IN THE NATIONAL COMPANY LAW TRIBUNAL

NEW DELHI

COURT-IV

CP (IB)-339(ND)/2025

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

IN THE MATTER OF:

SHIVA ASPHALTIC PRODUCTS PRIVATE LIMITED

...Applicant/Operational Creditor

VERSUS

ATLAS CONSTRUCTIONS PRIVATE LIMITED

...Respondent/Corporate Debtor

Order Pronounced On: 14.10.2025

CORAM:

SHRI MANNI SANKARIAH SHANMUGA SUNDARAM,

HON'BLE MEMBER (JUDICIAL)

SHRI ATUL CHATURVEDI,

HON'BLE MEMBER (TECHNICAL)

APPEARANCES:

For the Applicant : Mr. Nipun Gupta, Advocate.

For the Respondent : Mr. Shrey Patnaik, Ms. Saira Khan, Mr. Ritwik Batra, Advocates.

ORDER

PER: MANNI SANKARIAH SHANMUGA SUNDARAM, MEMBER (JUDICIAL)

1. This Application has been filed by Air Shiva Asphaltic Products Private Limited, the Applicant/Operational Creditor ("OC") before this Adjudicating Authority, under Section 9 of the Insolvency and Bankruptcy Code, 2016 ("IBC" or "Code") read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, ("Adjudicating Authority Rules"), for initiating the Corporate Insolvency Resolution Process ("CIRP"), declaring moratorium and for appointment of Interim Resolution Professional ("IRP"), against Atlas Constructions Private Limited on the ground that it is unable to repay the outstanding amount of Rs. 1,13,71,352 (Rupees One Crore Thirteen Lakh Seventy One Thousand Three Hundred Fifty Two Only) as on 28th February 2025. This amount includes the total principal amount of ₹74,38,683 (Rupees Seventy-Four Lakhs Thirty-Eight Thousand Six Hundred EightyThree Only) and interest of ₹39,32,669 (Rupees Thirty Nine Lakh Thirty Two Thousand Six Hundred Sixty Nine Only) calculated at 18% per annum from 16.02.2022.

2. The Corporate Debtor herein, Atlas Constructions Private Limited bearing CIN: U74899DL1988PTC031030 was incorporated under the provisions of the Companies Act 1956 and is having its registered office at F-31 Sector 10 DLF Sector 10/11, Dividing Road, Faridabad, Haryana 121006. Since the registered office of the Corporate Debtor is situated in New Delhi, this Tribunal having jurisdiction over the NCT of Delhi is the Adjudicating Authority under sub-section (1) of section 60 of the Code in relation to the prayer for initiation of Corporate Insolvency Resolution Process against the Corporate Debtor.

3. SUBMISSIONS OF THE APPLICANT:

i. The debt arises from the supply of Bitumen Emulsion RS-1 (KG) and associated freight charges as detailed in invoices issued and acknowledged by Atlas Constructions Private Limited (hereinafter referred to as "Atlas/Corporate Debtor").

ii. Since, parties were maintaining a running account, supplies were also received on 25th April 2022 and 10th May 2022 by the Corporate Debtor, which, remain unpaid. The last such payment was received on 10th May 2022. Accordingly, entire amount became due and payable on 10.05.2022. Further, vide letter dated 17.06.2024, the Corporate Debtor acknowledged outstanding dues, thereby, further extending limitation.

iii. However, the Corporate Debtor has failed to meet its repayment obligations and despite repeated requests the Corporate Debtor has never come forward to pay the outstanding amount.

iv. Therefore, the Operational Creditor vide demand notice had called upon the Corporate Debtor to pay an amount of ₹1,11,48,191 (Rupees One Crore Eleven Lakh Forty Eight Thousand One Hundred and Ninety One only) within 10 days from receipt of the Demand Notice. However, the Corporate Debtor has never come forward to make balance payment. Rather the Corporate Debtor has raised moonshine defense that there were issues in supplies vide an undated response received on 29th January 2025. However, no such communication has been received by the Operational Creditor at the time of supplies or immediately thereafter within a reasonable period of time. Further, reference has been made to a legal notice and its response in June 2024. In the backdrop of the aforementioned factual position, it is evidently clear that the Corporate Debtor has deliberately and intentionally failed to clear the admitted dues and are in fact insolvent.

v. These misconceived and moonshine allegations were rebutted by the Operational Creditor while clarifying that 15 tankers of Bitumen Emulsion were sold and supplied to the Corporate Debtor between 16th February, 2022 and 10th May, 2022. It is pertinent to note that at the time of supply of said Bitumen Emulsions by Operational Creditor, the Corporate Debtor accepted delivery of the same and did not raise any complaints, objections, or concerns regarding the quality of the product in any manner whatsoever. It was also pointed out that Corporate Debtor continued to accept deliveries of the Bitumen Emulsion from Operational Creditor and at no point refused to accept delivery of the

product throughout the aforementioned period citing concerns regarding quality. This is indicative of the fact that the Corporate Debtor had no objections to the quality of the product being supplied by Operational Creditor. It was therefore clear that the objections regarding the quality of the products in the Notice under reply are an afterthought meant to escape liability.

vi. Furthermore, the Applicant shared a response dated 10.02.2025 to the reply dated 29.01.2025 to the Demand Notice refuting the contention that any road damage allegedly arising at the project site can be attributed to the quality of the supplied material and asserts that such claims of CD are baseless and unsubstantiated and Consequently, there were no issues related to its quality, which is why the Corporate Debtor did not raise any concerns or objections during the relevant supply period.

vii. Materially, it was also pointed out that at the time of supply of the aforementioned Bitumen Emulsion, Operational Creditor with the intention of maintaining good relations with Corporate Debtor never pressurized for payments. On the first reminder regarding payment issued by Operational Creditor to Corporate Debtor, the Corporate Debtor released payment of Rs. 10 Lacs on 10th May, 2022, and promised to pay the balance amount on release of departmental payments. Materially, in response to demand made on 1.06.2022, the Corporate Debtor issued letter dated 17.06.2024 wherein Corporate Debtor assured Operational Creditor that the outstanding dues will be repaid along with requisite interest. Thereby, also acknowledging dues and extending the limitation for the purposes of the dues.

viii. The Operational Creditor, relying on the assurances given by Corporate Debtor waited for payment of the balance amounts, however, to no avail. Materially, the Corporate Debtor has also consumed GST Credit against the supplies, which has not been returned which demonstrates that plea raised by the Corporate Debtor are moonshine.

ix. This Adjudicating Authority vide order dated 17.07.2025 directed the Applicant to file an affidavit with regard to maintainability of the petition. The order dated 17.07.2025 is reproduced herein below:

> *"Learned Counsel for the applicant is directed to file an affidavit with regard to maintainability of the petition. List on 31.07.2025."*

x. In compliance of the order dated 17.07.2025, the Applicant filed the Affidavit regarding maintainability dated 15.08.2025.

xi. It has been submitted that the Operational Creditor, in a bona fide effort to amicably resolve the outstanding dues, undertook several steps following the Corporate Debtor's reply dated 17.06.2024, wherein the Corporate Debtor had expressed willingness to reconcile accounts and clear any legitimate liability. Pursuant to the said reply, the Operational Creditor was engaged in multiple communications, including but not limited to personal visits, telephone discussions, and email exchanges, to initiate and facilitate reconciliation. On the basis of these discussions, reconciliation meetings were held between the parties, during which the underlying transactions were reviewed. Consequent to such meetings, the Operational Creditor, vide email dated 29.06.2024, shared a duly approved reconciled account statement with the Corporate Debtor and expressly requested that the dues be cleared at the earliest. However, post the said email shared by the Operational Creditor, the same was not objected or replied by the Corporate Debtor which makes it due acknowledgment of the said debt. It is pertinent to mention that despite this conclusive communication and the earlier assurance given by the Corporate Debtor, no payment was made.

xii. It was further submitted that prior to instituting the present proceedings under Section 9 of the Insolvency and Bankruptcy Code, 2016, the Operational Creditor, in good faith and without prejudice to its legal rights, initiated Pre-Institution Mediation under Section 12A of the Commercial Courts Act, 2015 before the East District Legal Services Authority, Karkardooma Courts, Delhi, in relation to the same Operational claims. The mediation application was filed on 03.08.2024 and was registered as 383/24/Mediation/Commercialdispute/ EastDLSA/22575. Despite notice on 16.08.2024 & 31.08.2024, the Corporate

Debtor failed to participate in the process. Consequently, the Non-Starter Report was issued on 19.09.2024. The pre-institution mediation was undertaken voluntarily and in a bona fide effort to resolve the matter amicably.

xiii. The Operational Creditor submitted that the period from 03.08.2024 to 19.09.2024, during which the pre-institution mediation was pending, deserves to be excluded for the purpose of computing limitation, in view of the principles under Section 14 of the limitation Act, 1963.

xiv. The Operational Creditor after all due efforts to reconcile issued a Section 8 demand notice dated 04.01.2025 in Form 3 to the Corporate Debtor at its Registered office and to its Directors through email and Courier which was duly served upon them. Subsequently, no payment was made within 10 days of the said notice.

xv. It was submitted that in response to the said demand notice, the Corporate Debtor issued an undated reply alleging certain quality-related issues regarding the supplies made for the first time. The Operational Creditor refuted the said allegations in detail through its response dated 10.02.2025, clearly stating that no objections had been raised at the time of delivery, and that all supplies had been accepted and utilised without protest. These allegations were raised as an afterthought and lack supporting documentation.

xvi. It was submitted that the claim of the Operational Creditor is also supported by the ledger maintained by it in the regular course of business, bank statements evidencing the last payment, and GST returns, which indicate non-refund of GST and usage of input credit by the Corporate Debtor. These collectively establish both the supply and the acknowledgment of the transaction.

xvii. It was further submitted that the Corporate Debtor has not initiated any legal proceedings, arbitration, or civil suit regarding any alleged dispute on the quality of goods. No contemporaneous complaints or rejection notes were ever issued, nor was any sample testing or correspondence indicating dissatisfaction placed on record by the Corporate Debtor. This conclusively demonstrates the absence of any pre-existing dispute prior to the issuance of the demand notice under Section 8 of the Code.

xviii. The Corporate Debtor's reply dated 17.06.2024, itself clarifies the real intent to settle dues subject to reconciliation. It does not raise any dispute as understood under Section 8(2) of the Code. The offer to reconcile accounts also constitutes a valid acknowledgment under Section 18 of the Limitation Act, thereby extending the limitation period and also in terms of the exclusion as per the principles laid down under Section 14 of the Limitation Act.

xix. The cause of action for filing the present petition arose when the Corporate Debtor failed to clear the outstanding operational dues despite continued supply of goods and services and repeated requests for payment. The cause of action further arose and continued when, notwithstanding such default, the Corporate Debtor proceeded to deduct and deposit TDS on the payable amounts, thereby acknowledging its liability. The cause of action further crystallized when the Operational Creditor issued a legal notice dated 01.06.2024 demanding payment of the outstanding dues, which was replied to by the Corporate Debtor on 17.06.2024, admitting willingness to reconcile the accounts and pay legitimate dues. Pursuant thereto, reconciliation discussions took place, culminating in the Operational Creditor sending a reconciled account statement vide email dated 29.06.2024, which remains unanswered and unpaid. The cause of action was further sustained upon of Pre Institution Mediation under Section 12A of the Commercial Courts Act on 03.08.2024, which failed due to non-participation by the Corporate Debtor and was formally closed on 19.09.2024 as a non-starter. Finally, the cause of action arose with the issuance of a demand notice dated 04.01.2025 under Section 8 of the Insolvency and Bankruptcy Code, 2016, to which no valid payment or legally tenable dispute has been raised. The cause of action thus continues and is subsisting on the date of filing of the present petition.

xx. The present petition is, therefore, not only within limitation but is also maintainable both in law and on facts, and the time spent in pursuing pre-institution mediation deserves to be excluded while computing limitation in terms of well-settled law.

xxi. On 08.09.2025, this Adjudicating Authority heard the arguments and the order was reserved on maintainability.

4. ANALYSIS AND FINDINGS:

i. We have carefully perused the pleadings, documents, and submissions made by the Applicant/Operational Creditor.

ii. The primary issue for consideration is whether the present petition filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 ("IBC") is maintainable.

iii. The Operational Creditor has stated that the last payment towards the outstanding dues was made on 10.05.2022, and that the entire amount became due and payable on the said date. Therefore, the period of limitation of three years under Article 137 of the Limitation Act, 1963 would ordinarily expire on 09.05.2025. The present petition has been filed on 31.05.2025 as per records. On the face of it, therefore, the application appears to have been filed beyond the prescribed limitation period.

iv. However, the Applicant seeks to extend or exclude time on two grounds:

- **a.** acknowledgment of debt in the reply dated 17.06.2024, and
- **b.** exclusion of the period spent in Pre-Institution Mediation (PIM) proceedings between 03.08.2024 and 19.09.2024.

v. As regards the first contention, on a perusal of the letter dated 17.06.2024, it is evident that the Corporate Debtor merely expressed willingness to reconcile accounts and verify any legitimate claims. It was also stated in the said reply that the Applicant has not attached any Account statements. The said correspondence does not contain any clear, unqualified, or unequivocal acknowledgment of liability as required under Section 18 of the Limitation Act, 1963. The mere proposal to reconcile accounts or settle "legitimate dues" if any cannot be construed as acknowledgment of a subsisting debt. The law is well settled that for an acknowledgment to extend limitation, it must be a conscious and unconditional admission of debt. Accordingly, this Adjudicating Authority is of the view that the letter dated 17.06.2024 does not satisfy the test of acknowledgment under Section 18 and therefore cannot be relied upon to extend the period of limitation.

vi. The next contention of the Applicant pertains to exclusion of the period during which the Pre-Institution Mediation (PIM) was pending, i.e., from 03.08.2024 to 19.09.2024. The said proceedings were voluntarily initiated by the Applicant before the East District Legal Services Authority. However, there is no provision under the IBC or the Limitation Act to exclude time spent in such pre-litigation mediation undertaken at the discretion of a party. The exclusion contemplated under Section 14 of the Limitation Act applies only where the prior proceedings were pursued in a forum without jurisdiction or under a bona fide mistake, and not where a party voluntarily attempts settlement before approaching a judicial forum. Therefore, the time spent during the PIM proceedings cannot be excluded for computation of limitation.

vii. In this context, reference may be made to the "***Report on Framework for Use of Mediation under the Insolvency and Bankruptcy Code, 2016***", dated 31.01.2024, prepared by the Expert Committee constituted by the Insolvency and Bankruptcy Board of India (IBBI). The Committee, while deliberating on the scope of mediation in insolvency matters, specifically observed as follows:

> *"**5.42. Pre-institutional Mediation falls outside of Insolvency:***
>
> *The Committee also discussed at length, the possibility of pre-institutional mediation in insolvency matters, and is of the view that it may not fit well within the spirit of the Code. The remedies under the Code come into effect only after the statutory 'default' has occurred and an application has been made to initiate insolvency proceedings. Any mediation prior to such application would fall outside the realm of the Code and technically not be 'insolvency mediation.' Thus, it cannot therefore be enforced in the same manner as mediations post the filing of an application under the Code."*

viii. The above extract clearly strengthens the point that any mediation prior to filing of an insolvency application falls outside the framework of the Code and cannot be treated as a proceeding "in relation to insolvency." Therefore, the time spent in such voluntary pre-institution mediation proceedings cannot be excluded for computation of limitation under Section 14 of the Limitation Act.

ix. In light of the above discussion, the date of default as claimed being 10.05.2022, and there being no valid acknowledgment or permissible exclusion, the present Application is barred by limitation.

x. Accordingly, this Adjudicating Authority finds that the consideration of the present application under Section 9 of the Code is not warranted, as the Operational Creditor has failed to establish that the debt and default fall within the period of limitation on legally sustainable grounds.

xi. In view of the foregoing, it is ordered as follows:

The Application bearing **CP (IB) 339 (ND) 2025** filed by the Applicant under Section 9 of the Code read with Rule 6 of the of the Insolvency and Bankruptcy Code, 2016 (Application to Adjudicating Authority) Rules for initiating CIRP against the Respondent is **not maintainable** and is **dismissed**.

No order as to costs.

-SD/-	**-SD/-**
ATUL CHATURVEDI	**MANNI SANKARIAH SHANMUGA SUNDARAM**
MEMBER (TECHNICAL)	**MEMBER (JUDICIAL)**