IN THE NATIONAL COMPANY LAW TRIBUNAL, BENGALURU BENCH
[Through Physical hearing/ VC Mode (Hybrid)]

ITEM No.04
I.A (IBC) 1075/2025 in
C.P. (IB) No.194/BB/2025

IN THE MATTER OF:

Uttam Industrial Engineering Pvt Ltd	...	Petitioner
Vs		
Shree Basaveshwar Sugars Ltd	...	Respondent

Petition under Section 9 of I & B Code, 2016

Order delivered on: 03.06.2026

CORAM:

SHRI SUNIL KUMAR AGGARWAL
HON'BLE MEMBER (JUDICIAL)

SHRI RADHAKRISHNA SREEPADA
HON'BLE MEMBER (TECHNICAL)

COUNSELS PRESENT:

For the Petitioner/Respondent in I.A	:	Shri Shrikar Jayagovind
For Respondent/Applicant in I.A	:	Mr. Shyam Sundar
		Ms. Abhikrishna Lal

ORDER

I.A (IBC) No.1075/2025 is allowed vide separate order

C.P. (IB) No.194/BB/2025:

This petition was filed by the Operational Creditor to initiate CIRP against the Corporate Debtor. However, in view of the order passed in I.A (IBC) No.1075/2025, there exists Pre- Existing Dispute between the parties and **consequently the C.P is dismissed**. However, the Operational Creditor is given liberty to approach this Tribunal if needed in accordance with Law.

File be consigned to records.

-Sd-	**-Sd-**
RADHAKRISHNA SREEPADA	**SUNIL KUMAR AGGARWAL**
MEMBER (TECHNICAL)	**MEMBER (JUDICIAL)**

IN THE NATIONAL COMPANY LAW TRIBUNAL, BENGALURU BENCH
(Hybrid Mode)

I.A. No. 1075 of 2025
in
C.P. (IB) No. 194/BB/2025

(Rule 11 of the NCLT Rules, 2016, read with Section 379 and Section 215(1)(b)(i) of the Bharatiya Nagarik Suraksha Sanhita, 2023 and Sections 65(1) and 76 of the Insolvency and Bankruptcy Code, 2016)

IN THE MATTER OF :
M/S. Shree Basaveshwar Sugars Limited

...Applicant/ Corporate Debtor

Versus

Uttam Industrial Engineering Private Limited

...Respondent/Operational Creditor

IN THE MAIN MATTER OF:

Uttam Industrial Engineering Private Limited

7-C, First Floor, 'J" Block
Shopping Centre Saket,
New Delhi— 110 017 ... Petitioner/Operational Creditor

Versus

M/s. Shree Basaveshwar Sugars Limited

No.6, Mallikarjun Badavane,
Managuli Road, Ganesh Nagar,
Bijapur, Karnataka — 586109 ... Respondent/Corporate Debtor

Order delivered on: 03.06.2026

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

COUNSELS

For the Petitioner/Respondent in I.A: Shri Shrikar Jayagovind
For Respondent/Applicant in I.A : Mr. Shyam Sundar
Ms. Abhikrishna Lal

O R D E R

1. This Application has been filed under Rule 11 of the NCLT Rules, 2016, read with Section 379 and Section 215(1)(b)(i) of the Bharatiya Nagarik Suraksha Sanhita, 2023 and Sections 65(1) and 76 of the Insolvency and Bankruptcy Code, 2016, by the Applicant/Corporate Debtor on 27.11.2025 through its Director Mr. E. Dhayalan, who has been authorized in this behalf by Board Resolution dated 11.04.2025, with following prayers:
   a. *Conduct a preliminary inquiry under Section 379 of BNSS in respect of the Affidavit under Section 9(3)(b) submitted in C.P (IB) No. 194 OF 2025 and record a finding to that effect;*
   b. *Dismiss the present CP (IB) No. 194 of 2025 as being fraudulent, malicious, and an abuse of process under Section 65(1) of the IBC;*
   c. *Impose upon the Respondent appropriate penalty as prescribed under Section 65(1) and Section 76 of the Code for fraudulently initiating the proceedings with malicious intent for purposes other than the resolution of insolvency;*
   d. *Pass any other order(s) as this Hon'ble Tribunal may deem fit and proper in the interest of justice.*
2. **Submissions of the Applicant:**

i. The Applicant has filed Insolvency Petition for an alleged operational debt of INR 10,70,18,407/- (Rupees Ten Crore Seventy Lakhs Eighteen Thousand Four Hundred and Seven only). The principal allegation of the Applicant is that the Operational Creditor has filed a false affidavit under Section 9(3)(b) of the Code by suppressing the pre-existing dispute and thereby maliciously initiated CIRP proceedings against the Corporate Debtor.

ii. The operational debt arises out of an Arbitral Award dated 03.08.2019 directing the Corporate Debtor to pay a sum of ₹4,43,55,687/- together with interest at 12% per annum and costs of ₹6,00,000/-. The challenge to the Award under Section 34 of the Arbitration and Conciliation Act, 1996 was dismissed by the Hon'ble High Court of Madras on 30.06.2021 and the appeal under Section 37 was dismissed on 28.10.2024. Thereafter, the Corporate Debtor had preferred Special Leave Petition before the Hon'ble Supreme Court on 28.11.2024.

iii. According to the Applicant, despite the pendency of the aforesaid Special Leave Petition, the Operational Creditor issued a demand notice dated 10.12.2024 under Section 8 of the Code. The Corporate Debtor, by reply dated 30.12.2024, informed the Operational Creditor about the pendency of the Special Leave Petition and contended that the same constituted a pre-existing dispute. However, notwithstanding receipt of the reply, the Operational Creditor filed the Section 9 Petition on 22.01.2025 and simultaneously filed an affidavit under Section 9(3)(b) of the Code stating that no notice of dispute had been received from the Corporate Debtor.

iv. The affidavit dated 22.01.2025 of Mr. H.N. Tyagi filed under Section 9(3)(b) that no record of dispute was raised in the reply notice issued by the Applicant, is false and misleading inasmuch as the Operational Creditor was fully aware of the pendency of the Special Leave Petition and the objections raised in the reply notice dated 30.12.2024.

v. The act of suppressing the existence of a pending dispute and solemnly swearing to the falsity thereof in the Affidavit under oath, for the purpose of enabling the filing of the present Petition, amounts to perjury perpetrated by the Respondent and renders the entire proceeding *non-est* and illegal.

vi. It is submitted that suppression of these facts amounts to perjury, renders the Section 9 Petition non-maintainable, and constitutes malicious initiation of proceedings attracting Sections 65 and 76 of the Code.

vii. Further in paragraph 14 of the Rejoinder filed by the Operational Creditor in the main Company Petition, it is stated that the reply notice dated 30.12.2024 merely referred to the filing of Special Leave Petition and did not disclose any dispute contemplated under Section 8(2)(a) of the Code. Such stand of OC demonstrates that it was aware of the pendency of the Special Leave Petition yet chose to file an affidavit under Section 9(3)(b), justifying initiation of proceedings for perjury and imposition of penalties under Sections 65 and 76 of the Code.

3. **<u>Objections of the respondent/OC</u>**:

a. While opposing the Application and seeking its dismissal, it is contended that the Application is legally untenable, procedurally impermissible and a clear abuse of the process of law. The Application has been filed only as a desperate attempt to derail adjudication of the Section 9 Petition by portraying a legitimate legal position as an act of perjury. It suffers from gross delay, having been filed only after the main Company Petition has been extensively heard and reserved for orders and therefore, constitutes an attempt to re-litigate issues already canvassed in the main petition and liable to be rejected at the threshold.

b. No case for initiation of perjury proceedings is made out. The allegation of perjury proceeds on the erroneous assumption that the affidavit filed under Section 9(3)(b) of the Insolvency and Bankruptcy Code, 2016 contained a false statement. In fact, it was sworn on the basis of a bona fide and legally sustainable understanding of the law and there was neither any suppression of material facts nor any deliberate attempt to mislead this Adjudicating Authority. Offence of perjury requires proof of a wilful and intentional falsehood under oath and cannot be founded merely upon a difference in legal interpretation or because one party disagrees with the legal position adopted by the other.

c. The Corporate Debtor has incorrectly equated the filing of a Special Leave Petition with the existence of a pre-existing dispute under Sections 8 and 9 of the Code. A Special Leave Petition under Article 136 of the Constitution is not an appeal as of right but only a request seeking leave to appeal. Unless leave is granted, appellate proceedings do not commence. The mere filing of an SLP neither operates as a stay of the impugned judgment nor revives issues that have already attained finality before the courts below.

d. The arbitral award dated 03.08.2019 had been upheld by the Hon'ble High Court of Judicature at Madras in proceedings under Section 34 of the Arbitration and Conciliation Act, 1996 by an order dated 30.06.2021 and thereafter in appeal under Section 37 by an order dated 28.10.2024. It is submitted that at the time of filing the Section 9 Petition, the purported SLP was only at the diary stage and had neither been admitted nor accompanied by any interim order staying the operation of the judgment under Section 37. In such circumstances, the debt stood crystallized and had attained finality and therefore, no genuine or subsisting dispute existed in relation to the operational debt.

e. The legal position adopted by it is supported by the judgment of the Hon'ble Supreme Court in ***K. Kishan v. Vijay Nirman Company Pvt. Ltd.***, wherein it was held that pendency of proceedings challenging an arbitral award may constitute a dispute; however, once such challenge stand dismissed, the award attains finality and the debt becomes undisputed. According to the Operational Creditor, after the dismissal of proceedings under Sections 34 and 37 of the Arbitration and Conciliation Act, the debt stood conclusively determined and filing of an unadmitted SLP could not revive or create a dispute for the purposes of the Code.

f. Moreover, the present Application is a collateral attack on the maintainability of the Section 9 Petition and forms part of a continuing effort by the Corporate Debtor to delay the insolvency proceedings after unsuccessfully challenging the arbitral award before various judicial forums. Having failed in its challenges to the award and obtained no interim protection from the Hon'ble Supreme Court, the Corporate Debtor has now attempted to invoke the jurisdiction of this Adjudicating Authority under the guise of perjury proceedings. According to the Operational Creditor, perjury proceedings cannot be used as a substitute for appellate remedies or as a mechanism to re-open issues already concluded.

g. On the aforesaid grounds, the Operational Creditor submits that the present Application does not satisfy the threshold required for initiation of perjury proceedings and is liable to be dismissed with exemplary costs.

4. **<u>Rejoinder by Applicant</u>:** The Applicant/CD has filed a rejoinder controverting the objections raised by the Respondent and contended that:

a. The Applicant reiterates that the Respondent has not disputed its knowledge of the pendency of the Special Leave Petition at the time of issuing the demand notice, receiving the reply notice, and filing the Section 9 Petition along with the affidavit under Section 9(3)(b) of the Code. According to the Applicant, the Respondent's defence is not a denial of the facts but merely an attempt to justify the non-disclosure by characterising it as a legal interpretation or litigation strategy.

b. The essential ingredients of perjury stand satisfied since the Respondent has filed an affidavit stating that no dispute existed despite being aware of the pending SLP. The false statement pertained to a material fact having a direct bearing on the maintainability of the Section 9 Petition and was made with an intention to secure a favourable order from this Authority.

c. The pendency of the SLP is an objective fact and not a matter of legal interpretation. Even assuming that the Respondent believed the SLP did not amount to a pre-existing dispute, it was nevertheless under an obligation to disclose the pendency of such proceedings and allow the Adjudicating Authority to determine its legal effect. The Respondent could not unilaterally decide that the pending proceedings were irrelevant and omit them from disclosure.

d. The Applicant also disputes the Respondent's contention that the debt had crystallised upon dismissal of the proceedings under Sections 34 and 37 of the Arbitration and Conciliation Act. Irrespective of the Respondent's view regarding crystallisation of debt, the pendency of proceedings before the Hon'ble Supreme Court remained a material fact which ought to have been disclosed. The Applicant therefore maintains that the omission to disclose the SLP coupled with the positive assertion that no dispute existed amounts to suppression of material facts, fraud upon the Tribunal, abuse of process and perjury, warranting appropriate action and dismissal of the Section 9 Petition.

5. We have heard learned Counsels for the parties and carefully perused the pledings and documents on record.

6. **ANALYSIS:**

   The following factual position is not disputed by both the Parties.

   a. There was an agreement of Design and supply of Sugar mill equipment entered in to on 05.05.2011.
   b. On 26.12.2012, the Agreement was terminated by the Corporate Debtor. It was stated that an amount of Rs 11,80,000/- is payable to the Operational Creditor.
   c. The matter was taken up in arbitration and the Hon'ble Arbitral Tribunal passed the Award under the Arbitration and Conciliation Act,1996 on 03.08.2019 determining Rs 4,43,55,687/- as payable and Interest @12% p.a. on this amount from March 2013 till the date of filing claim statement and thereafter from the date of the Award till the final Payment.
   d. The Arbitral Award was Challenged under Section 34 before the Hon'ble High Court of Madras in O P no 39 of 2020. This came to be dismissed on 30.06.2021.
   e. It was further challenged in OSA (CAD) no 45/2022 under section 37 and this appeal came to be dismissed on 28.10.2024.
   f. At this stage Demand notice in Form 3 dated 10.12.2024 was sent by the Operational Creditor.
   g. In Response, the Corporate Debtor by Letter dated 30.12.2024 stated that
      i. The Demand notice is received on 23.12.2024

ii. An SLP is filed before Hon'ble Supreme court in Diary no 55565/2024 on 28.11.2024 against the Order of Hon'ble High Court of Madras.

iii. Hence, the Claim is still under dispute and has not attained finality.

h. The Operational Creditor filed petition u/s 9 of IBC, 2016 on 28.01.2025.

i. When the IA was being heard, the Operational Creditor contended that

a. SLP did not lead to commencement of appeal proceedings.

b. Litigation strategy is not Perjury.

c. A mere inaccuracy or an error of Judgement does not amount to Perjury.

d. When a party adopts a bona-fide legal position, even if ultimately found to be incorrect, there can be no allegation of perjury.

j. After considering the arguments put forward and the decisions relied upon by the Corporate debtor in

a. **Ashok Kumar Agarwal Vs UOI and Others** (2013) 15 Supreme Court cases 539 Specifically para 11.

b. **Muthu Karuppan Vs Parithi Ilamvazhuthi and Another** (2011) 15 Supreme Court cases 496 Specifically para 15 and 16,

We are unable to agree with the arguments of Operational Creditor.

k. This being a Petition u/s 9 of the IBC, 2016 existence of Dispute is sufficient and it is not necessary for this authority to look into the merits of the issues of Dispute.

DECISION

7. Accordingly, the instant **I.A. No. 1075 of 2025** filed by the Applicant is **Allowed**. However, We, do not intend to initiate any action for the Perjury except to observe that this situation could have been avoided.

-Sd-	-Sd-
RADHAKRISHNA SREEPADA **MEMBER (TECHNICAL)**	**SUNIL KUMAR AGGARWAL** **MEMBER (JUDICIAL)**