

Judgement

PER: SH. L. N. GUPTA, M(T) & SH. HARNAM SINGH THAKUR, M(J)

IDBI Bank Ltd. (for brevity, the **“Applicant”**) has filed the present application under Section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 with a prayer to initiate the Corporate Insolvency Process against M/s. Cheema Spintex Ltd. (for brevity, the **“Corporate Debtor”**).

2. The Corporate Debtor namely, M/s. Cheema Spintex Ltd. is a Company incorporated on 10.10.1994 under the provisions of the Companies Act, 1956 with CIN U17115CH1994PLC015140 having its registered office at House No 176/2, Sector 41-A, Chandigarh-160036, which is within the jurisdiction of this Tribunal. The Authorized Share Capital of the Corporate Debtor Company is Rs. 45,00,00,000/-, and the Paid-up Share Capital is Rs. 41,68,12,000/-, as per the master data annexed with the application.

3. It is submitted by the Applicant that the Corporate Debtor executed Foreign Currency Loan (FCL) Agreement in favour of the Applicant amounting to SF 10.64 million (Rs. 2630 Lakhs Approximately). Later, the Corporate Debtor approached the Applicant for conversion of its Foreign Currency Loan into Single Currency Pool Facility to re-pay the loan in Rupee equivalent of the sanctioned facility of SF 10.64 million, that was accepted by the Applicant while executing an Amendatory Agreement dated 31.03.2000. Thereafter, the Corporate Debtor executed an additional Rupee term loan agreement of Rs.

400 lacs with the Applicant on 23.07.1997. Later, on 15.02.2000, Corporate Debtor was sanctioned an assistance of Rs. 275 Lakhs by way of subscription to NCDs on Private Placement basis and accordingly, the Subscription Agreement was entered into between the two parties. At the request of the Corporate Debtor, liabilities of the Corporate Debtor were restructured in the year 2002 and certain reliefs and concession were granted.

3.1 The liabilities of the Corporate Debtor were further restructured in June, 2005, March 2006 envisaging re-scheduling of principal outstanding of Rupee Term Loan (RTL) and rupee tied Foreign Currency Loan, reduction in interest rate and conversion of existing Funded Interest Term Loan, deferred interest, and Non-Convertible Debentures into Cumulative Redeemable Preference Shares. The Corporate Debtor again approached the Applicant and other lenders for re-structuring of its liabilities under Corporate Debt Restructuring (CDR) in December, 2008 for comprehensive restructuring. It has been averred that due to default in payments, the Account of the Corporate Debtor Company could be classified as NPA on 31.12.2008.

3.2 In Dec 2010, CD was declared sick by BIFR and the Petitioner was declared as operating agency. In the meantime, on 18.03.2013, the Corporate Debtor approached the Applicant for settlement of dues by way of OTS which was approved. However, the company failed to pay the money and OTS was revoked. Again in 2015, on the request of Corporate Debtor the Applicant approved the restoration OTS. However, in view of the failure of the CD to honour the terms of the restored OTS, the Applicant Bank revoked the restoration of OTS. Letter of recall of loan was issued on 23.03.2017 giving 15

days' time but no payment was made. Finally, notice under Section 13(2) SARFAESI Act was issued to the Corporate Debtor Company on 15.09.2017.

4. The detailed particulars of the unpaid Financial Debt including the total amount of default and the date of default claimed by the applicant in Part IV of the application reads thus:

2	<p>AMOUNT CLAIMED TO BE IN DEFAULT AND THE DATE ON WHICH THE DEFAULT OCCURRED (ATTACH THE WORKINGS FOR COMPUTATION OF AMOUNT AND DAYS OF DEFAULT IN TABULAR FORM)</p>	<p>Rs.254,95,95,389.88/- (Rupees Two Hundred Fifty Four Crore Ninety Five Lac Ninety Five Thousand Three Hundred Eighty Nine and Eighty Eight Paise only) as on 01.03.2023 plus further interest at applicable rate, costs, dues, and expenses that may accrue till total repayment and settlement of dues by the Corporate Debtor/Guarantors.</p> <p>M/s Cheema Spintex Limited, had availed the financial assistance from the petitioner financial creditor from time to time, however, on account of the default in making repayment of loans/ financial facilities the account of the corporate debtor was classified as NPA on 31.12.2008, by the petitioner financial creditor. However the account of the corporate debtor was restructured and granted OTS and extension of OTS on various occasions, despite the same the corporate debtor had failed to comply with the terms and conditions of the restructuring/CDR/ OTS and lastly the OTS was revoked on 11.01.2016 and the CDR had also failed</p>
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leading to the exit of the petitioner financial creditor from the CDR on 22.01.2016, and as such the account of the corporate debtor was declared NPA w.e.f. 31.12.2008 as per the RBI Guidelines.

Table for working of default for all the accounts of corporate debtor:

1.	Account type	Foreign Currency Loan
2.	Account no.	1001673200002103
3.	Amount of disbursement	Rs. 26,30,00,000/-
4.	Date of default	07.04.2017 (15 days after issuance of recall notice) however the account was declared NPA w.e.f 31.12.2008.(nominal date as per RBI Circular)
5.	Rate of interest	14.15% p.a. plus penal interest as applicable
6.	Total outstanding as on 01.03.2023	Rs.2,30,95,47,589.00/-

1.	Account type	Rupee Term Loan
2.	Account no.	1001673200002110
3.	Amount of disbursement	Rs.4,00,00,000/-
4.	Date of default	07.04.2017 (15 days after issuance of recall notice) however the account was declared NPA w.e.f 31.12.2008.(nominal date as per RBI Circular)
5.	Rate of interest	14.15% p.a. plus penal interest as applicable
6.	Total outstanding as on 01.03.2023	Rs. 23,83,93,173/-

5. As per Part IV of the application (ibid), the Applicant has claimed an outstanding “financial debt” of Rs. 254,95,95,389.88 and relied on 07.04.2017 as the “date of default”. It is mentioned that the Account of the Corporate Debtor Company became NPA on account of default on 31.12.2008. It is further submitted that the Applicant Bank issued the recall notice dated 23.03.2017 and notice under Section 13(2) of SARFAESI Act dated 15.09.2017, calling upon the Corporate Debtor and other obligors to pay the defaulted amount.

6. To buttress its plea, the Applicant has relied on the following documents:

- (i) Foreign Currency Loan Agreement dated 04.08.1995, 23.07.1997;
- (ii) Sanction Letter dated 26.08.2002 and Sanction of Restructuring dated 30.06.2005;
- (iii) Copy of the CDR Sanction dated 17.11.2009;
- (iv) Copy of Amendatory Agreement dated 31.03.2000;
- (v) Recall Notice dated 23.03.2017, Letter of Invocation of Guarantee dated 31.05.2017, Notice under Section 13(2) SARFAESI dated 15.09.2017;
- (vi) Copy of Balance Sheets (page 499-521);
- (vii) Copy of the Audit Report dated 27.05.2010;
- (viii) OTS sanction letters dated 11.03.2013, 09.07.2014, 26.09.2014, 12.02.2015, 22.02.2016, 24.04.2021, 08.09.2022, 16.02.2023;
- (ix) Acknowledgement letters of debt towards IDBI Bank (page 522-529).

7. Based on the facts and the documents mentioned above, the Applicant has prayed for initiation of the CIRP against the Corporate Debtor.

8. On issuance of the notice, the Corporate Debtor filed its reply dated 04.01.2024 stating mainly the following:

8.1 As per RBI's Master Circular dated 01.07.2015, a mandatory cure period of 90 days is to be provided. However, in the instant case, without even waiting for 90 days' period to lapse, applicant bank classified the loan account of Corporate Debtor as NPA on 31.12.2008 thereby rendering all the subsequent actions unsustainable in the eyes of law.

8.2 It is appalling that while filing the present application, the applicant bank has completely concealed the fact that out of total sanctioned OTS amount of Rs.2721.38 Lakhs, the Corporate Debtor has already repaid Rs. 1975.98 Lakhs and was ready to deposit the remaining amount of Rs.745 Lakhs. Thus a majority portion of 72.66% of OTS Amount already stood repaid by the Corporate Debtor. The copy of OTS request dated 16.02.2023 written by the Corporate Debtor to the applicant bank is annexed as Annexure R-1. Similarly, the OTS request dated 16.03.2023 written by the Corporate Debtor to the applicant bank is placed at Annexure R-2.

8.3 The Applicant has not filed respective affidavit of the concerned dealing officials who have dealt with the loan account. The Applicant Bank has only filed affidavit of Atul Deep Gupta, DGM IDBI Bank Ltd., NPA Management Group, Sector-17B, Chandigarh whereas the said official was not even posted in the concerned Branch of the applicant Bank at the relevant time and especially at the time of alleged execution of loan documents.

8.4 The Applicant has relied upon the copy of authority letter dated 21.03.2023. However, it is worth to state that there is no board resolution or

any proper authorization given, thus the said letter of authority cannot be relied upon any manner for purpose of giving authority to a person.

8.5 The Applicant has also not filed the mandatory interest chart/certificate of rate of interest reflecting the different rate of interest charged in the loan accounts) as per RBI directives and guidelines issued in this regard from time to time.

8.6 The present application filed by the Applicant is barred by limitation. The date of default could not be taken from the recall notice dated 23.03.2017 as the Corporate Debtor had defaulted much prior to the year 2017.

8.7 The applicant has failed to place on record Form-D showing the record of default in terms of Regulations 21(4) of the IBBI (Information Utilities) Regulations, 2017 and on the ground that there is no record with the Information Utility, the present application is liable to be dismissed in terms of Section 7(4) of the IBC, 2016.

9. In rebuttal, the applicant has filed a Rejoinder dated 19.01.2024 to the reply filed by the Corporate Debtor and written submissions dated 16.04.2024 stating mainly the following:

9.1 On the request of the Corporate Debtor, Applicant allowed restructuring of debt on multiple occasions. However, despite giving multiple opportunity for restructuring the debt, the CD failed to service the debt on time and the account turned NPA w.e.f. 31.12.2008 in view of the applicable guidelines of the Reserve Bank of India. The fact of restructuring of debt granted by the Applicant to the Corporate Debtor has been accepted in the CWP No.4785 of 2016 filed by the CD before the High Court of Punjab and Haryana.

9.2 The submission of the Corporate Debtor that it had paid Rs. 1975.98 lakhs against settlement amount of Rs.2719.55 lakhs is misleading as the amount claimed to be paid by the CD has been paid over a 3-year period much beyond the timelines stipulated in the OTS Letter of Approval dated 18.03.2013 and that too without applicable interest. Further, the CD was given multiple opportunities to pay the settlement amount by extending the OTS vide letter dated 09.07.2014 which the Corporate Debtor failed to pay and further by restoring the OTS vide letter dated 12.02.2015, the Corporate Debtor again failed to pay the settlement amount. Despite restructuring the debt multiple times the Corporate Debtor failed to repay the dues.

9.3 Sh. Atul Deep Gupta, who was the Deputy General Manager of the Applicant, then, posted at NPA Management Group, Sector 17-B, Chandigarh is duly competent to file the present application against the CD.

9.4 The Applicant functions under the overall guidance and governance of its Board of Directors. As per delegation of powers, documents which are attached on page 37-38-39 of application regarding delegation of powers pertaining to IBC related matters, Deputy General Manager is duly competent to file an application in NCLT and as authorized representative Sh. Atul Deep Gupta, Deputy General Manager of the bank is duly competent to file the present application against the Corporate Debtor. The Hon'ble NCLAT in **Palogix Infrastructure** has held that if the officer was authorised to sanction loans and had done so, the application filed under Section 7 of the Code cannot be rejected on the ground that no separate specific authorisation letter was issued by the financial creditor in favour of such officer. In such cases, the CD cannot take the plea that while the officer has power to sanction the

loan, such officer has no power to recover the loan amount or to initiate Corporate Insolvency Resolution Process in spite of default in repayment. The Hon'ble Supreme Court in the matter of "**Rajendra Narottamdas Sheth & Anr. v/s Chandra Prakash Jain & Anr.** Civil Appeal No.4222 of 2020" has confirmed/ taken the same view.

9.5 The Chennai Bench of Hon'ble NCLAT in the matter of "**Guruprasad V Hishobkar vs. Shree Aashraya Souhard Credit Society Ltd. reported as 2023 SCC OnLine NCLAT 299**" held that while admitting an application under Section 7 of the IBC, existence of Debt and Default needs to be examined and not 'Quantum of Debt'. While reaching on this conclusion, the Hon'ble NCLAT relied upon the judgment of **Rajesh Kedia vs. Phoenix ARC (P) Ltd., 2022 SCC OnLine NCLAT 147**, and stated that "once the 'threshold' is crossed, it is not for the Adjudicating Authority to decide the exact 'Quantum of Debt', but what is to be examined is whether there is a 'Debt' and 'Default'. In the matter in hand, it is not disputed that the amount due and payable is also above the threshold limit prescribed under section 4 of the IBC.

9.6 The Respondent made offers of OTS to the Applicant vide its letters dated 16.02.2023, 16.03.2023 and e-mail dated 14.12.2023 and also made some payments under OTS, which further extends the limitation period. Further, CD acknowledged the debt due to IDBI in its Audited Financial Statements for FY 2018-19 and FY 2019-20 (Annexure 39 of the petition). Hence, the present Application is well within the limitation period.

9.7 Form D containing Record of Default has been appended at Annexure-3 on page 60, which has been duly authenticated as per the provisions of regulation 21 of IU Regulation, 2017. Further, a fresh copy of IU record in

which default of CD has been shown as authenticated has been appended with the rejoinder as Annexure A-3.

10. We heard the submissions of both parties and perused the pleadings on record, including the Written Submissions filed by the Applicant. The Corporate Debtor in its defence has mainly contended that (a) the present application filed by the Applicant is barred by limitation, (b) there is no proper authorization to file the Application, (c) the Applicant has not filed respective affidavit of the concerned dealing officials who have dealt with the loan account and who were posted in the Branch of the Applicant Bank at the relevant time, and (d) no valid record of default in Form D of Information Utility has been placed on record.

Per Contra, the Applicant has annexed various documents to prove the existence of debt and default as listed in Para 6 of this order, viz, the Applicant Bank's sanction letters, Loan Recall Notice dated 23.03.2017 issued on behalf of the Applicant Bank, and notice under Section 13(2) SARFAESI dated 15.09.2017 and Acknowledgement letters of debt towards IDBI Bank. The Applicant Bank has contended that the fact of restructuring of debt granted by the Applicant to the CD has been duly accepted in the CWP No.4785 of 2016 filed by the Corporate Debtor before the High Court of Punjab and Haryana. Further, the Applicant has acknowledged debt in its balance sheets for FY 2018-19 and FY 2019-20. Also, a valid record of default in Form D of Information Utility has been placed on record along with the rejoinder.

11. First, we would like to examine the contention of the Corporate Debtor that the present Application is barred by limitation. From the record, we notice that the present Application has been filed on 27.03.2023, whereas the date

of default relied upon by the Applicant is 07.04.2017, which implies that the application has been filed after expiry of the limitation period of 03 years on 06.04.2020. However, we are conscious of the fact that due to Covid-19, the Hon'ble Supreme Court extended the period of limitation vide its order dated 10.01.2022 in "**Suo Motu Writ Petition (C) No. 3 of 2020**", the relevant extracts of which reads thus:

"5. Taking into consideration the arguments advanced by learned counsel and the impact of the surge of the virus on public health and adversities faced by litigants in the prevailing conditions, we deem it appropriate to dispose of the M.A. No. 21 of 2022 with the following directions:

- I. The order dated 23.03.2020 is restored and in continuation of the subsequent orders dated 08.03.2021, 27.04.2021 and 23.09.2021, it is directed that the period from 15.03.2020 till 28.02.2022 shall stand excluded for the purposes of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings.*
- II. Consequently, the balance period of limitation remaining as on 03.10.2021, if any, shall become available with effect from 01.03.2022.*
- III. In cases where the limitation would have expired during the period between 15.03.2020 till 28.02.2022, notwithstanding the actual balance period of limitation*

remaining, all persons shall have a limitation period of 90 days from 01.03.2022. In the event the actual balance period of limitation remaining, with effect from 01.03.2022 is greater than 90 days, that longer period shall apply.”

Further, the Hon’ble NCLAT in the Company Appeal (AT) (Insolvency) No. 936 of 2021 in the matter of **“M/s. Essjay Ericsson Private Limited vs. M/s. Frontline (NCR) Business Solutions Pvt. Ltd”** dated 10.01.2022, specifically held that:

“12. When the Hon’ble Supreme Court in exercise of jurisdiction of Article 142 of the Constitution of India has directed for extension of period of limitation, a litigant is entitled for the benefit of extended period of limitation and if the petition, application, suit, appeal etc. are filed within extended period of limitation, the application, appeal, suit etc. shall be treated within period of limitation. When the Hon’ble Supreme Court has granted extension of period of limitation, it cannot be said that appeal, suit or application which is filed during the relevant period is barred by time so as requiring an Application under Section 5 of the Limitation Act, 1963 for condonation of delay. When the appeal, suit, application etc. is filed within period of limitation as extended by the Hon’ble Supreme Court, there does not arise any occasion to pray for condonation of delay for filing suit, application or appeal.

However, if a litigant being over cautious files an Application under Section 5 of the Limitation Act, 1963, no exception can be taken to that proceeding but there is no requirement in law to file an application under Section 5 of the Limitation Act, 1963.

13. Further, when an application, appeal or suit etc. is filed within extended period of limitation as directed by the Hon'ble Supreme Court, as noted above, there is no discretion left with the Court or Tribunal to hold that application, appeal or suit is delayed when there is no requirement of filing application under Limitation Act. In above circumstances, discretion of Court to consider sufficient cause does not arise.”

12. In the normal circumstances, the limitation of the present Applicant would have expired on 06.04.2020, however, in view of the directions passed by Hon'ble Supreme Court (Supra), the Applicant has got the benefit of the extended limitation period, as per which it had 90 days from 01.03.2022 to file the present application.

Further, we notice from the record that the Corporate Debtor vide its letter dated 24.04.2021 addressed to the General Manager-NPA Management Group, IDBI Bank Ltd. (page no. 522- 525 as Annexure 40 of the Application) made an offer of OTS to the Applicant Bank. Thus the position that emerges regarding limitation is as given in the table overleaf:

S. No.	Documents	Date	Period of Limitation till
1.	Date of Default (as per Part IV of Application)	07.04.2017	06.04.2020
2.	The Hon'ble Supreme Court extended the period of limitation vide its order dated 10.01.2022 in Suo Motu Writ Petition (C) No. 3 of 2020	15.03.2020	30.05.2022 (i.e. 90 days from 01.03.2022)
3.	OTS proposal given by the Corporate Debtor	24.04.2021	23.04.2024
4.	Date of Filing of the Present Application		27.03.2023

Accordingly, we find that the present Application, having been filed on 27.03.2023, is well within the Limitation.

13. Now, we would like to examine the petition is not maintainable because there is no proper authorization to file the Application. In this context, we refer to “the Delegations of Powers & the Authority Letter” placed on record by the Applicant Bank, which reads thus:

Sf.No.	Nature of Delegation	Delegated Authority	Control/Reporting
1 [#]	Identification of an account for filing the case against corporate debtors and corporate guarantors, and for filing insolvency and bankruptcy case against individuals and personal guarantors, in NCLT/ DRT (for individuals where applicable) under the IBC	(i) For cases upto EDCC – EDCC (ii) For cases above EDCC - Respective Sanctioning Authority <i>Note. For cases being referred to IBC, “Outstanding” to be used in lieu of “Exposure” for NPA/ TWO accounts. Outstanding shall include: Fund based outstanding (including TL) i.e. GPO + NFB outstanding (including under derivatives, underwriting, intra-day exposures etc.)+ Investment exposure (including equity, underwriting and similar commitments)</i>	Yes (Except for EC cases)
2	Approval of applications and other documents to be filed before adjudicating authorities	DGM (Legal)/ DGM	No
3 [#]	Appointment of Advocate/ Legal Counsel, and fixing of legal fee & payment at the time of filing reference to NCLT and DRT (in case of insolvency and bankruptcy of individuals as applicable) and till the reference is admitted i) When the bank's exposure is less than ₹100 crore ii) When the bank's exposure is ₹100 crore and above	(i) GM (ii) CGM	No
4 (a) [#]	Filing of application with NCLT/ DRT/ affidavits before NCLT/ DRT (in case of individuals where applicable) (after approval of delegated authority for action under IBC) (i) When the bank's exposure is less than ₹100 crore (ii) When the bank's exposure is ₹100 crore and above	(i) DGM (ii) DGM (RH/ CH/ BH)/ GM	No

Amended on February 23, 2021



CIN: L65190MH2004GO1148838

आईडीबीआई बँक लिमिटेड
पंजीकृत कार्यालय : आईडीबीआई टॉवर,
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FAX : (+91 22) 2218 0411
Website : www.idbibanke.in

TO WHOMSOEVER IT MAY CONCERN

This is to certify that Shri Atul Deep Gupta, Deputy General Manager of IDBI Bank Limited, NPA Management Group is authorized to file the application, to sign the plaints, vakalatnama and affidavits in reply/proof of debt, applications, other papers, proceedings, documents, adduce evidence and instruct the lawyer on behalf of IDBI Bank Limited and to do all such actions which are necessary for the purpose of proceedings before NCLT, Chandigarh, by virtue of the Delegation of Power dated March 17, 2020, Clause No. V: IBC Related Matters, Sr. No. 4 (a) approved by IDBI Bank Ltd.

Dated: March 21, 2023

(O T Tolani)
General Manager
NPA Management Group

Later, the Applicant bank has also placed on record the following Specific authorization letter in its Rejoinder:



CIN: L65190MH2004GO1148838

आईडीबीआई बँक लिमिटेड
पंजीकृत कार्यालय : आईडीबीआई टॉवर,
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Website : www.idbibanke.in

TO WHOMSOEVER IT MAY CONCERN

This is to certify that Shri Ashok Kumar Singal, Deputy General Manager of IDBI Bank Limited, NPA Management Group is authorized to file the application, to sign the plaints, vakalatnama and affidavits in reply/proof of debt, applications, Rejoinder, other papers, proceedings, documents, adduce evidence and instruct the lawyer on behalf of IDBI Bank Limited and to do all such actions which are necessary for the purpose of proceedings before NCLT, Chandigarh, by virtue of the Delegation of Power dated May 17, 2020, Chapter No. V: IBC Related Matters, Sr. No. 4 (a) (ii)(ii) approved by IDBI Bank Ltd.

Dated: January 18, 2024

(Omkumar T Tolani)
General Manager
NPA Management Group

Thus, on perusal of the documents (ibid), this Bench observes that the Application has been filed by the duly authorized person and there is no infirmity in this regard.

14. The next contention raised by the Corporate Debtor is that in order to prove the execution of loaning & security documents, the Applicant has not filed affidavit of the concerned officials who have dealt with the loan account and who were posted in the Branch of the Applicant Bank at the relevant time. Per contra, the Applicant has stated that this contention of the Corporate Debtor is not true as Sh. Atul Deep Gupta, who has filed the present Application, was posted as Deputy General Manager at NPA Management Group, Sector 17-B, Chandigarh of the Applicant is duly competent to file the present application against the Corporate Debtor. Thus, we do not find any merit in this contention of the Corporate Debtor in this regard.

15. As regards the next contention of the CD that the Applicant has not placed on record the Form D. We find the same at Annexure A-3 in the Rejoinder (page No. 202-213), which reads thus:

Annexure - A-3

NeSL NATIONAL E-GOVERNANCE SERVICES LIMITED
India's First Information Utility

**FORM D
RECORD OF DEFAULT (RoD)**

(Issued By information utility under sub-regulation (4) of regulation 21 of the Insolvency and Bankruptcy Board of India (Information Utilities) Regulations, 2017)

This Record of Default is issued to the Financial Creditor M/s IDBI BANK LIMITED in respect of the default of debt as per details given below-

(a) Name of the Submitter:	M/s IDBI BANK LIMITED
(b) Schedule-2 Bank (Y/N):	Y
(c) Name of Corporate Debtor:	M/s CHEEMA SPINTEX LIMITED
(d) Unique Debt Identifier Number:	AABCI8842G_1001673200002110
(e) Registered Address:	IDBI Tower, cuffed parade colaba Mumbai
(f) Total Outstanding Amount:	230859968.88
(g) Default Amount:	230859968.88
(h) Date of Default:	07-04-2017
(i) Status of Authentication of Default:	AUTHENTICATED
(j) Date of Last Acknowledgement of Debt (AoD):	Not Available

Filing of Default (Submission ID No.)	Submitted on	Status of Authentication (Authenticated / Disputed / Deemed to be authenticated)	Authentication completed on
(3)	03-12-2022 20:28:31	<u>AUTHENTICATED</u> Colour Code : GREEN	20-12-2022 13:21:47

NeSL is authorized to issue this record of default and has accordingly affixed its digital signature, as per the provisions of the Insolvency and Bankruptcy Code, 2016 read with Insolvency and Bankruptcy Board of India (Information Utilities) Regulations, 2017, Guidelines for Technical Standards for Performance of Core Services and Other Services and the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2017.

PART A

- (Information of default filed with IU, covering information of debt, submitter and other parties connected with the debt, security interest and default details)
- Status of authentication by the party on whom the report is generated by the submitter
- Communication made by IU to intimate the party on the default filing)

Record of Default for Party M/s CHEEMA SPINTEX LIMITED (Debtor)

Unique Debt Identifier :AABC18842G_1001673200002110

Information as of 03-12-2022

Received by NeSL on 03-12-2022 20:28:31

Status of Authentication (DEBTOR) : AUTHENTICATED (as on :20-12-2022 13:21:47)

Registered in IU : NO

Registration Date : N.A.

Last Login : N.A.

Submitter Information	
UIN	AABC18842G
Name	M/s IDBI BANK LIMITED
Relationship to the Debt	Financial Creditor
Communication address	IDBI Tower,cuffe parade colaba Mumbai
PIN code	400005
Telephone number	02266552037
Mobile number	8878160909
Email ID	idbisrcd@idbi.co.in
Email ID - Dispute Alert	vijendra.tawar@idbi.co.in
Email ID - Default Alert	bhavik.shastri@idbi.co.in

Other Party Information	
Relationship to the Debt	Debtor
Party name	M/s CHEEMA SPINTEX LIMITED
Registered/ permanent Address of counterparty	House No. 176/2 Sector 41A Chandigarh
PIN code	160036
Address for Communication	Village Kauli Majra Tehsil Dera Bassi District SAS Nagar Punjab
PIN code	140501
Legal Constitution	PVTL
Date of Incorporation	10-10-1994
CIN/LLPIN	U17115CH1994PLC015140
PAN No. / Other ID	AAACC6786C
Counterparty Contact Person Name	Hardyal Singh Cheema

Registered Office : Gresham Assurance House,4th Floor Sir P.M. Road, Fort,Mumbai-400001
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Thus, we find no merit in the contention raised by the CD with regard to the record of default of Information Utility. Hence, the same is rejected.

16. Furthermore, from the pleadings, we notice that the Corporate Debtor Company itself had offered one-time settlement of its dues to the Applicant Bank vide its letters dated 11.03.2013, 09.07.2014, 26.09.2014, 12.02.2015, 22.02.2016, 24.04.2021, 08.09.2022, 16.02.2023, which in terms of the judgment of the Hon'ble Supreme Court in **“Dena Bank (now Bank of Baroda) vs. C. Shivakumar Reddy and Anr.”** are acknowledgments of debt. The relevant para of the judgment (supra) dated 04.08.2021 reads thus:

*“141. Section 18 of the Limitation Act cannot also be construed with pedantic rigidity in relation to proceedings under the IBC. **This Court sees no reason why an offer of One Time Settlement of a live claim, made within the period of limitation, should not also be construed as an acknowledgment to attract Section 18 of the Limitation Act.** In Gaurav Hargovindbhai Dave (supra) cited by Mr. Shivshankar, this Court had no occasion to consider any proposal for one time settlement. Be that as it may, the Balance Sheets and Financial Statements of the Corporate Debtor for 2016 2017, as observed above, constitute acknowledgement of liability which extended the limitation by three years, apart from the fact that a Certificate of Recovery was issued in favour of the Appellant Bank in May 2017. The NCLT rightly admitted the application by its order dated 21st March, 2019”.*

(Emphasis placed)

17. Thus, in terms of the abovementioned discussion, we find that the Applicant Bank has been able to successfully establish the debt and default beyond doubt on the part of the Corporate Debtor in repayment of its financial debt due. Even otherwise, M/s. Cheema Papers Mills Pvt. Ltd., the Corporate Guarantor of the Corporate Debtor herein has already been admitted into CIRP for the same debt vide order dated 14.05.2024 of this

Adjudicating Authority whose liability is joint, several and co-extensive to the liability of Principal Borrower, i.e., the Corporate Debtor herein.

18. In the sequel to the above and the given facts & circumstances, the present Application being complete and the Applicant having established the default on the part of the Corporate Debtor in payment of the Financial Debt for an amount being above the minimum threshold limit, **the present Application is admitted in terms of Section 7(5) of the IBC and accordingly, the Moratorium is declared in terms of Section 14 of the Code.** As a necessary consequence of the Moratorium in terms of Section 14(1) (a), (b), (c) & (d), the following prohibitions are imposed, which must be followed:

“(a) 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;

(b) Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;

(c) 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;

(d) The recovery of any property by an owner or lessor, where such property is occupied by or in the possession of the Corporate Debtor.”

19. As proposed by the Applicant, this Bench appoints Mr. Nipan Bansal as IRP having Registration No. IBBI/IPA-001/IP-P00039/2017-18/10100 Email ID: irp@parshotamandassociates.com subject to the condition that no disciplinary proceedings is pending against the IRP so named and disclosures as required under IBBI Regulations, 2016 are made by him within a period of one week of this Order. This Adjudicating Authority further orders that:

Mr. Nipan Bansal, as an IRP having Registration No. IBBI/IPA-001/IP-P00039/2017-18/10100, Email ID: irp@parshotamandassociates.com is directed to take charge of the CIRP of the Corporate Debtor with immediate effect. The IRP is further directed to take the steps as mandated under the IBC specifically under Sections 15, 17, 18, 20, and 21 of IBC, 2016.

20. Since, M/s. Cheema Papers Mills Pvt. Ltd., the Corporate Guarantor has also been admitted into CIRP for the same debt vide order dated 14.05.2024 of this Adjudicating Authority, the RP would ensure that the total recovery from the CIR Process of both the main Corporate Debtor herein and the Corporate Guarantor M/s. Cheema Papers Mills Pvt. Ltd. shall not exceed the total amount of debt of the Applicant due and pay.

21. The Applicant is directed to deposit Rs.5,00,000/- (Five Lakhs) only with the IRP to meet the immediate expenses. The amount, however, will be subject to adjustment by the Committee of Creditors as to be duly accounted for by IRP and shall be paid back to the Applicant.

22. A copy of this Order shall immediately be communicated to the Applicant Bank, the Corporate Debtor Company, IBBI, and the IRP named above by the Court Officer/Registry of this Tribunal.

23. **The Application is admitted and disposed of accordingly.**

Sd/-

(L. N. GUPTA)
MEMBER (T)

Sd/-

(HARNAM SINGH THAKUR)
MEMBER (J)