NATIONAL COMPANY LAW TRIBUNAL
CUTTACK BENCH
CP(IB) No. 52/CB/2024

(An Application under Section 9 of the Insolvency and Bankruptcy Code,2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules,2016.)

In the matter of:

M/s VALIANCE ENGINEERS PRIVATE LIMITED
(Through its Director, Mr. Atul Dave),
Incorporated under the provisions of the Companies Act, 2013
Having its registered office at
6A/6, First Floor, Siri Fort Institutional Area,
August Kanti Marg, South Delhi, New Delhi- 110049
Email Id- dave@valiance.co.in or infor@valiance.co.in

.... **APPLICANT/OPERATIONAL CREDITOR**

Vs.

ATMASTCO LIMITED
Having its registered office at
157-158, Light Industrial Area,
Nandini Road, Opposite Karunna Hospital,
Durg, Bhilai, Chattisgarh-490026
Email Id- atmpl@atmastco.com or atmastco.group@gmail.com

.... **RESPONDENT/CORPORATE DEBTOR**

DATE OF PRONOUNCEMENT: 29.08.2025

CORAM: **DEEP CHANDRA JOSHI (MEMBER JUDICIAL)**
BANWARI LAL MEENA (MEMBER TECHNICAL)

APPEARANCE:

FOR APPLICANT: **MR. SIDHARTH KHATTAR, ADVOCATE**
MR. AKASH JAIN, ADVOCATE
MR. DIVIJ ANDLEY, ADVOCATE
FOR RESPONDENT: **MR Y VIJAY, ADVOCATE**
MR. ADISH GIRI

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ORDER

PER: DEEP CHANDRA JOSHI, M(J)

1. The present Application has been filed on 19.02.2024 by **Valiance Engineers Private Limited** (hereinafter referred as "**Applicant/Operational Creditor/OC**") seeking to initiate Corporate Insolvency Resolution Process (hereinafter referred to as "**CIRP**") against **Atmastco Limited** (hereinafter called "**the Respondent/Corporate Debtor/CD**") by invoking the provisions of Section 9 of the Insolvency and Bankruptcy Code,2016 (hereinafter called "**Code/IBC**") read with Rule 6 of Insolvency & Bankruptcy (Application to adjudicating Authority) Rules, 2016 for an Operational Debt of **Rs. 1,82,08,965/-** (Rupees One Crores Eighty Two Lakhs Eight Thousand Nine Hundred and Sixty-Five) and the Date of Default as stated in Part-IV of the application is 22.12.2023

BRIEF SUMMARY OF THE PLEADINGS:

2. The averments made by the Applicant in its application are summarized herein:

2.1 Tata Steel had awarded to Respondent a contract for 219.86 crores for execution of EPC work of Silico Manganese Plant at Ferroy Allow Plant, Joda, Orissa.

2.2 Respondent desired to engage a sub-contractor for Supply, Manufacturing, Deliver to Site, Erection of Technological Equipment & Structure of Balance of Plant (BOP) excluding the submerged are of furnace for 2x18.5 MVA High Carbon Silico Manganese 0.06 MTPA Capacity Plant for Tata Steel Limited, Ferro Alloy Plant, Joda (hereinafter referred to as '**Project**') and foe which both the parties entered a contract dated 01.09.2023.

2.3 Respondent illegally terminated the contract dated 01.09.2023 vide their Email dated 23.11.2023. After termination of the Contract, Applicant had raised an invoice dated 30.11.2023 of Rs. 4,76,60,469/- for the works done prior to termination of the Contract and as per the terms of the

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contract, all payment had to be made within 21 days of the date of submissions of Invoices and hence the invoice was due and payable on 21.12.2023. The Tax invoice issued by the CD stated that in case of default in payment an interest @18% will be payable by the respondent.

2.4 The invoice dated 30.11.2023 was acknowledged by the CD vide email dated 06.12.2023 and sought time to reconcile accounts on their end before making payment. The Applicant neither received any payment from the CD nor the CD raised any dispute in respect to the invoice raised by the applicant, hence the applicant sent a demand notice dated 05.03.2024 under Section 8 of IBC.

2.5 Pursuant to the Demand Notice dated 05.03.2024, Corporate Debtor and Operational Creditor had reconciled their accounts and had arrived at an amount of Rs. 4,02,63,139/- to be due from Corporate Debtor to Operational Creditor in terms of the Contract dated 01.09.2023 and Invoice dated 30.11.2023. The said fact was duly agreed upon in Settlement Agreement dated 09.04.2024.

2.6 After entering into the settlement agreement, the Corporate Debtor had paid an amount of Rs. 1,00,00,000/- on 12.04.2024 and a further sum of Rs. 25,00,000/- on 18.05.2024 but did not clear the whole amount, hence a second Demand Notice dated 27.05.2024 under Section 8 of IBC was sent by the applicant demanding a sum of Rs. 2,84,63,348/- consisting of principal amount of Rs. 2,77,63,139/- and interest of Rs. 7,00,209/- as on 26.05.2024.

2.7 Pursuant to receipt of the Second Demand Notice dated 27.05.2024 under Section 8 of IBC, the Corporate Debtor vide its email dated 06.06.2024, had acknowledged that a sum of Rs. 2,84,63,3480 is due to the Operational Creditor and out of the said amount Rs. 50,00,000/- will be paid on 06.06.2024 and a

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sum of Rs.2,34,63,348/- on 30.06.2024 but a sum of Rs. 50,00,000/- was paid by the applicant on 06.06.2024 and Rs. 50,00,000/- on 03.07.2024. Since the Corporate Debtor was not clearing the dues of the Operational Creditor, the Operation Creditor was constrained to send a Third demand notice on 24.07.2024 under Section 8 of IBC whereby it demanded a sum of Rs. 1,90,87,312/- consisting of principal amount of Rs. 1,77,63,139/- and interest of Rs.13,24,173/- as on 23.07.2024. Subsequently, the Corporate Debtor had released a further sum of Rs. 10,00,000/- on 05.08.2024 leaving a balance of Rs. 1,82,08,965/- consisting of Principle amount of Rs. 1,67,63,139/- and interest of Rs. 14,45,825/- calculated till 06.08.2024.

2.8 Hence a total debt due from Corporate Debtor to Operational Creditor is Rs. 1,82,08,965/- consisting of Principle of amount of Rs. 1,67,63,139/- being the amount of debt due against Invoice No. VEPL/OD/01/23-24 dated 30.11.2023 raised in terms of the contract dated 01.09.2023 and Rs. 14,45,825/- on account of interest on delayed payment for a period from 09.04.2024 to 06.08.2024 @ 18% per annum and no disputes whatsoever has been raised by the Corporate Debtor regarding the outstanding due.

3. The Corporate Debtor/ Respondent made the following contentions in its reply:

3.1 Respondent was engaged by Tata Steel Ltd. for execution of EPC work of Silico Manganese Plant at Ferroy Alloy Plant, Joda Orissa on 09.01.2023 was to be completed in a time bound manner i.e. before 08.05.2024 and in pursuance of that the Respondent entered a contract with the Applicant on 01.09.2023 but the Applicant did not make payment to their vendors which culminated in delay of the project. Therefore, Tata Steel Ltd expressed its displeasure with the Respondent for

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the delay being caused in the contract work and ultimately causing the project go beyond schedule. The Respondent had made every effort to impress upon the Applicant to make payment to vendors to avoid delay and expedite the work, but to no avail and, therefore, the Respondent had to terminate the contract on 23.11.2023.

3.2 The Applicant has served three demand notices i.e. on 05.03.2024, 27.05.2024 and 24.07.2024 under section 8 of IBC and issuance of notice under Section 9 of IBC intermittently and multiple times to Corporate Debtor is bad in law in light of the judgement in ***M/s Ultratech Cement Ltd. Vs M/s Universal Journeys (India) Pvt. Ltd. & Ors. CP (IB) 1027/ND/2020 dated 01.08.2023 by NCLT New Delhi Bench.***

3.3 The first notice by Operational Creditor dated 05.03.2024 demanded an amount of Rs. 4,94,09,078/- consisting of principal amount of Rs. 4,76,69,469/- and interest of Rs. 17,39,609/- although no provision for interest was made in the agreement. The claimed amount was subsequently revised to Rs.382,63,139/-after reconciliation of accounts by Operational Creditor with the respondent. Subsequently, a Settlement Agreement was entered into on 09.04.2024 between the Applicant and the Respondent, whereby the outstanding amount was reduced to Rs. 3,82,63,139/- and this revision and settlement ipso facto indicates a pre-existing dispute.

3.4 Once the Settlement agreement was drawn and the claim amount has been reduced from Rs. 4,76,69,469/- to Rs. 382,63,139/-, the Operational Creditor ought to have issued a credit note for the difference amount or revise / amend the invoice accordingly to claim a definite and crystallized, but the applicant has failed to do so and as per ***Neeraj Jain vs. Cloudwalker Streaming Technologies Private Limited and Another [2020 SCC Online NCLAT 445]*** filing of invoices is *sine*

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qua non for section 9 applications pertaining to transactions where invoice is generated as part of the transaction.

3.5 There is a pre-existing dispute between the parties as is evident from the Emails exchanged with the Applicant on various dates corroborate the fact that due to the existing dispute and non-adherence to the timelines of the contract dated 01.09.2023 by the Applicant, the Respondent had to terminate the contract on 23.11.2023. It is only after the termination of contract that the Applicant came for a settlement on 09.04.2024.

3.6 The GST amount on the principal invoice amount of Rs. 4,03,97,855/- as per invoice dated 30.11.2023 was Rs. 72,71,614/- but after reconciliation of accounts the outstanding principal invoice amount was revised to Rs. 3,09,71,525/- and accordingly the GST payable on the principal amount is Rs. 55,78,474/- and for which, the difference in GST has been raised by way of debit note dated 10.08.2024 by the respondent.

3.7 The respondent has also deposited TDS to the tune of Rs.807957/- deducted u/s 194C of the Income Tax Act, 1961 on account of payments made to the applicant, which has been duly credited to the Income Tax Account of the applicant

3.8 In accordance to the settlement agreement the respondent was obligated to pay Rs. 382,63,139/- which included an excess GST amount to the tune of Rs. 16,93,139/- and the TDS amount already credited to the account of the applicant and hence the same should be deducted to compute the outstanding liability.

Dates	Amount claimed	Repayment	Balance
Settlement dated 09.04.2024	3,82,63,139.00		
(-) TDS	807,957.00		

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(-) GST Return Debit note	16,93,139.00		
Crystallized Amount	**357,62,043.00**		
12.04.2024		100,00,000.00	
18.05.2024		25,00,000.00	
06.06.2024		50,00,000.00	
03.07.2024		50,00,000.00	
05.08.2024		10,00,000,00	
17.08.2024		55,00,000.00	
		290,00,000.00	**67,72,043.00**

3.9 The amount payable after deducting the TDS and excess GST stands at Rs. 357,62,043/- out of Rs. 290,00,000/- stands paid and only Rs. 67,72,043 remains unpaid which is below the threshold required to maintain an application u/s 9 of the Code.

3.10 The original agreement dated 01.09.2023 and the settlement agreement dated 09.04.2024, both this agreement contains arbitration clause and hence any dispute arising out of the said agreements shall be adjudicated through arbitration and hence this Adjudicating Authority is not the right forum to adjudicate on this dispute.

4. The applicant in response to the reply filed a rejoinder wherein it has submitted that:

4.1 The present application was filed on 08.08.2024 for a default of Rs. 1,82,08,965/- which included interest till 06.08.2024 but subsequent to filing of this application the applicant has made a payment of Rs. 55,00,000/- on 17.08.2024 and issued a TDS Certificate for Rs. 8,07,957/- and even after adjusting both these amounts from the total due amount the total outstanding amount as on 24.01.2025 i.e. date of filing of the rejoinder stands at Rs. 1,28,10,999/- consisting

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of principal amount of Rs. 1,04,55,182/- and interest of Rs. 23,55,817/-.

4.2 The contentions of the respondent in regard to illegal termination of the contract by them that it was justified and it occurred due to noncompliance by the applicant is misleading and be that as it may, the respondent has agreed and acknowledged the debt amount due to the applicant in the settlement agreement dated 09.04.2024 and even through various email communications including email dated 06.06.2024.

4.3 Applicant had not issued the Demand notices multiple times qua the same amount of debt due, but the notices were issued for the reduced amounts, since the Corporate Debtor kept on making part payments. The issuance of multiple notices by the Applicant was necessitated due to the reconciliation of the accounts and part payments made by the Corporate Debtor and the reliance on ***M/s Ultratech Cement Ltd. Vs M/s Universal Journeys (India) Pvt. Ltd. (Supra)*** is misplaced as the facts is totally distinguishable as in that case the Operational Creditor issued 2 notices claiming the same amount and thereafter, on its own issued a third notice with reduced amount without even receiving any payment from the Corporate Debtor.

4.4 In respect to imposition of interest the Contract dated 01.09.2023, had no provision of interest for delayed payments. However, the Invoice dated 30.11.2023 was duly received and acknowledged by the Corporate Debtor vide email dated 06.12.2023 contained the clause regarding imposition of interest. It is well settled principal of law that invoice is a contract and the terms of interest mentioned in the same becomes payable if the payment is not made in time. The payment of interest for delayed payment was also acknowledged

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in Settlement Agreement / MOU dated 09.04.2024 by the Corporate Debtor and therefore, Corporate Debtor cannot backtrack from the same at this stage.

4.5 The claimed amount in default was never revised to Rs. 3,82,61,139 in fact the reconciled amount Rs. 2,71,31,106 (Base Value) + Rs. 27,13,111 (Profit Margin @10% of Base Value) + Rs. 72,71,614 (GST paid by applicant on invoice dated 30.11.2023) + Rs. 10,93,361 (Salaries of Staff) + 20,53,947/- (Interest calculated upto 09.04.2024) totaling to Rs. 4,02,63.139/- as recorded in the Settlement Agreement dated 09.04.2024 and therefore, the amount of Rs. 3,82,63,139/- is incorrect, even as per the knowledge of the Corporate Debtor which is evident from its email dated 06.06.2024.

4.6 The execution of a settlement agreement shows the acknowledgment of the outstanding debt due by the Corporate Debtor after the reconciliation of accounts and the payment terms in a staggered manner on the dates mentioned in the Settlement Agreement dated 09.04.2024. It is submitted that mere existence of a settlement agreement or a reconciliation process cannot constitute a "pre-existing dispute" unless there is a categorical denial or dispute raised by the Corporate Debtor concerning the debt in question for which the Applicant has approached the Tribunal and for which the demand notice in question was issued. The relevant demand notice pertaining to the present application was issued on is 24.07.2024 for Rs. 1,90,87,312/- qua which there is no pre-existing dispute. that the Corporate Debtor having admitted the outstanding debt and having agreed to pay the same, the same amounts to clear acknowledgment of debt being due and payable i.e. through email dated 06.06.2024 and belies the existence of any dispute.

4.7 The reliance on the judgment in ***Mobilox Innovations Private Limited v. Kirusa Software Private Limited [(2018)***

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1 SCC 353] by the Corporate Debtor is totally misplaced and does not apply in the facts of the case. The principal of law cited by the Corporate Debtor cannot be disputed but the Corporate Debtor having admitted the outstanding operational debt and having agreed to pay the same, the same amounts to clear acknowledgment of operational debt being due and payable and belies the existence of any dispute. The Corporate Debtor's failure to comply with the settlement agreement further negates its assertion of a pre-existing dispute. The Corporate Debtor has neither denied the operational debt sought by the Applicant till the filing of the present Application nor provided any credible material to substantiate its defense of a pre-existing dispute qua the amount sought by the Applicant.

4.8 Deposit of TDS of Rs. 8,07,957/- is a matter of record, however, the same was informed to the Applicant for the first time vide email dated 10.08.2024 i.e. subsequent to the filing of the present Application on 08.08.2024 and the TDS certificate for the same was sent by email dated 12.08.2024 i.e. subsequent to the filing of the present Application. In so far as the debit note qua GST is concerned, the same was also sent subsequent to the filing of the present Application on 12.08.2024 and the same has been explained in the Additional Affidavit dated 28.09.2024 filed by the Applicant. It is admitted that GST @18% on the Invoice amount of Rs. 4,03,97,855/- raised by the Applicant comes to Rs. 72,71,614/-. By the time, the Settlement Agreement had taken place, the Applicant had already filed its GST Return and paid taxes to the tune of Rs. 72,71,614/- and therefore, it was agreed that despite the Applicant agreeing to take the reduced amount for reasons explained herein above, the said GST will be completely paid by the Applicant and the same was duly recorded in the Settlement Agreement.

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ANALYSIS AND FINDINGS:

5. We have heard both the ld. counsels appearing for the parties and have perused the materials brought on record. It is an undisputed fact that the Corporate Debtor was handed over a contract for execution of EPC work of Silico Manganese Plant at Ferroy Allow Plant, Joda, Orissa and it has subsequently through an agreement dated 01.09.2023 (hereinafter **Sub-Contractor agreement**) engaged the applicant as the sub-contractor for the said work. Subsequently the Sub Contractor agreement was terminated by the respondent vide email dated 23.11.2023.

6. The applicant pursuant to the termination raised an invoice No. VEPL/OD/01/23-24 on 30.11.2023 on the respondent for an amount of Rs.4,76,60,469/- which included a principal amount of Rs. 4,03,97,855/- and GST of Rs.72,71,614/-. The said invoice contained an interest clause as per which an interest @18% was chargeable if it is not paid within the agreed time period i.e. after 21 days from submission of invoice. The said invoice was duly acknowledged by the respondent vide its email dated 06.12.2023.

7. The First Demand Notice u/s 8 of the code was sent by the applicant on 05.03.2024, after which the applicant and respondent reconciled their accounts and entered into a settlement agreement on 09.04.2024 (hereinafter "**Settlement Agreement**") to crystalize the outstanding amount payable by the respondent to the applicant. As per the settlement agreement the outstanding liability agreed between both the parties **as on 09.04.2024** is as follows:

Sl No.	Particulars	Amount (INR)
1.	Actual Expenditure borne by Applicant	2,71,31,106
2.	10% of the Actual Expenditure as Profit	27,13,111
3.	Reimbursement of total GST paid by Applicant	72,71,614

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4.	Interest payable @18%	20,53,947
5.	Salary to employees	10,93,361
	Total	**4,02,63,139**

8. It was also agreed between the parties that the total due towards salary and interest amounts to Rs. 31,47,308/- but if the respondent pays the outstanding amount within the time schedule as specified in the settlement agreement, then the applicant will waive off Rs. 20,00,000/- and the respondent will be obligated to pay Rs. 11,47,308/- only out of the total liability of Rs. 31,47,308/-. Hence the liability of the creditor upon successful fulfillment of condition as stipulated in the settlement agreement was Rs. 3,82,63,139/- otherwise the same will remain as Rs.4,02,63,139/-.

9. The relevant clause of the settlement agreement is reproduced herein for brevity:

> That subsequent to termination of the Contract, Party No. 1 had raised an Invoice for a sum of Rs. 4,76,69,469/- in terms of the contract dated 01.09.2023 for the works done prior to termination of the Contract.
>
> That since Party No. 2 did not clear the invoice raised by the Party No. 1, Party No. 1 had issued a Demand Notice dated 05.03.2024 to Party No. 2.
>
> Both the parties have reconciled their accounts and it is agreed to between the parties that a sum of Rs. 2,71,31,106/- is due by Party No 2 to Party No 1 towards actual expenditure by Party No 1, Rs. 27,13,111/- towards profit @ 10% in terms of contract dated 01.09.2023 and Rs. 72,71,614/- towards GST paid totaling to Rs. 3,71,15,831/-.
>
> It is further agreed to between the parties that a sum of Rs. 10,93,361/- is due by Party No 2 to party No 1 towards salaries, etc. and Rs.

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20,53,947/- is due by Party no 2 to Party No 1 towards interest calculated @ 18% p.a. till date. Salary + Interest is totaling to Rs. 31,47,308/-. It is agreed to between the parties that Party no 1 will be entitled to only Rs. 11,47,308/- out of the said amount of Rs. 31,47,308/- if Party No 2 pays the below mentioned amount strictly as per the schedule mentioned herein under and in that case balance Rs. 20,00,000/- will be waived off.

Whereas, both the parties have amicably resolved their disputes and have agreed to settle their disputes on the terms and conditions mentioned herein under:-

NOW THIS AGREEMENT WITNESSETH AS UNDER:

(i) The Party No. 2 will pay a sum of Rs. 1,00,00,000/- to the Party No. 1 on or before 12.04.2024.

(ii) The Party No. 2 will pay a sum of Rs. 1,40,00,000/- to the Party No. 1 on or before 11.05.2024.

(iii) The Party No. 2 will pay a sum of Rs. 1,42,63,139/- to the Party No. 1 on or before 25.05.2024.

10. Hence the revised timeline for payment as per the settlement agreement is as follows:

Sl No.	**Amount**	**Timeline/Due Date**
1.	Rs. 1,00,00,000/-	12.04.2024
2.	Rs. 1,40,00,000/-	11.05.2024
3.	Rs. 1,42,63,139/-	25.05.2024
Total	**Rs. 3,82,63,139/- (Computed after waiving off RS. 20 lakhs)**	

11. The respondent on the contrary has contended that as per the settlement agreement dated 09.04.2024 the respondent was obligated to pay Rs.3,82,63,139/- and not Rs.4,02,63,139/-. It is observed that the CD did make the 1st tranche of payment of Rs. 1 Cr as per the time line mentioned in the settlement agreement but failed to comply with the remaining payment schedule, hence the Creditor did not reduce the

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liability of the debtor in terms of the agreement and **the total liability as per the settlement agreement stood at Rs.4,02,63,139/-*** (Principal of Rs. 3,82,09,192/- and Interest of Rs.20,53,947/- and interest was imposed on the reducing principal as per clause (iv) of the settlement agreement.

In the agreement dated 09.09.2024 at clause (iv) the amount mentioned is Rs.4,02,63,138/- which is incorrect

12. Clause (iv) of the settlement agreement is as follows:

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(iv) That in case the Party No. 2 fails to pay any of the aforesaid installments, as per the aforesaid schedule, then the Party No. 1 will be entitled to aforesaid amount of Rs. 4,02,63,138/- (which will be deemed to be the principal amount) along with interest @ 18% per annum from 09.04.2024 on reducing balance after decreasing the amount paid in terms of the present settlement.

13. The total outstanding amount as per the submissions of the applicant which includes accrual of interest and the outstanding principal amount from the date of the settlement agreement on 09.04.2024 and till 06.08.2024 (the cut off date for computing debt) after deducting the payments made by the respondent in a nutshell is as follows:

Time Period	**Amount Outstanding (Date outstanding on) (INR)**	**Interest Levied as per agreement dated 09.04.2024**
09.04.2024	4,02,63,139/-	NIL
10.04.2024 to 11.04.2024	4,02,63,139 + 39,719 = **4,03,02,851/- (11.04.2024)**	18% interest on 4,02,63,138 for **2 days** is **Rs. 39,712/-**

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Payment of Rs 1 Cr on **12.04.2024** (**Reduced Principal - 4,02,63,138- 1,00,00,000 = 3,02,63,138/-**)		
12.04.2024 to 17.05.2024	3,02,63,139 + 39,712+ 5,37,274 = **3,07,60,701 (17.05.2024)**	18% interest on 3,02,63,138 on principal for **36 days** Rs. **5,37,274/-**
Payment of Rs 25 Lakhs on **18.05.2024** (**Reduced Principal- 3,02,63,138 – 25,00,000 = 2,77,63,138/-**)		
18.05.2024 to 05.06.2024	2,77,63,139 + 39,712+ 5,37,274 + 2,60,137 = **2,86,00,262/- (05.06.2024)**	18% interest on 2,77,63,138 for **19 days** is **Rs. 2,60,137/-**
Payment of Rs. 50,00,000 on **06.06.2024** (**Reduced Principal- 2,77,63,138– 50,00,000 = 2,27,63,138/-**)		
06.06.2024 to 02.07.2024	2,27,63,139 + 39,712+ 5,37,274 + 2,60,137 + 3,03,093 = **2,39,03,355/- (02.07.2024)**	18% interest on 2,27,63,138 for **27 days** is **Rs. 3,03,093/-**
Payment of Rs. 50,00,000 on **03.07.2024** (**Reduced Principal- 2,27,63,138– 50,00,000 =1,77,63,138/-**)		
03.07.2024 to 04.08.2024	1,77,63,139 + 39,712+ 5,37,274 + 2,60,137 + 3,03,093 + 2,89,077 = **1,91,92,432/- (03.07.2024)**	18% interest on 1,77,63,138 for **33 days** is **Rs. 2,89,077/-**
Payment of Rs. 10,00,000 on **05.08.2024** (**Reduced Principal- 1,77,63,138– 10,00,000 =1,67,63,138/-**)		
05.08.2024 to 06.08.2024	1,67,63,139 + 39,712+ 5,37,274 + 2,60,137 + 3,03,093 + 2,	18% interest on 1,67,63,138 for **2**

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	89,077 + 16,533 = **1,82,08,965/-** **(06.08.2024)**	**days** is **Rs.16,533/-**

Time Period	Total Outstanding Principal as on 06.08.2024 as submitted in Part IV of application	Total Interest as on 06.08.2024 as submitted in Part IV of application
09.04.2024 to 06.08.2024	Rs.1,67,63,138	Rs.14,45,287

14. It is observed that both the parties after reconciliation of their book of accounts entered into the agreement dated 09.04.2024 and has clearly agreed to the outstanding due amount to be Rs. 4,02,63,138/- as clear from Clause (iv) the settlement agreement reproduced at ***Para 12 of this order***. It is true that there existed a proposition wherein the applicant had agreed to waive off Rs.20,00,000/- if the respondent adheres to time timeline stipulated in the settlement agreement and since evidently the same ahs not been done. **It cannot be said that the total debt amount outstanding on the date of settlement agreement was Rs. 3,82,63,139/- and not 4,02,63,139/-**

15. The respondent further has contended *(computation reproduced at para 3.8 of this order)* that out of the outstanding liability as per the settlement agreement which according to respondent is Rs. 3,82,63,139/- and it has made payments to the tune of Rs. 2,90,00,000/- and has issued a TDS to the applicant to the tune of Rs. 807,957/-. It is also contended that there is an excess GST payment to the tune of Rs. 16,93,139/- which has been raised by way of a debit note 10.08.2024. Hence the remainder liability of the respondent is only to the tune of Rs.67,72,043 only which falls below the threshold of Rs.1 Crore.

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16. In regard to the TDS payment, it is noted from the TDS Deposit slip in F-16A that TDS to the tune of Rs.8,07,957/- was deposited in the PAN account of the applicant on 31.03.2024. **Hence the TDS deposit of Rs. 8,07,957/- shall be deducted to compute the threshold.**

17. The respondent has further contended that the GST amount payable by the respondent was in excess of Rs. 16,93,139/- as the base amount has changed subsequent to the revision. It is observed that the liability of GST of Rs. 72,71,614/- was clearly stated in the settlement agreement and the same was acceded to by the respondent by entering into the settlement agreement. Furthermore, it is observed that the respondent has duly acknowledged the outstanding due through his email on 06.06.2024 which included the GST liability. This Adjudicating Authority does not have the subject jurisdiction to make any observation on the correctness of the computation of the GST amount post re-conciliation. This Adjudicating Authority is bound to adjudicate based on the records brought before it. Hence, no observation is made regarding the correctness of GST computation *albeit* the same was agreed by both the parties.

18. It is also observed that the GST Debit note was issued only on 10.08.2024 that is 2 days after the present application was filed. It is also noted that the respondent has failed to show any form of communication whatsoever after entering into the settlement agreement that he has raised any issue regarding the GST liability, on the contrary as noted above it has duly acknowledged the same in email dated 06.06.2024.

19. The respondent has also contended that it has made a payment of Rs.55,00,000/- on 17.08.2024 to the applicant and hence the same shall be deducted while computing the threshold amount.

20. At this juncture, we are inclined to refer to a judgement of Hon'ble NCLAT in ***Devika Resources Pvt Ltd (Formerly known as Kalinga***

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Enterprises Pvt. Ltd) v MAA Manasha Devi Alloys Pvt. Ltd. [CA(AT)(Ins) No.939/2024] wherein while remanding back the matter back to this very Adjudicating Authority the Hon'ble Appellate Tribunal, by relying on the judgements of the Hon'ble Apex Court in ***Rajamundry Electric Supply Corporation Limited Vs. A Nageshwara Rao & Ors., (1995) 2 SCR 1066***, ***Manish Kumar Vs. Union of India, (2021) 5 SCC 1*** and a decision of Hon'ble NCLAT in ***Hyline Medoconz Pvt. Ltd. Vs. Anandaloke Medical Centre Pvt. Ltd., CA (AT) (Ins) No. 1036 of 2022 decided on 20.09.2022*** held at **Para 18 of its judgment** that threshold has to be seen at the time of filing and not at the time of the admission of the application.

21. Hence both the issuance of GST debit-note and payment of Rs.55,00,000/- was done after the present application was filed and hence the same cannot be considered for computing the threshold amount u/s 4 of IBC, 2016. It is also pertinent to state here that the applicant in his rejoinder has re-computed the outstanding liability by adding interest that has arose since the date of filing of this application upto the date of filing of the rejoinder, even that interest component cannot be considered to evaluate the threshold.

22. Hence as on the **date of filing of this present application** i.e. on 08.08.2024 *(or 06.08.2024 as stated in Part-IV)* the total outstanding liability of the respondent was **Rs. 1,74,01,008/-** (Rs.1,82,08,965 - 8,07,957) which is above the requisite threshold as required u/s 4 of IBC 2016.

23. There is no evidence of any pr-exiting dispute between the parties post the settlement agreement on 09.04.2024 till the present application was filed. Furthermore, the original invoice was raised by the applicant on 30.11.2023 and the date of default as mentioned in Part-IV is 22.12.2023 i.e. after end of 21 days from acknowledgment of invoice and the settlement agreement was entered on 09.04.2024 and the last part payment was made by the respondent on 05.08.2024 (pre-

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initiation date) and 17.08.2024 (post initiation date). All these actions have occurred within 3 years period of the initiation date hence the present application is well within limitation.

24. In light of the above observations, we are inclined to hold that there exists an outstanding operational debt, a default and hence the present Petition bearing **CP (IBC) No. 52/CB/2024** under Section 9 of the Code read with Rule 6 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating CIRP of **ATMASTCO LIMITED** Corporate Debtor is **'ADMITTED'**.

25. The **Moratorium** under section 14 of the Insolvency and Bankruptcy Code, 2016 is declared for prohibiting all the following in terms of section 14(1) of the Code –

25.1 the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree, or order in any court of law, tribunal, arbitration panel or other authority;

25.2 transferring, encumbering, alienating, or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;

25.3 any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;

25.4 the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.

26. The order of moratorium shall have effect from the date of this order till the completion of the Corporate Insolvency Resolution Process until this Adjudicating Authority approves the Resolution Plan under sub-section (1) of section 31 or passes an order for liquidation of

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Corporate Debtor under section 33 of the Insolvency & Bankruptcy Code, 2016.

27. Sambhu Lal Agarwal having IBBI regd No. IBBI/IPA-001/IP-P00387/2017-18/10698 (sambhuandassociates@gmail.com) is appointed as **Interim Resolution Professional, subject to him possessing a valid Authorisation for Assignment.**

28. The IRP so appointed shall make a public announcement of initiation of Corporate Insolvency Resolution Process (CIRP) and call for submission of claims under Section 15 as required by section 13(1)(b) of the Code.

29. The supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended, or interrupted during the moratorium period. The corporate debtor to provide effective assistance to the IRP as and when he takes charge of the assets and management of the corporate debtor.

30. The IRP shall perform all his functions as contemplated, *interalia,* by sections 17, 18, 20 & 21 of the Code. It is further made clear that all personnel connected with Corporate Debtor, its Promoter or any other person associated with management of the Corporate Debtor are under legal obligation under section 19 of the Code extending every assistance and co-operation to the Interim Resolution Professional. Where any personnel of the Corporate Debtor, its Promoter or any other person required to assist or cooperate with IRP, do not assist or co-operate, the IRP is at liberty to make appropriate application to this Adjudicating Authority with a prayer for passing an appropriate order.

31. The IRP shall be under duty to protect and preserve the value of the property of the 'Corporate Debtor' and manage the operations of the Corporate Debtor as a going concern as a part of obligation imposed by section 20 of the Insolvency & Bankruptcy Code, 2016.

32. The IRP/RP shall submit to this Adjudicating Authority periodical reports concerning the progress of the CIRP in respect of the Corporate Debtor.

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33. The Financial Creditor shall deposit a sum of **Rs.1,00,000/- (One Lakh only)** with the within two weeks from the date of receipt of this order for the purpose of smooth conduct of Corporate Insolvency Resolution Process (CIRP) and IRP to file proof of receipt of such amount to this Adjudicating Authority along with First Progress Report. Subsequently, IRP may raise further demands for Interim funds, which shall be provided as per Rules.

34. In terms of section 9(5)(i) of the Code, the Registry is hereby directed to communicate a copy of this order to the Financial Creditor, Corporate Debtor and to the Interim Resolution Professional and the concerned Registrar of Companies, within seven (7) working days and upload the same on website immediately after pronouncement of the order.

35. The IRP shall also serve a copy of this order to the various departments such as Income Tax, GST, State Commercial Tax, and Provident Fund etc. who are likely to have their claim against Corporate Debtor as well as to the trade unions/employee's associations so that they are informed of the initiating of CIRP against the Corporate Debtor timely.

36. The commencement of the Corporate Insolvency Resolution Process shall be effective from the date of this order.

37. The Resolution Professional shall submit his periodic reports before this Adjudicating Authority as per rules/regulations.

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BANWARI LAL MEENA	**DEEP CHANDRA JOSHI**
Member (Technical)	**Member (Judicial)**

This Order is signed on 29th Day of August 2025.