, confirmation, or reconciliation by the Corporate Debtor. In the absence of reciprocal and continuous dealings, the plea of a running account cannot be sustained.
33. Further, no acknowledgment of liability, as contemplated under Section 18 of the Limitation Act, 1963, has been brought on record within the prescribed limitation period of three years from the last of the alleged transactions under the MOUs. There is no document evidencing any acknowledgment of debt by the Corporate Debtor within the said period. The reliance placed on the alleged dishonour of cheques in February 2023 to shift the date of default is misconceived, as such subsequent events cannot revive or extend limitation in the absence of a legally enforceable and subsisting debt. This is particularly relevant in the present case, as the issuance and authenticity of the cheques are themselves in dispute. Therefore, the said cheques cannot be relied upon to extend the limitation or cure the delay in filing the claim.
34. Upon consideration of the material on record, we find that the claim of the Operational Creditor, arising from MOUs executed during 2015–2018, lacks a consistent and credible factual foundation. The reliance placed on the cheques is materially inconsistent, as their issuance, execution, and authenticity are seriously disputed, giving rise to substantial questions of fact. The exchange of legal notices before the statutory demand notice, coupled with the pendency of proceedings under Section 138 of the Negotiable Instruments Act, 1881, clearly indicates the existence of pre-existing disputes. Further, the ledger extracts and journal entries relied upon are unilateral in nature and fail to establish any mutually acknowledged liability or running account between the parties. No

material evidence of acknowledgment within the limitation has been produced, and the dishonour of cheques in 2023 cannot revive a time-barred claim.

35. It is well settled that proceedings under the IBC are not intended to be used as a substitute for a recovery mechanism or as a tool for recovery of disputed claims. The Applicant had earlier filed CP (IB) No. 102/9/HDB/2020 against the same Respondent, arising out of the same business transactions, which this Tribunal dismissed vide order dated 12.12.2022. Despite the said dismissal, the present application has been filed again on the same business transactions with a different claim amount and a different basis for the claim. Such repeated filings clearly show that the Applicant is endeavouring to use the Code as a recovery tool rather than for bona fide insolvency resolution. The present proceedings are therefore not maintainable in law.
36. In view of the aforesaid, we find that the disputes raised by the Corporate Debtor are not illusory or moonshine, but raise substantial questions regarding liability, validity of the underlying transactions, and authenticity of the cheques. Applying the principles laid down by the Hon'ble Supreme Court in *Mobilox Innovations Pvt. Ltd. v. Kirusa Software Pvt. Ltd*³, it is evident that there exists a pre-existing dispute between the parties before issuance of the statutory demand notice, which requires further investigation and cannot be adjudicated in summary proceedings under Section 9 of the Insolvency and Bankruptcy Code, 2016.

Consequently, the application is **dismissed**.

Sd/-

SANJAY PURI
MEMBER (TECHNICAL)

Sd/-

RAJEEV BHARDWAJ
MEMBER (JUDICIAL)