THE NATIONAL COMPANY LAW TRIBUNAL
JAIPUR BENCH

CORAM: MS. REETA KOHLI,
HON'BLE JUDICIAL MEMBER

MS. KAVITA BHATNAGAR
HON'BLE TECHNICAL MEMBER

In CP No. (IB)- 5/9/JPR/2026

IN THE MATTER OF:
M/S PREMIUM PETRO PRODUCTS

...Operational Creditor/ Petitioner

VERSUS

M/S MEENESH CONTRACTORS AND DEVELOPERS PRIVATE LIMITED

...Corporate Debtor/ Respondent

In CP No. (IB)- 5/9/JPR/2026

MEMO OF PARTIES

M/s Premium Petro Products
R/o: 1-3, Hathroi Market, Ajmer Road,
Opp. Gopal Bari, Jaipur- 302001. **...Operational Creditor**

Meenesh Contractors And Developers
Private Limited
R/o: 308, Aishwarya Complex, Ajmer Road,
Civil Line, Jaipur, Rajasthan, 302006. **...Corporate Debtor**

PRESENT: -

For the Petitioner : Prakul Khurana, Adv.;
Akshita Koolwal, Adv.;

For the Respondent : Nivedita R. Sarda, Adv.;
Sagrika Joshi, Adv.

Case Citation: (2026) ibclaw.in 4097 NCLT

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Order Pronounced On: 28.10.2026

ORDER

Per: Ms. Reeta Kohli

1. The present Petition has been filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 ('Code') read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 by *M/S Premium Petro Products* ('Petitioner'/ 'Operational Creditor') seeking initiation of Corporate Insolvency Resolution Process ('CIRP') in respect of *Meenesh Contractors And Developers Private Limited* (CIN: U45201RJ2003PTC018095)('Respondent'/'Corporate Debtor'), on account of default in payment of Rs. 1,05,25,187/- (Rupees One Crore Five Lakh Twenty-Five Thousand One Hundred Eighty-Seven Only).

2. The Operational Debt produced in Part IV of the Petition, is reproduced here as following:

PARTICULARS OF OPERATIONAL DEBT		
1.	Total amount of debt, details of transactions on account of which debt fell due, and the date from which such debt fell due	**Total Amount Due:** *Rs. 1,05,25,187/- (Rupees One Crore Five Lakh Twenty-Five Thousand One Hundred Eighty-Seven Only)*
2.	Amount claimed to be in default and the date on which the default occurred.	**TOTAL AMOUNT CLAIMED UNDER DEFAULT:** *Rs. 1,05,25,187/- (Rupees One Crore Five Lakh Twenty-Five Thousand One Hundred Eighty-Seven Only)*

Case Citation: (2026) ibclaw.in 4097 NCLT

IBC Laws | www.ibclaw.in

		The Date on which the default occurred:06.08.2025.

3. The Petitioner is a partnership firm engaged in the business of manufacturing all types of emulsion and modified bitumen, having registered address at *1-3, Hathroi Market, Ajmer Road, Opp. Gopal Bari, Jaipur-302001.*

4. The Respondent is a company incorporated under the provisions of the Companies Act, 1956 on 14.02.2003, having registered address at *308, Aishwarya Complex, Ajmer Road, Civil Line, Jaipur, Rajasthan, 302006.*

5. The Petition has been filed on the basis of the following set of facts:

5.1 The Petitioner is dealing in the business of manufacturing all types of emulsion and modified bitumen and the Respondent who is engaged in the business of construction of road and bridges approached the Petitioner, in the year 2022, for supply of bitumen, for its various projects at Rajasthan and Madhya Pradesh on credit basis. Acceding to the request, the Petitioner agreed and supplied the bitumen to the Respondent on a credit period of 40 days from the date of invoice. Further, the Petitioner and the Respondent agreed upon the condition that any outstanding amount beyond the credit period of 40 days shall attract interest @1.25% per month from the 41st day of the invoice till the date of payment.

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Case Citation: (2026) ibclaw.in 4097 NCLT

IBC Laws | www.ibclaw.in

5.2 The Petitioner submitted that the Respondent placed several orders through verbal and WhatsApp message in the daily course of business. Upon that the Petitioner supplied bitumen to the Respondent on credit basis at various different sites situated in Rajasthan and Madhya Pradesh. It is further submitted that the Respondent used to make intermittent payments rather than making invoice-wise payments, therefore, the Petitioner maintained a running account of the Respondent.

5.3 The Petitioner submitted that the Respondent started causing delays in making payments, whereupon the Petitioner expressed its unwillingness to continue further supplies. Upon that the Respondent executed an undertaking dated 16.05.2024 and acknowledged its liability towards Petitioner and undertook to make payment of the entire outstanding amount by 30.06.2024. The Respondent further agreed, that if the Respondent failed to make payment within 40 days, the interest @ 1.25% p.m. would apply along with a penalty of Rs. 2,51,000/-. The Respondent also submitted two cheques bearing no. *'00580'* and *'000581'* of ICICI Bank and provided authority to the Petitioner to use the same in case the Respondent failed to make payment till 30.06.2024.

5.4 Thereafter, the Respondent breached the terms of undertaking dated 16.05.2024 and failed to make payment of the entire outstanding amount. Upon such failure, the Petitioner revoked the supply of goods to the

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Case Citation: (2026) ibclaw.in 4097 NCLT

IBC Laws | www.ibclaw.in

Respondent and submitted Cheque no. *'000580'* of Rs. 1,24,28,236/- before *Kotak Mahindra Bank* for the recovery of outstanding amount. However, the said cheque got returned with the remark *'Payment Stopped by Drawer'*.

5.5 Thereafter, the Respondent, while assuring to clear the outstanding invoices, requested for continuous supply of bitumen and furnished a bank guarantee of Rs. 40,00,000 (Rupees Forty Lakhs Only) dated 17.02.2025 to the Petitioner, which had 17.08.2025 as the expiry date. The Respondent further furnished a fresh undertaking dated 11.04.2025 and acknowledged and admitted to perform several promises, and furnished a signed undertaking of the same date (11.04.2025), wherein it expressly acknowledged that in the event of any delay in payment, the Petitioner shall be entitled to encash Bank Guarantee No. *0315NDLG00016225* against the outstanding invoices.

5.6 The Petitioner further submitted that despite various follow-ups, when the Respondent failed to make the payment, the Petitioner submitted a letter dated 28.07.2025 with *ICICI Bank* for encashment of the bank guarantee along with Cheque no '*000750*' of Rs. 1,24,28,236/- against outstanding debt. However, the said cheque returned with the remark *'Exceeds Arrangement'*. In response to that the Respondent requested the Petitioner to defer the action of invocation of the bank guarantee and

Case Citation: (2026) ibclaw.in 4097 NCLT

IBC Laws | www.ibclaw.in

the action regarding the dishonour of cheque and further, made assurance to the Petitioner to make certain payment of outstanding dues by 12.08.2025. Further, the Respondent issued an amended bank guarantee (*0315NDLG00016225*) dated 04.08.2025, extending the expiry date to 31.03.2026 along with a letter dated 05.08.2025 stating that it has no issue if the said bank guarantee is encashed by the Petitioner against the outstanding dues. Upon receipt of the amended bank guarantee, the Petitioner instructed the bank to hold the bank guarantee until further instruction.

5.7 However, the Respondent failed to discharge the outstanding dues by 12.08.2025. Upon which the Petitioner encashed the bank guarantee of Rs. 40,00,000/- by submitting a letter dated 25.08.2025 with the *ICICI Bank Ltd.*

5.8 The Petitioner further submitted the list of remaining unpaid invoices which are reproduced herein as follows:

Invoice No.	Date of Invoice	Outstanding Principal Amount (Rs.)
Invoices regarding MP Project		
PPP/2022- 23/1100	28.05.2022	2,99,753.00
PPP/2022- 23/1546	13.06.2022	16,70,570.00
Invoices regarding Rajasthan Project		
PPP/2024- 25/1254	01.06.2024	7,06,917.35
PPP/2024- 25/1386	07.06.2024	13,07,555.00
PPP/2024- 25/1654	18.06.2024	11,40,122.58
PPP/2024- 25/1787	25.06.2024	10,83,022.00

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Case Citation: (2026) ibclaw.in 4097 NCLT

IBC Laws | www.ibclaw.in

PPP/2024- 25/1829	27.06.2024	11,09,921.00
TOTAL		73,17,860.93

5.9 The Petitioner further submitted that after repeated and continuous issuance of undertakings, cheques and bank guarantee(s) by the Respondent in favour of the Petitioner constitutes an acknowledgment of debt and unequivocally establishes the liability of the Respondent towards the Petitioner. Petitioner submitted that it sent timely reminders to the Respondent for the repayment but the Respondent used to give false assurances to the Petitioner regarding release of outstanding amount, however, till date the entire outstanding amount has not been released.

5.10 The Petitioner issued a demand notice dated 30.10.2025 under Section 8 of the Code on 01.11.2025 through speed post and on 04.11.2025 through email. The speed post was delivered to the Respondent on 04.11.2025 at its registered office.

5.11 Upon which, the Respondent sent reply to the demand notice on 04.12.2025, which is beyond the prescribed period of ten (10) days. It is further submitted that in the said reply to demand notice, the Respondent did not raise any dispute regarding the Bitumen supplied to it. Rather, the Respondent unequivocally acknowledged the supplies received and the outstanding amount payable to the Petitioner.

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Case Citation: (2026) ibclaw.in 4097 NCLT

IBC Laws | www.ibclaw.in

5.12 Petitioner further submitted that, the Respondent has failed to make the payment till date, without any legitimate justification. Accordingly, a sum of Rs. 1,05,25,187/- (Rupees One Crores Five Lakhs Twenty-Five Thousand One Hundred Eighty-Seven Only) remains outstanding and due from the Respondent.

5.13 The Petitioner further submitted that he has filed the information of default of Respondent on NESL portal.

6. The submissions made by the Respondent are as follows:

6.1. The Respondent submitted that there is a bona fide and pre-existing dispute between the parties, and the claim of the Operational Creditor arises out of a continuous and mutual running account which necessarily requires detailed reconciliation. The alleged debt of Rs. 1,05,25,187/- (Rupees One Crore Five Lakhs Twenty-Five Thousand One Hundred and Eighty-Seven Only) is neither crystallized nor admitted and, in fact, the amount is disputed from the date of raising the demand notice and do not cross the threshold amount of Rs. 1 crore of unpaid operational debt against the Respondent.

6.2. The Respondent further submitted that, instant Petition has an artificially inflated amount upon a true and correct reconciliation of accounts, the alleged default amount, if any, falls far below the statutory minimum threshold prescribed under Section 4 of the Code,

Case Citation: (2026) ibclaw.in 4097 NCLT

IBC Laws | www.ibclaw.in

which mandates that a CIRP can only be initiated where the minimum default is Rs. 1,00,00,000/- (Rupees One Crore Only).

6.3. The Respondent submitted that in the present case, the Petitioner has not accounted for the amount already received by it which is duly acknowledged by it in its undertaking dated 11.04.2025 and included inadmissible unilateral interest from the date of first invoice which is made exclusively in order to cross the said threshold of Rs. 1 crore. Such inclusion of disputed components and unilateral interest calculations cannot be relied upon to trigger insolvency proceedings under the Code.

6.4. The Respondent further submitted that it is an undisputable fact that the outstanding amount towards the invoices as on 03.11.2025 was of Rs. 48,17,860/- on the date of demand which was duly mentioned and contested through the reply to the demand notice dated 04.12.2025.

6.5. It is further submitted that for the verification of the amount due, the Respondent has also submitted the ledger account of the Petitioner along with the Demand Notice to subsist its claims.

6.6. The Respondent further submitted that there is a pre-existing dispute between the Petitioner and the Respondent particularly with respect to the quantum of the alleged operational debt. The transactions between the parties were not isolated transactions but were carried out

Case Citation: (2026) ibclaw.in 4097 NCLT

IBC Laws | www.ibclaw.in

in the nature of a continuous commercial relationship involving supply of materials for multiple infrastructure projects, including projects situated in the States of Rajasthan and Madhya Pradesh. The dealings between the parties were maintained through a running and mutual account, requiring periodic reconciliation of accounts. The Respondent further submitted that upon verification of its books of accounts, substantial discrepancies were noticed in the ledger statements relied upon by the Petitioner. Additionally, a comparative reconciliation of the ledger accounts maintained by both parties clearly revealed material differences between the balances reflected by the Petitioner and the Respondent.

That a comparative analysis of the ledger entries maintained by the parties till 11.09.2025 is reproduced herein below:

Particulars	Amount (Rs.) as per the Corporate Debtor/Respondent	Amount (Rs.) as per the Operational Creditor/ Petitioner
State of Rajasthan	*7,94,381.67*	*19,70,323.00*
Madhya Pradesh	*96,98,605.64*	*93,47,537.93*
Opening Balance as on 01.04.2025	*1,04,92,987.31*	*1,13,17,860.93*

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Case Citation: (2026) ibclaw.in 4097 NCLT

IBC Laws | www.ibclaw.in

Payment made by the Director of the CD - Mr. Rajkumar Sethi on behalf of the Company as per the Stamp Undertaking		
As on 11.04.2025	*(18,00,000.00)*	*Not taken into consideration*
As on 17.04.2025	*(7,00,000.00)*	
Payment made by way of Bank Guarantee No. 0315NDLG00016225 issued on 17.02.2025 (encashed on 26.08.2025 by the OC)	*(40,00,000.00)*	*(40,00,000.00)*
Closing Balance till 11.09.2025	*39,92,987.31*	*73,17,860.93*
Less: Amount to be adjusted as per the Undertaking	-	*(25,00,000.00)*
Less: Interest wrongly charged during FY-24-25 **For the State of Rajasthan - Rs. 6,43,204.00* **For the State of MP - Rs. 1,75,941.00*	-	*(8,19,145.00)*
Total Outstanding (if any)	***39,92,987.31***	***39,98,715.93***

* The amount mentioned in brackets represents a payment made by the Respondent to the Petitioner.

6.7. The Respondent further contended that the transactions between the parties were conducted through a running and mutual account in relation to multiple infrastructure projects executed in the State of

Case Citation: (2026) ibclaw.in 4097 NCLT

IBC Laws | www.ibclaw.in

Rajasthan and Madhya Pradesh. Consequently, the accounts between the parties necessarily require detailed reconciliation, which cannot be undertaken within the limited summary jurisdiction exercised by this Adjudicating Authority under Section 9 of the Code. The aforementioned substantial variations between the books of accounts maintained by the parties clearly establish the existence of a pre-existing dispute regarding the quantum of the alleged operational debt, which by itself is sufficient to render the present Petition not maintainable under Section 9 of the Code.

6.8. The Respondent further submitted that the existence of disputes between the parties was not only evident from the discrepancies in the books of accounts but had also been expressly communicated to the Operational Creditor prior to the initiation of the present insolvency proceedings. The Respondent submitted that the Petitioner issued a Demand Notice dated 30.10.2025 under Section 8 of the Code in Form-3. Upon receipt of the aforesaid demand notice, the Respondent submitted a detailed reply dated 04.12.2025, herein the Respondent categorically raised several preliminary objections and brought to the notice of the Petitioner the existence of serious disputes relating to reconciliation of accounts, discrepancies in ledger balances and non-consideration of payments made on behalf of the Respondent.

Case Citation: (2026) ibclaw.in 4097 NCLT

IBC Laws | www.ibclaw.in

6.9. The Respondent further submitted that the Petitioner has also sought to inflate the alleged claim by including interest @15% per annum (@ 1.25% Per month) along with additional penalties and charges in its calculation sheet. It is submitted that such unilateral and arbitrary interest calculations cannot be treated as part of the operational debt in the absence of any written agreement executed between the parties providing for such rate of interest.

6.10. The Respondent further submitted that the Petitioner has attempted to get the wrong idea about the very nature of the undertakings dated 16.05.2024 and 11.04.2025. While it is admitted that the Respondent signed these documents, they were executed as part of a comprehensive settlement and restatement of accounts. By the Petitioner's own logic, once these agreements were signed with specific outstanding amounts mentioned therein, any and all prior claims, alleged defaults or opening balance discrepancies standing before those dates were fully settled and subsumed into the new agreements. The Petitioner cannot now legally "reach back" to claim interest or dues from periods preceding these specific undertakings.

6.11. Furthermore, it is submitted that the interest @ 1.25% per month mentioned in the said undertakings was not a "running interest" from the date of the invoices, but was a contingent penalty intended to be

Case Citation: (2026) ibclaw.in 4097 NCLT

IBC Laws | www.ibclaw.in

triggered only upon a proven, crystallized default of the specific payment schedules outlined in those very undertakings. Since the Respondent has already ensured the payment/realization of Rs. 65,00,000/- (Rupees Sixty-Five Lakhs Only) through direct payments and the successful encashment of the Bank Guarantee, there has been substantial compliance with the financial commitments.

6.12. The Respondent further contended that the Petitioner is guilty of "Double Charging" by attempting to claim interest on amounts that have already been realized through the Bank Guarantee and direct bank transfers. It is further submitted that the Petitioner has wilfully ignored the Reconciled Ledger Accounts and the Site-wise Account Statements which were formally served upon them along with the Respondent's Reply to the Demand Notice.

6.13. The Respondent further submitted that the Petitioner has also sought to include contractual penalties in its calculation sheet in order to inflate the alleged operational debt. In particular, the Petitioner has included a penalty amounting to Rs. 2,51,000/- (Rupees Two Lakhs Fifty-One Thousand Only) purportedly arising out of the first undertaking executed between the parties. It is further contended that contractual penalties, damages, or disputed interest components cannot be treated as an operational debt for the purpose of triggering

Case Citation: (2026) ibclaw.in 4097 NCLT

IBC Laws | www.ibclaw.in

the CIRP, particularly where the underlying principle amount itself is disputed and subject to reconciliation between the parties.

6.14. The Respondent further submitted that in the present case, the Petitioner has attempted to artificially inflate the alleged claim by including the aforesaid penalty amount along with unilateral interest calculations in order to cross the statutory threshold prescribed under Section 4 of the Code.

6.15. The Respondent further submitted that the Petitioner has failed to disclose before this Adjudicating Authority the true sequence of events relating to the payments and financial arrangements made by the Respondent in the course of its commercial dealings with the Petitioner. The Respondent further submitted that prior to the encashment of the Bank Guarantee and the direct payments made by the Director of the Respondent on behalf of the Company, several cheques had already been handed over to the Petitioner by the Respondent. The said cheques were provided as a security measure and as a bona fide assurance of the Respondent's intention to settle the dues upon proper reconciliation of accounts between the parties.

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Case Citation: (2026) ibclaw.in 4097 NCLT

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Analysis and findings –

7. We have heard the Learned counsels for the parties and have perused the averments made in the Petition, the Reply and the written submission by the Petitioner and the Respondent. The observations of the Adjudicating Authority are followed as under: -

7.1 Before proceeding with the factual matrix of the present case, the statutory framework regarding the Application under Section 9 of the Code needs to be recapitulated. An application under Section 9 of the Code can only be filed if the default exceeds the value of 1 crore rupees after the delivery of a demand notice as provided under Section 8 of the Code. Section 8 of the Code requires the Operational Creditor, upon the occurrence of default, to deliver a Demand Notice for unpaid Operational Debt. Furthermore, the Section 8(2) specifies that the Corporate Debtor must, within 10 days of receiving the Demand Notice, inform the Operational Creditor of any existing dispute.

7.2 Under Section 9(1), if Operational Creditor does not receive payment from the Corporate Debtor or notice of the dispute under Sub-section (2) of Section 8, may file an application under Section 9(1) of the Code. Section 9(1) and (5) are reproduced herein as follows:

*"**Section 9**: Application for initiation of corporate insolvency resolution process by operational creditor. -*

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Case Citation: (2026) ibclaw.in 4097 NCLT

IBC Laws | www.ibclaw.in

(1) After the expiry of the period of ten days from the date of delivery of the notice or invoice demanding payment under sub-section (1) of section 8, if the operational creditor does not receive payment from the corporate debtor or notice of the dispute under sub-section (2) of section 8, the operational creditor may file an application before the Adjudicating Authority for initiating a corporate insolvency resolution process.

...

(5) The Adjudicating Authority shall, within fourteen days of the receipt of the application under subsection (2), by an order—

(i) admit the application and communicate such decision to the operational creditor and the corporate debtor if, -

(a) the application made under sub-section (2) is complete;

(b) there is no payment of the unpaid operational debt;

(c) the invoice or notice for payment to the corporate debtor has been delivered by the operational creditor;

(d) no notice of dispute has been received by the operational creditor or there is no record of dispute in the information utility; and

(e) there is no disciplinary proceeding pending against any resolution professional proposed under sub-section (4), if any.

(ii)reject the application and communicate such decision to the operational creditor and the corporate debtor, if—

(a) the application made under sub-section (2) is incomplete;

(b) there has been [4][payment] of the unpaid operational debt;

(c) the creditor has not delivered the invoice or notice for payment to the corporate debtor;

(d) notice of dispute[16] has been received by the operational creditor or there is a record of dispute in the information utility; or

(e) any disciplinary proceeding is pending[5] against any proposed resolution professional:"

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Case Citation: (2026) ibclaw.in 4097 NCLT

IBC Laws | www.ibclaw.in

7.3 Before examining the matter further, it is necessary to outline the statutory threshold that regulates the jurisdiction of this Adjudicating Authority under Part II of the Code. Section 4(1) and Section 5 (21) of the Code is herein reproduced as follows:

> *"4. **Application of this Part.** – (1) This Part shall apply to matters relating to the insolvency and liquidation of corporate debtors where the minimum amount of the default is one lakh rupees:*
> *Provided that the Central Government may, by notification, specify the minimum amount of default of higher value which shall not be more than one crore rupees."*
>
> *(21) "**operational debt**" means a claim in respect of the provision of goods or services including employment or a debt in respect of the payment of dues arising under any law for the time being in force and payable to the Central Government, any State Government or any local authority;"*

7.4 In exercise of the power conferred by the said proviso, the Central Government, by Notification *No. S.O. 1205(E) dated 24.03.2020*, issued by the Ministry of Corporate Affairs, has specified the minimum amount of default at Rs. 1,00,00,000/- (Rupees One Crore Only). This threshold is not a mere procedural requirement; it is a condition of jurisdiction. An application under Section 9 of the Code is simply not maintainable before this Adjudicating Authority unless the operational debt which is due, payable and in default equals or exceeds Rs. 1 crore.

Sdr

Sdr

Case Citation: (2026) ibclaw.in 4097 NCLT

IBC Laws | www.ibclaw.in

7.5 The present Petition has been filed by the Petitioner, under Section 9 of the Code, praying for initiation of CIRP against *Meenesh Contractors and Developers Private Limited* the Corporate Debtor, on account of default in payment of a sum of Rs. 1,05,25,187/- (Rupees One Crore Five Lakh Twenty-Five Thousand One Hundred Eighty-Seven Only). The present Petition has been filed within the statutory period of limitation.

7.6 It is an admitted position that the Petitioner and Respondent were in a business relationship since 2022 and Respondent received supplies of bitumen subject to a credit period of 40 days. Furthermore, the Respondent has admitted that it signed the Undertakings dated 16.05.2024 and 11.04.2025. Consequently, the core dispute is confined solely to the precise quantum of the debt that remained due and unpaid between the Petitioner and the Respondent.

7.7 It is an admitted position on record that the Respondent acknowledged its pecuniary liability amounting to Rs. 1,34,50,583.96/- towards the Petitioner through 1st undertaking dated 16.05.2024. Under the terms of the said undertaking, the Respondent agreed that if the outstanding amount was not discharged by 30.06.2024, the credit note amount receivable by the Petitioner would stand forfeited, and an additional sum of Rs. 2,51,000/- would be

Sdr

Sdr

Case Citation: (2026) ibclaw.in 4097 NCLT

IBC Laws | www.ibclaw.in

recoverable towards penalty. In addition, interest at the rate of 1.25 % p.m. was agreed to be paid on the outstanding balance until full payment was realized. Further, to secure performance under the undertaking, the Respondent issued two security cheques bearing Nos. '*000580*' and '*000581*' in favour of the Petitioner.

7.8 It is pertinent to mention that the Respondent failed to pay outstanding amount by 30.06.2024 and breached the Undertaking. Furthermore, the Respondent furnished Bank Guarantee No. *0315NDLG00016225* dated 17.02.2025 for Rs. 40,00,000/-, valid till 17.08.2025, which was further extended till 31.03.2026 on 04.08.2025.

7.9 It is pertinent to observe that the second undertaking dated 11.04.2025 is an instrument executed unilaterally by the Respondent, wherein the Respondent alleges the payment of Rs. 18,00,000/- has been paid to the Petitioner on 11.04.2025 and also a further sum of Rs. 7,00,000/- will be disbursed on 17.04.2025. Further, under the terms of the said document, the Respondent agreed to discharge the interest accruing on the outstanding dues of Rs. 25,00,000/- in four equal instalments of Rs. 6,25,000/- each. Furthermore, the record indicates that the Respondent accepted specific commercial terms regarding fresh supplies initiated after 12.04.2025, stipulating that

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Case Citation: (2026) ibclaw.in 4097 NCLT

IBC Laws | www.ibclaw.in

upon failure to clear outstanding invoices within 45 days, interest at the rate of 1.25% p.m. would become leviable from the 46th day following the date of supply. In addition, accompanying the second undertaking, the Respondent furnished a separate written commitment expressly authorizing the Petitioner to encash the Bank Guarantee in the event of any payment default.

7.10 Upon a careful perusal of the record, this Adjudicating Authority observes that the sole material evidence adduced by the Respondent in support of the alleged payments consists of self-serving ledger entries, specifically, a cash entry of Rs. 18,00,000/- dated 11.04.2025 and another of Rs. 7,00,000/- dated 17.04.2025. Significantly, there is a total absence of any contemporaneous receipt or acknowledgment emanating from the Petitioner. It is a settled principle of jurisprudence that a document executed unilaterally by one party, alongside entries made within its own books of account, cannot constitute substantive proof of payment to other party. Furthermore, the Respondent has failed to place on record any corroborative evidence or proof whatsoever regarding the payment of the alleged interest amounting to Rs. 25,00,000/-.

7.11 It is pertinent to mention that the Respondent again failed to pay and breached the 2nd Undertaking. Upon which, the Petitioner

Sdr

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Case Citation: (2026) ibclaw.in 4097 NCLT

IBC Laws | www.ibclaw.in

presented Cheque No. '*000750*' dated 05.08.2025 for Rs. 1,24,28,236/- through *Kotak Mahindra Bank*. It was returned on 06.08.2025 with the remark '*Exceeds Arrangement*'. The Petitioner has also shown 06.08.2025 as the date of default in Part IV of the Petition.

7.12 Upon a careful examination of the records, this Adjudicating Authority notes that the outstanding dues on 06.08.2025 stood at Rs. 1,03,60,456/- in respect of the Rajasthan account and Rs. 20,67,780/- in respect of the Madhya Pradesh account, culminating a total liability of Rs. 1,24,28,236/-. Notably, the aggregate amount of the subject cheque corresponds precisely with the total outstanding dues accrued as on the aforementioned date. In light of these concurrent transactions, this Adjudicating Authority draws a reasonable inference that the cheque for Rs. 1,24,28,236/- was issued and presented by the Petitioner solely toward the recovery of the aforesaid outstanding dues.

7.13 It is pertinent to note that the Bank Guarantee amounting to Rs. 40,00,000/- was encashed by the Petitioner on 26.08.2025, a fact duly reflected within the Petitioner's own ledger account. The said Bank Guarantee had been furnished by the Respondent expressly as security for the subject debt. Furthermore, the Respondent had

Case Citation: (2026) ibclaw.in 4097 NCLT

IBC Laws | www.ibclaw.in

explicitly consented in writing, through communications dated 11.04.2025 and 05.08.2025, to the encashment of the security toward the satisfaction of these dues. Consequently, the encashment on 26.08.2025 operated as a valid realization of the debt to the extent of Rs. 40,00,000/-, an entry for which credit has duly been afforded by the Petitioner in its ledger. Crucially, this encashment transpired prior to the issuance of the Demand Notice dated 30.10.2025 and well before the institution of the present Petition.

7.14 It is pertinent to note that the Petitioner further submitted that the Respondent has failed to make the payment till date without any legitimate justification. As per the Instant Petition, the total outstanding amount claimed by the Petitioner is Rs. 1,05,25,187/-, which consists of:

Particulars	Amount (Rs.)
Principal Amount	73,17,860.93
Interest (levied @ 15% p.a.)	24,67,076.00
Sub-total	**97,84,936.93**
Penalty	2,51,000.00
GST on Interest	4,44,073.00
GST on Penalty	45,177.00
Total Claimed Amount	**1,05,25,187.00**

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Case Citation: (2026) ibclaw.in 4097 NCLT

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7.15. The Adjudicating Authority records its findings and observations on the core issues as follows:

The First Undertaking dated 16.05.2024 is a bilateral, notarised document confirming the outstanding dues and establishing a clear contractual basis for interest @ 1.25% per month and a penalty of Rs. 2,51,000/- under Clause 5 thereof. The verbatim extract of Clause 5 reads:

"That if, for any reason, the said outstanding amount is not paid by the applicant company by June 30, 2024, the credit note amount to be received by the applicant company will be forfeited, and an additional amount of Rs. 2,51,000/- (Rupees Two Lakh Fifty-One Thousand) will be recovered as a penalty. Furthermore, interest at the rate of 1.25% will be paid by my applicant company to M/s Premium Petro Products on the outstanding amount until the said amount is paid."

Accordingly, the Corporate Debtor's argument in its Reply that "*there is no written contract stipulating any interest*" is completely refuted in light of Clause 5. The contractual basis for interest is established, and interest is admissible in principle.

7.16. This Adjudicating Authority now proceeds to compute the admissible operational debt on the basis of the documents placed on record, examining each component of the Petitioner's claim in a structured and categorical manner.

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Case Citation: (2026) ibclaw.in 4097 NCLT

IBC Laws | www.ibclaw.in

Part I — Principal Amount

The gross principal outstanding as per the Petitioner's ledger, prior to any adjustment, stood at Rs. 1,13,17,860.93/-. Two credits fall to be considered:

(a) Rs. 40,00,000/- Bank Guarantee No. *0315NDLG00016225* encashed on 26.08.2025, a fact expressly acknowledged in the Petitioner's own ledger and corroborated by the Respondent's written authorisation communicated on 05.08.2025. This credit is not in dispute. Accordingly, the net admissible principal = Rs. 1,13,17,860.93 − Rs. 40,00,000.00 = Rs. 73,17,860.93/-. Thus, the principal sum of Rs. 73,17,860.93/- is accordingly included as admissible operational debt.

Part II — Interest (Rs. 24,67,076/-)

The contractual basis for interest is unimpeachable. According to *Clause 5* of the First Undertaking dated 16.05.2024, a bilateral, notarised instrument executed by the Respondent's authorised representative stipulates interest at the rate of 1.25% per month (15% per annum) on the outstanding balance from 30.06.2024 (the agreed payment deadline) until full payment is realised. The Respondent's own submissions before this Adjudicating Authority acknowledge

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Case Citation: (2026) ibclaw.in 4097 NCLT

IBC Laws | www.ibclaw.in

the execution of the Undertaking, and the terms of *Clause 5* are not disputed as to their existence.

The Petitioner has computed interest at the contractual rate of 1.25% per month (15% per annum) for approximately 16 months from the date of default (30.06.2024) to the date of the Demand Notice (30.10.2025), yielding a sum of Rs. 24,67,076/-. This computation computed on the running outstanding balance in accordance with the terms of Clause 5 of the First Undertaking, yielding a sum of Rs. 24,67,076/-. Thus, the interest sums of Rs. 24.67,076/- is accordingly included as admissible operational debt.

Part III — Penalty of Rs. 2,51,000/- (Excluded)

The Petitioner has claimed a sum of Rs. 2,51,000/- as penalty under *Clause 5* of the First Undertaking dated 16.05.2024, which provides that *'an additional amount of Rs. 2,51,000/- (Rupees Two Lakh Fifty-One Thousand) will be recovered as a penalty'* in the event of non-payment by 30.06.2024.

The Hon'ble Supreme Court in *Srinivasa Reddy Velagala v. Sravanthi Infratech Pvt. Ltd. (SC, Civil Appeal No. 876/2021, decided 12.08.2026)* has unambiguously held as follows (Para 52):

Sd/-

Sd/-

Case Citation: (2026) ibclaw.in 4097 NCLT

IBC Laws | www.ibclaw.in

> *"..52. Insofar as the amount claimed under the heads of suspension and demobilization charges is concerned, there is no gainsaying that the same would be in the nature of damages. It is a settled position of law that damages, whether liquidated or unliquidated, cannot be treated as operational debt unless and until they are assessed and crystallized by way of adjudication by a court of competent jurisdiction. We say so because the NCLT and NCLAT are not the appropriate fora for determination of disputes. Their functions and powers are for the purpose of ensuring survival of a particular company and alternatively, to ensure maximization of repayment capabilities in the event of liquidation."*

The phrase *'whether liquidated or unliquidated'* in Para 52 is of critical importance. The Supreme Court expressly recognised that even pre-agreed (liquidated) damages amounts require adjudication by a court of competent jurisdiction before they can crystallise into operational debt. A contractual 'penalty' which is legally indistinguishable from liquidated damages under Section 74 of the Indian Contract Act, 1872 falls squarely within this ratio. The Respondent has specifically contested the penalty amount; it has not accepted liability thereunder. In the absence of either acceptance by the debtor or adjudication by a court, the penalty remains unadjudicated damages claim and cannot constitute operational debt.

Further, Para 93 of *Srinivasa Reddy Velagala (supra)* reinforces this conclusion:

Sd/-

Sd/-

Case Citation: (2026) ibclaw.in 4097 NCLT

IBC Laws | www.ibclaw.in

> *"...93. However, the amount claimed under the heads of suspension, idling or demobilization charges would be in the nature of damages as they arise from the alleged breach of the EPC contract by the appellant. It is a settled position of law that damages, whether liquidated or unliquidated, cannot be treated as operational debts unless and until they are assessed and crystallized by way of adjudication by a court of competent jurisdiction. Therefore, these portions of the respondent's claims cannot be treated as operational debt for the purpose of adjudication of an application under Section 9 of the IBC."*

Accordingly, the penalty of Rs. 2,51,000/- is excluded from the computation of admissible operational debt. It is, however, clarified that this exclusion arises solely on account of the jurisdictional constraints of this Adjudicating Authority and shall not be construed as an adjudication upon the merits of the penalty claim. The Petitioner is granted liberty to seek adjudication of this claim before a court of competent jurisdiction.

Part IV — GST Amounts of Rs. 4,44,073/- and Rs. 45,177/-

The Petitioner has claimed GST on two components:

(A) GST on Interest Rs. 4,44,073/-; and

(B) GST on Penalty — Rs. 45,177/-.

This Adjudicating Authority finds both amounts inadmissible, for distinct legal reasons.

Case Citation: (2026) ibclaw.in 4097 NCLT

IBC Laws | www.ibclaw.in

(A) **GST on Penalty (Rs. 45,177/-):** Since the penalty of Rs. 2,51,000/- has been held to be inadmissible as operational debt, the GST levied thereon must, as a necessary corollary, be excluded as well. An accessory charge that is levied upon an inadmissible principal sum cannot independently survive for the purpose of threshold computation under Section 4 of the Code. GST on Penalty of Rs. 45,177/- is accordingly excluded.

(B)Further, **GST on Interest (Rs. 4,44,073/-):** The Ministry of Finance, *vide Notification No. 12/2017-CT* (Rate) dated 28.06.2017 (as amended), has explicitly exempted 'services by way of interest' from the levy of GST. Interest on delayed payment for goods and services falls squarely within this exemption. The Petitioner has not produced any GST invoice or GST-compliant document evidencing that GST was lawfully levied or remitted on the interest component. A valid GST invoice is a prerequisite for a recipient's obligation to pay GST; no such invoice is on record. In the absence of any GST invoice and given the applicable statutory exemption, the claimed GST of Rs. 4,44,073/- on interest has no legal or evidentiary basis.

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Case Citation: (2026) ibclaw.in 4097 NCLT

IBC Laws | www.ibclaw.in

Thus, both GST amounts, aggregating Rs. 4,89,250/- (Rs. 4,44,073/- + Rs. 45,177/-), are accordingly excluded from the computation of admissible operational debt.

Part V — Final Computation of Admissible Operational Debt

Based on the foregoing component-wise analysis, the admissible operational debt is computed herein as follows:

Component	Claimed (Rs.)	Admissible (Rs.)	Reason
Principal Amount	73,17,860.93	**73,17,860.93**	Admitted; BG encashment of Rs. 40,00,000/- duly credited
Interest @ 15% p.a. (Clause 5, First Undertaking dated 16.05.2024)	24,67,076.00	**24,67,076.00**	Contractually stipulated; admissible as operational debt (Section 5(21))
Penalty (Clause 5, First Undertaking)	2,51,000.00	NIL	Damages in nature; requires court adjudication - Srinivasa Reddy Velagala, Para 52 & 93
GST on Interest	4,44,073.00	NIL	Exempt under Notification No. 12/2017-CT (Rate); no GST invoice produced

Case Citation: (2026) ibclaw.in 4097 NCLT

IBC Laws | www.ibclaw.in

GST on Penalty	45,177.00	NIL	Accessory to excluded Penalty head
TOTAL	**1,05,25,187.00**	**97,84,936.93**	

It is observed that the total admissible operational debt, after categorical exclusion of inadmissible components, stands at Rs. 97,84,936.93/- (Rupees Ninety-Seven Lakhs Eighty-Four Thousand Nine Hundred Thirty-Six and Paise Ninety-Three Only), which is Rs. 2,15,063.07/- (Rupees Two Lakhs Fifteen Thousand Sixty-Three and Paise Seven Only) below the statutory minimum threshold of Rs. 1,00,00,000/- (Rupees One Crore Only) prescribed under Section 4 of the Code read with Notification No. *S.O. 1205(E)* dated 24.03.2020. The present Petition therefore fails at the threshold itself.

8. We have arrived to the conclusion on the basis of Petitioner's own ledger accounts. Furthermore, no credit has been accorded to the Respondent in respect of the unverified payments amounting to Rs. 18,00,000/- and Rs. 7,00,000/-, nor for the adjustment of Rs. 25,00,000/- claimed by it. Notwithstanding the exclusion of these disputed claims and adjustments, the unpaid operational debt continues to remain below the statutory threshold limit.

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Sdr

Case Citation: (2026) ibclaw.in 4097 NCLT

IBC Laws | www.ibclaw.in

9. In this context, reliance is placed upon the observations of the Hon'ble NCLAT in *Vishal Kumar v. United Breweries Ltd. and Anr., (2026)*, wherein it was held that if the Corporate Debtor's claims are adjusted against the Operational Creditor's claim and the resultant sum fails to meet the threshold, the admission order is unsustainable on that ground alone.

The relevant extract of the judgment reads as follows:

> *"4. Present is a case where both OC and CD has issued Section 8 notice of their claims which have been also noted by the Adjudicating Authority. In event the claim of the CD is adjusted in the claim of the OC, threshold is not met, hence, on this ground alone itself the order impugned could not have been passed...".*

Furthermore, in the case of *Bengal Chemicals & Pharmaceuticals Ltd. v. Lalani Info Tech Ltd., (2026) ibclaw.in 3560 NCLT*, wherein the Adjudicating Authority held that upon the adjustment of security deposits and the exclusion of unsupported interest, the default amount fell below the threshold under Section 4 of the Code, thereby rendering the Section 9 application unmaintainable.

The relevant portion of the said order is reproduced below:

> *"Thus, as pointed out by the Respondent, upon such adjustment of Rs. 28,12,396/- from the claimed default amount of Rs. 1,13,20,000, the balance amount of Rs. 85,07,604/- fails to meet the threshold under section 4 of the Code. Hence, the default amount claimed by the Applicant is miscomputed and the actual amount due and payable by the Respondent CD to the Applicant OC does not meet*

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Case Citation: (2026) ibclaw.in 4097 NCLT

IBC Laws | www.ibclaw.in

the threshold prescribed under the Code to initiate insolvency proceedings against the Corporate Debtor."

10. Keeping in view the facts and circumstances of the present case, and placing reliance on the judgment of the Hon'ble NCLAT in *Vishal Kumar v. United Breweries Ltd. and Anr. (2026)* as well as the ruling of the Hon'ble NCLT Kolkata Bench, in *Bengal Chemicals & Pharmaceuticals Ltd. v. Lalani Info Tech Ltd. (2026)*, this Authority observes that the mandatory requirement concerning the statutory threshold limit under Section 4 of the Code for admission of a Petition under Section 9 remains unsatisfied.

11. Since the instant Petition fails at the threshold itself, this Authority does not deem it necessary to delve into or adjudicate upon the remaining contentions raised by the respective parties.

12. In light of the foregoing findings and observations, the Company Petition bearing *CP (IB) No. 5/9/JPR/2026* is hereby **dismissed** as being non maintainable, given that the adjudicated amount in default falls squarely below the mandatory statutory threshold of Rs. 1,00,00,000/- (Rupees One Crore Only) prescribed under Section 4 of the Code.

13. It is hereby clarified that the observations made herein are strictly confined to the issue regarding the maintainability of the instant Petition under Section 9 of the Code, and shall not be construed as an adjudication upon, or an expression of any opinion regarding, the merits of the Petitioner's claims

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Sd/-

Case Citation: (2026) ibclaw.in 4097 NCLT

IBC Laws | www.ibclaw.in

concerning the principal amount, interest, or penalty. Furthermore, nothing contained in this Order shall prejudice or affect any concurrent or independent proceedings initiated or pending in respect of the dishonoured cheques. The Petitioner is accordingly granted the liberty to pursue such alternative remedies as may be available under the law.

14. The Registry is directed to send a copy of this order to the Petitioner and the Respondent forthwith.

Sd/-

REETA KOHLI
JUDICIAL MEMBER

Sd/-

KAVITA BHATNAGAR
TECHNICAL MEMBER

LRA KT