

**ENTERED**

April 25, 2025

Nathan Ochsner, Clerk

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

In re:	)	
	)	Chapter 11
	)	
ASCEND PERFORMANCE MATERIALS	)	Case No. 25-90127 (CML)
HOLDINGS INC., <i>et al.</i> , <sup>1</sup>	)	
	)	
Debtors.	)	(Jointly Administered)
	)	

**STIPULATION AND AGREED ORDER  
REGARDING MASTEC’S TEMPORARY RESTRAINING ORDER**

This Stipulation and Agreed Order (the “Stipulation”) is entered into by and among (a) the above-captioned debtors (collectively, the “Debtors”) and (b) MasTec Power Corporation (“MasTec” and together with the Debtors, the “Parties”). The Parties hereby stipulate and agree as follows:

WHEREAS, Ascend Performance Materials Operations LLC (“Ascend LLC”) and MasTec are parties to litigation pending before The Honorable Charles Eskridge of the United States District Court for the Southern District of Texas (the “District Court”) in Case No. 4:22-cv-03932 (the “District Court Litigation”) respecting certain disputes under a contract for MasTec to design, engineer, and construct a cogeneration steam power plant in Decatur, Alabama (the “Contract”).

WHEREAS, pursuant to the Contract, Ascend LLC was the beneficiary of a letter of credit in the maximum amount of \$13,267,470 issued by Bank of America (the “MasTec LOC”).

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<sup>1</sup> A complete list of each of the Debtors in these chapter 11 cases may be obtained on the website of the Debtors’ claims and noticing agent at <https://dm.epiq11.com/Ascend>. The location of Debtor Ascend Performance Materials Holdings Inc.’s principal place of business is 1010 Travis St., Suite 900, Houston, Texas 77002.

WHEREAS, on April 15, 2025, Ascend LLC notified Bank of America that it was drawing down the MasTec LOC in full (the proceeds thereof, the “MasTec LOC Proceeds”).

WHEREAS, on April 16, 2025, MasTec filed an *Emergency Motion and Memorandum In Support of Emergency Motion for Temporary Restraining Order* (the “MasTec TRO Motion”) in the District Court seeking to enjoin Ascend LLC from using the MasTec LOC Proceeds and to require Ascend LLC to deposit the MasTec LOC Proceeds in the registry of the District Court (the “Registry”).

WHEREAS, Ascend LLC represented that it did not receive the MasTec LOC Proceeds into its account until during the hearing on April 16, 2025.

WHEREAS, on April 16, 2025, the District Court entered a temporary restraining order in favor of MasTec (the “Temporary Restraining Order”), requiring Ascend LLC to deposit the MasTec LOC Proceeds into the Registry immediately upon entry of the Temporary Restraining Order. The Temporary Restraining Order is currently set to expire on April 25, 2025, at 6:00 pm.

WHEREAS, on April 21, 2025, prior to the commencement of the Debtors’ bankruptcy cases, and pursuant to Rule 67 of the Federal Rules of Civil Procedure and 28 USC § 2041, Ascend LLC deposited the MasTec LOC Proceeds into the Registry.

WHEREAS, on April 21, 2025, each Debtor filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) in the United States Bankruptcy Court for the Southern District of Texas (the “Bankruptcy Court”).

WHEREAS, by way of compromise and settlement to avoid unnecessary costs and fees, and without the Debtors agreeing that MasTec has shown the proof necessary to obtain a temporary or permanent restraining order or preliminary injunction in the Bankruptcy Court, hereby submit this Stipulation.

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, AND UPON APPROVAL BY THE BANKRUPTCY COURT OF THIS STIPULATION, IT IS SO ORDERED as follows:

1. Notwithstanding the expiration of the Temporary Restraining Order, the MasTec LOC Proceeds shall remain in the Registry, subject to Rule 67 of the Federal Rules of Civil Procedure and 28 USC §§ 2041-42 (except as may be agreed by the Parties) pending determination of the MasTec LOC Proceeds Dispute (as defined below) by Final Order<sup>2</sup> of the Bankruptcy Court (subject to paragraphs 6-7 of this Stipulation). Following determination of the MasTec LOC Proceeds Dispute by Final Order of the Bankruptcy Court, the MasTec LOC Proceeds shall be immediately disbursed to the applicable Party (together with any interest earned thereon) without further proceedings before the District Court, and neither Party shall oppose such release of the MasTec LOC Proceeds. For the avoidance of doubt, MasTec's right to argue that the MasTec LOC Proceeds are cash collateral of MasTec within the meaning of 11 U.S.C. § 363, and disbursement of the MasTec LOC Proceeds to the Debtors is therefore subject to 11 U.S.C. § 363(c)(4), are fully reserved; *provided*, that the rights of the Debtors and the DIP Lenders<sup>3</sup> to object to or otherwise oppose such arguments are fully reserved.

2. In the event that the MasTec LOC Proceeds are inadvertently transferred to the Debtors, the Debtors shall immediately segregate the MasTec LOC Proceeds, not to be commingled with any other funds, pending determination of the MasTec LOC Proceeds Dispute by Final Order of the Bankruptcy Court.

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<sup>2</sup> As used herein, "Final Order" shall mean an order that has not been stayed, reversed, or amended and as to which no appeal or request to review is pending and the time to appeal or seek review is expired.

<sup>3</sup> "DIP Lenders" shall have the meaning ascribed in the *Revised Interim Order (I) Authorizing the Debtors to Obtain Postpetition Financing, (II) Granting Liens and Providing Claims with Superpriority Administrative Expense Status, (III) Authorizing the Use of Cash Collateral, (IV) Modifying the Automatic Stay, (V) Scheduling a Final Hearing, and (VI) Granting Related Relief* [Docket No. 96].

3. The Debtors, their officers, agents, servants, employees, and attorneys, and all persons acting in concert with them, must, at all times, refrain from using or otherwise transferring or disbursing the MasTec LOC Proceeds, except as provided in Paragraph 2 of this Stipulation pending determination of the MasTec LOC Proceeds Dispute by Final Order of the Bankruptcy Court.

4. The Parties may enforce the terms and conditions of this Stipulation in the Bankruptcy Court against any non-Party that has proper notice of this Stipulation.

5. Subject to paragraphs 6-7 of this Stipulation, the Parties agree that the issue of whether the MasTec LOC Proceeds are property of the Debtors' bankruptcy estate within the meaning of 11 U.S.C. § 541 and/or whether the MasTec LOC Proceeds constitute cash collateral of MasTec within the meaning of 11 U.S.C. § 363 (the "MasTec LOC Proceeds Dispute") shall be determined by the Bankruptcy Court.

6. This Stipulation is without prejudice to either Party's right to argue whether (i) the District Court Litigation (other than, for the avoidance of doubt, the MasTec LOC Proceeds Dispute) or (ii) sub-issues related to the MasTec LOC Proceeds Dispute, but not, for the avoidance of doubt, the MasTec LOC Proceeds Dispute itself (the "Ancillary LOC Issues"), should be adjudicated in the District Court or the Bankruptcy Court.

7. For the avoidance of doubt, if the Bankruptcy Court determines, which may be by a motion of either MasTec or the Debtors (in accordance with local rules and procedures, including notice, a hearing, and an opportunity for parties in interest to object) that the Ancillary LOC Issues should be resolved by the District Court, MasTec's rights are reserved to request relief from the automatic stay to have the Ancillary LOC Issues resolved by the District Court or for the District Court Litigation (other than, for the avoidance of doubt, the MasTec LOC Proceeds Dispute itself)

to continue and the Debtors' rights to oppose such relief, including with respect to both the Ancillary LOC Issues and the continuation of the District Court Litigation (other than the MasTec LOC Proceeds Dispute itself) are reserved.

8. No transfer or disposition of the MasTec LOC Proceeds subsequent to this Stipulation (whether inadvertent or intentional, by any party) shall affect the Parties' rights with regard to the status of the MasTec LOC Proceeds pursuant to 11 U.S.C. § 541, 11 U.S.C. § 363, or otherwise and shall not affect any of the Parties' rights as to the MasTec LOC Proceeds Dispute or the District Court Litigation.

9. By entering into this Stipulation, the Parties are not waiving and will not be deemed to have waived, *inter alia*, any available defenses, claims, counterclaims, causes of action, or privileges, including at law, equity, or otherwise. Without limitation of the foregoing, MasTec shall not, by virtue of entry into this Stipulation, be deemed to have consented to the jurisdiction of the Bankruptcy Court over any claim asserted by MasTec in the District Court Litigation (other than the MasTec LOC Proceeds Dispute) nor waived its right to a jury trial as to any such claims (other than the MasTec LOC Proceeds Dispute); *provided* that, for the avoidance of doubt, MasTec is hereby consenting to the jurisdiction of the Bankruptcy Court with respect to the MasTec LOC Proceeds Dispute.

10. Neither this Stipulation nor any negotiations and writings in connection with this Stipulation will in any way be construed as or deemed to be evidence of or an admission on behalf of any Party regarding any claim or right that such Party may have against any other Party.

11. Each of the Parties hereto represents and warrants it is duly authorized to enter into and be bound by this Stipulation.

12. The terms and conditions of this Stipulation will be immediately effective and enforceable upon its entry.

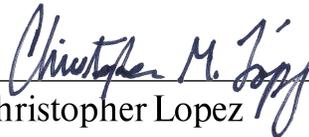
13. The Parties are authorized to take all actions necessary to effectuate the relief granted in this Stipulation.

14. The Bankruptcy Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Stipulation.

15. Promptly upon entry of this Stipulation and Agreed Order, the Debtors shall lodge it on the docket of the District Court Litigation and serve a copy thereof on Bank of America or its counsel (if any) in the Bankruptcy Cases.

**THE FOREGOING STIPULATION IS HEREBY APPROVED AND SO ORDERED.**

Signed: April 25, 2025

  
\_\_\_\_\_  
Christopher Lopez  
United States Bankruptcy Judge

Stipulated and agreed by:

Houston, Texas  
April 25, 2025

/s/ Jason G. Cohen

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**ATTORNEYS FOR MASTEC  
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