NATIONAL COMPANY LAW TRIBUNAL
CHANDIGARH BENCH (COURT-I)

CP (IB) 131/CHD/CHD/2023 & IA No. 1286/2024

IN THE MATTER OF:

IDBI Bank Ltd.
Through its Deputy General Manager
Mr. Atul Deep Gupta,
SCO 72-73, Sector 17-B,
Chandigarh- 160017 **... Applicant/Financial Creditor**

Versus

M/s. Cheema Papers Limited.
9 KM Stone, Bazpur Road,
Kashipur, Uttarakhand - 244713 **... Corporate Guarantor**

And in the matter of IA No. 846/2023

M/s. Cheema Papers Ltd.
9 KM Stone, Bazpur Road,
Kashipur, Uttarakhand – 244713 **...Applicant/Corporate Guarantor**

Versus

IDBI Bank Ltd.
Through its Deputy General Manager
Mr. Atul Deep Gupta,
SCO 72-73, Sector 17-B,
Chandigarh- 160017 **...Respondent**

Order Delivered on: 14.06.2024

SECTION: Section 7 of IBC 2016; & Rule 11 of the NCLT Rules, 2016 read with Section 7 (1) of the IBC, 2016

CORAM:

SH. HARNAM SINGH THAKUR, HON'BLE MEMBER (J)

SH. L. N. GUPTA, HON'BLE MEMBER (T)

PRESENT:

For the Applicant : Mr. Harsh Garg, Advocate

For the Respondent : Mr. Aalok Jagga, Advocate

Judgement

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

As both the IA No. 1286/2024 and CP (IB) 131/CHD/CHD/2023 are interlinked, we decide them through this common order.

IA No. 1286/2024

The present IA has been filed by the Applicant-M/s Cheema Papers Limited (Respondent in CP (IB) 131/CHD/CHD/2023) under Rule 11 of NCLT Section 7(1) of the Insolvency and Bankruptcy Code, 2016, praying to keep the proceedings in CP (IB) 131/CHD/CHD/2023 in abeyance and defer adjudication of the petition in view of the pending talks of settlement as also in view of letter dated 17.05.2023.

Per contra, the Respondent herein IDBI Bank Limited (Financial Creditor in CP (IB) 131/CHD/CHD/2023) has submitted that there was no OTS proposal of the Corporate Guarantor Cheema Papers Limited pending with them. IDBI Bank Limited has filed a Compliance Affidavit dated

05.06.2024 pursuant to the orders of this Adjudicating authority dated 27.05.2024, which reads thus:

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL CHANDIGARH

BENCH CHANDIGARH

CP (IB) NO. 131/CHD/CHD /2023

IDBI Bank Ltd.

..... Financial Creditor/ Petitioner

V/s

M/s Cheema Papers Ltd.

.....Respondent/ Corporate Debtor/ Corporate Guarantor

Affidavit of Omkumar Tirathdas Tolani aged 57 years bearing employee code 17264 presently working as General Manager, NPA Management Group-Mumbai Zone, IDBI Tower, WTC Complex, Cuffe Parade, Mumbai- 400005 in compliance to the order dated 27.05.2024.

1. That aforesaid application u/s 7 of IBC, 2016 is pending adjudication against the corporate debtor who is a corporate guarantor of the main borrower i.e. M/s Cheema Spintex Ltd. and is now adjourned for 30.05.2024. That during the arguments, counsel for the CD had contended that their OTS proposal is pending consideration with IDBI Bank Ltd. and also relied upon letter dated 17.05.2024 written by IDBI Bank Ltd. to CD. In this regard IDBI bank Ltd. was directed to file specific affidavit with regard to pendency of any OTS proposal with bank.

2. That in compliance to the aforesaid order dated 27.05.2024, the deponent wish to confirm that there is no OTS proposal pending consideration with IDBI Bank Ltd. as on 27.05.2024 pertaining to M/s Cheema Papers Ltd. as M/s Cheema Papers Ltd. neither forward any valid OTS proposal nor deposited any demand drafts with IDBI Bank Ltd. as on 27.05.2024.

3. That only one letter was sent by M/s Cheema Papers Ltd. on 09.05.2024 contending therein that in principally they agree to the terms and conditions for the

28 MAY 2024

OTS-Scheme applicable to the Corporate Guarantor and they give their consent for the said OTS but this letter is completely misconceived as no specific OTS proposal was given by M/s Cheema Papers Ltd.

4. That letter dated 17.05.2024 sent by IDBI Bank only in response to the letter dated 09.05.2024 calling upon M/s Cheema Papers Ltd. to send proper OTS proposal and also requisite information as per the policy of the bank but in response to that letter no OTS proposal was sent by M/s Cheema Papers Ltd. as on 27.05.2024.

5. That even pendency of OTS proposal with the bank should not be a ground for the CD to avoid the legal implications of section 7 of IBC, 2016. The same was also mentioned in letter dated 17.05.2024 in the following terms.

"Meanwhile, please note that the Bank reserves its right to proceed with all legal actions against the Company and Personal Guarantors/Corporate Guarantors towards recovery of its dues."

Dated: 28.05.2024

Mumbai 28 MAY 2024

For IDBI BANK LTD.

Deponent
Authorised Signatory

NOTARY * INDIA * GOVERNMENT OF
DR. T.C. KAUSHIK MUMBAI (MAHARASHTRA) Regd. No. 309

Verification:

I, the above-named deponent do hereby affirm and declare as that contents of para no. 1 to 5 of my affidavit are true and best to my knowledge and nothing has been concealed therein.

Dated: 28.05.2024

Mumbai 28 MAY 2024

For IDBI BANK LTD.

Deponent
Authorised Signatory

28 MAY 2024

NOTED & REGISTERED
Sr. No. 479 Page No. 54
Book No. I Date: 28 MAY 2024

BEFORE ME
28/05/2024
DR. T. C. KAUSHIK
ADVOCATE HIGH COURT &
NOTARY, GOVT. OF INDIA
REGD. NO. 309,
FLAT NO. 904, BLDG. NO. 11,
YVONNE BUILDING, KONKAR AMRIT SHAKTI,
CHANDIVALI, ANDHERI (E), MUMBAI- 400 072

Seen
ID/ Aadhar / PAN / DL / EID
Exp. No. 17264

Thus, by filing the aforesaid affidavit, the Respondent/Financial Creditor has stated, in no uncertain terms, that no OTS proposal is pending consideration with IDBI Bank Limited pertaining to M/s Cheema Papers Ltd., which neither forwarded any valid OTS proposal nor deposited any demand drafts with IDBI Bank Ltd. as on 27.05.2024. In view of the above, this Bench finds the

submissions and contention made by or on behalf of the Respondent regarding pendency of a valid OTS proposal purely a delay tactic and misleading.

In view of the above, we did not find any justification to keep the proceedings in CP (IB) 131/CHD/CHD/2023 in abeyance and defer adjudication further. **Hence, the present IA-1286/2024 is dismissed.**

CP (IB) 131/CHD/CHD/2023

The present application has been filed by IDBI Bank Ltd. (for brevity, the **"Applicant"**) 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 Papers Ltd. (for brevity, the **"Corporate Guarantor"**).

2. The Corporate Guarantor namely, M/s Cheema Papers Limited is a Company incorporated on 26.05.1988 under the provisions of the Companies Act, 1956 with CIN U21012UR1988PLC009679 having its registered office at 9 KM Stone, Bazpur Road, Kashipur, Uttarakhand – 244713, which is within the jurisdiction of this Tribunal. The Authorized Share Capital of the Corporate Guarantor Company is Rs. 7,32,13,750/-, and the Paid-up Share Capital is Rs. 7,03,20,000/-, as per the master data annexed with the application.

3. It is averred 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). To Secure the Foreign Currency Loan sanctioned by the Petitioner Financial Creditor in favour of the

corporate debtor; one Mr. Hardyal Singh Cheema, Harbhajan Singh Cheema, Amarjit Singh Cheema, Pratap Singh Cheema (personal guarantors) and M/s Cheema Paper Boards Private Limited (Later rechristened as **M/s. Cheema Papers Limited** (**the corporate Guarantor herein**) and M/s. Cheema Paper Mills Private Limited executed irrevocable an un-conditional Deed of Guarantee, to re-pay forthwith, on demand, without demur, any amount payable by the Borrower i.e. Corporate Debtor under the Loan Agreement.

3.1 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 i.e. SF 10.64 million, which was duly accepted by the Applicant while executing an Amendatory Agreement dated 31.03.2000. Thereafter, the liabilities of the Corporate Debtor were restructured in the year 2002 and 2004 and certain reliefs & concession were granted.

3.2 The liabilities of the Corporate Debtor were further restructured in June, 2005, March 2006 and July 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. 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. the Corporate Debtor submitted proposal with the Applicant Financial Creditor for restoration/ extension of OTS which was approved on 12.02.2015 and the LOA was issued on 12.02.2015. 9. The Corporate Debtor paid the initial amount as mentioned in LOA, however failed to pay the entire OTS amount. Hence, the restoration of OTS was revoked by Applicant vide its letter dated January 11, 2016 and the CDR-EG in its meeting held on 22.01.2016 approved the exit of the Applicant Financial Creditor from the CDR with immediate effect and original dues have been restored in the system of the Applicant Financial Creditor. It has been averred that due to default in payments, the Account of the Corporate Debtor could be classified as NPA on 31.12.2008.

3.3 Letter for recall of assistance was issued on 23.03.2017 and corrigendum was issued on 31.05.2017. Letter for invocation of guarantees was issued on 31.05.2017. Notice under Section 13(2) of SARFAESI Act was issued on 15.09.2017. The Respondent Corporate Guarantor has acknowledged the debt in its Audited Financial Statement/Balance Sheet for the F.Y. 2019-20 signed on 08.12.2020. Subsequently, the Petitioner filed an OA No. 1258/2021 (IDBI Bank vs Cheema Spintex Ltd., Cheema Papers Limited and others) before the Ld. Debt Recovery Tribunal-II, Chandigarh. As the said OA is having debt of more than Rs. 100 Crore, the DRT-II, Chandigarh transferred the same to DRT-II, Delhi, where the same is pending adjudication.

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	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)	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. 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 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.	100167320002103
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 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.	100167320002110
3.	Amount of disbursement	Rs.4,00,00,000/-
4.	Date of default	07.04.2017 (Expiry of 15 days of notice of recall), however the account was declared NPA w.e.f 31.12.2008 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/-

Subsequently on account of default of by the Corporate Debtor, Guarantee Invocation notice was issued to

		respondent Corporate Guarantor on May 31, 2017 calling upon the Corporate Guarantor to pay forthwith the amount due to IDBI Bank. However, the respondent Corporate Guarantor failed to make the payment. Hence date of default is 31.05.2017.

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 31.05.2017 as the "date of default". It has been added that the Account of the Corporate Debtor became NPA on account of default on 31.12.2008. It is further submitted Letter for recall of assistance was issued on 23.03.2017 and corrigendum was issued on 31.05.2017. Letter for invocation of guarantees was issued on 31.05.2017 calling upon the Corporate Guarantor to pay forthwith the amount due to IDBI Bank. However, the respondent Corporate Guarantor failed to make the payment.

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; Loan Agreement dated 23.07.1997,

(ii) Sanction Letter dated 26.08.2002 and Sanction of Restructuring dated 30.06.2005 and CDR Sanction dated 17.11.2009;

(iii) Deeds of Guarantee dated 09.08.1995, 23.07.1997, 18.07.2001.

(iv) Copy of Amendatory Agreement dated 31.03.2000;

(v) Letter of Recall Notice dated 23.03.2017,

(vi) Letter of Invocation of Guarantee dated 31.05.2017 issued to Cheema Paper Limited (Annexure-36),

(vii) Notice under Section 13(2) SARFAESI dated 15.09.2017;

(viii) Copy of Balance Sheets (page 499-521);

(ix) Copy of the Audit Report dated 27.05.2010;

(x) OTS proposal letters dated 18.03.2013, 09.07.2014, 26.09.2014, 12.02.2015, 22.02.2016, 24.04.2021, 08.09.2022, 16.02.2023;

(xi) Acknowledgement letters of debt towards IDBI Bank (page 522-529).

(xii) Copy of the Subscription Agreement dated 15.02.2000;

7. Based on the facts described above and the documents referred above, the Applicant has prayed for initiation of the CIRP against the Respondent.

8. On issuance of notice, the Respondent filed its reply dated 14.05.2021 and Written Submissions dated 22.05.2024 stating mainly the following:

8.1 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 defaulted much prior to the year 2017.

8.2 There is no authorization in favour of the signatory of the present petition. Page 37 reflects certificate dated 21.03.2023, which is apparently not an authorization and commences with the word "certify". It allegedly certifies that Atul Deep Gupta, Deputy General Manager of IDBI Limited, is authorized to file the present application in terms of the delegation of powers dated 17.03.2020. The said alleged delegation is placed by applicant at page 39. At Sr.No.4, the power of DGM is to maintain applications with NCLT in case of individuals. The instant case does not pertain to individuals. Sr.No.1 pertains to authority for filing applications against Corporate Debtor which does not include DGM. Consequently, certificate dated 21.03.2023 at page 37, stating that signatory is authorized to maintain the present petition, is unsustainable.

8.3 No guarantee Agreement for the alleged debt and alleged default of the Corporate Debtor has been placed on record to the claimed extent.

8.4 The Applicant has claimed change of name from Cheema Paper Boards Private Limited to Cheema Papers Limited. There is no statutory document on record to substantiate this contention. There is nothing on record to reflect acquisition of alleged liabilities of the former in favour of latter.

8.5 No resolution has been appended along with the alleged deed of guarantee dated 23.07.1997. The said document is also incomplete.

8.6 During the arguments, Ld. counsel for the Corporate Guarantor contended that an OTS proposal is pending consideration with the Applicant IDBI Bank Ltd. and in this regard, relied upon letter dated 17.05.2024 written by IDBI Bank Ltd. to Corporate Guarantor.

9. In rebuttal, the Applicant filed a Rejoinder dated 19.04.2024 to the reply filed by the Corporate Guarantor and written submissions dated 24.04.2024 stating mainly the following:

9.1 The application has been filed u/s 7 of IBC, 2016 for a defaulted amount of Rs. 254,95,95,389.98 outstanding as on 01.03.2023 against Corporate Debtors/ Corporate Guarantors including the M/s Cheema Papers Ltd., who stood as corporate guarantor in the loan account of M/s Cheema Spintex Ltd., the Principal Borrower/Corporate Debtor.

9.2 The principal borrower could not maintain the account properly, thus the Applicant Financial Creditor issued Letter for Recall of Assistance dated

23.03.2017 giving 15 days' time to the Principal Borrower M/s. Cheema Spintex Limited.

9.3 The main borrower had acknowledged the debt due to IDBI in Audited Financial Statements for FY2018-19 and FY2019-20 which are enclosed at Annexure 39 (Pg no.499-521) of the CIRP petition. Moreover, the corporate guarantor i.e. Cheema Papers Ltd. has acknowledged the guarantee given to principal borrower on page no 37 of its Audited Financial Statements as on March 31, 2023 which is enclosed at Annexure-42 of the Rejoinder. The limitation period is further extended by the OTS request letters dated 16.02.2023, 16.03.2023 and e-mail dated 14.12.2023 from the main borrower which is enclosed at Annexure A-40 (Pg no.522-529) in the Section 7 petition.

9.4 It is mentioned that the present corporate guarantor has duly signed the irrevocable guarantee agreement (Annexure-15 pg no. 205-218) in which it has been clearly stated (Pg no.210 para 22) that the guarantor affirms any balance confirmation or acknowledgment of debt by the main borrower shall be deemed to have been made by the present corporate guarantor (i.e. M/s Cheema Papers Ltd to M/s Cheema Spintex Ltd.) itself. Letter for invocation of guarantees was issued on 31.05.2017 calling upon the Corporate Guarantor to pay forthwith the amount due to the Applicant IDBI Bank.

9.5 The Debt is never disputed by the corporate guarantor in its reply. Rather it has taken frivolous grounds that the petitioner financial creditor had charged extra interest but did not ever dispute the fact that the amount defaulted is above the threshold limit u/s 4 of IBC, 2016. It is settled law that while admitting an application under Section 7 of the IBC, existence of Debt

and Default needs to be examined. The Hon'ble Apex Court in the matter of **M. Suresh Kumar Reddy Vs Canara Bank & Ors.** held that once NCLT is satisfied that the default has occurred, there is hardly a discretion left with NCLT to refuse admission of the application under Section.

9.6 Lastly, in compliance to the order dated 27.05.2024 of this Tribunal, the Applicant IDBI Bank has filed an affidavit on 29.05.2024 confirming that there is no OTS proposal pending consideration with the IDBI Bank Limited as on 27.05.2024 pertaining to Cheema Papers Limited, as Cheema Papers Limited neither forwarded any valid OTS proposal nor deposited any demand draft with IDBI Bank Limited as on 27.05.2024.

10. We heard the submissions of both parties and perused the pleadings on record, including the Written Submissions filed by the Applicant. The Corporate Guarantor 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) no guarantee Agreement for the alleged debt and alleged default of the Corporate Debtor has been placed on record to the claimed extent, and (d) OTS proposal is pending consideration with IDBI Bank Ltd. Further, during the arguments, the Ld. Counsel on behalf of the Respondent took an additional plea that the Corporate Guarantor did not receive the Letter of Invocation of Guarantee dated 31.05.2017.

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, Foreign Currency Loan Agreements, relevant sanction letters, Deeds of Guarantee (dated 09.08.1995, 23.07.1997, 18.07.2001), Loan 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; and Acknowledgement letters of debt towards IDBI Bank. The Applicant has averred that the present corporate guarantor has duly signed the irrevocable guarantee agreement, in which it has been clearly stated that the guarantor affirms any balance confirmation or acknowledgment of debt by the main borrower shall be deemed to have been made by the corporate guarantors including M/s Cheema Spintex Ltd. itself.

11. At the outset, we would like to examine Whether the present Application is filed within limitation period or not. We notice that, in the instant case, the Application was filed on 31.03.2023, whereas the date of default relied upon by the Applicant is 07.04.2017. We are conscious of the fact that date of default in the case of a Guarantor is counted from the date of Invocation of Guarantee, which in the present case is 31.05.2017. This implies that the application filed on 31.03.2023 is much beyond expiry of the limitation period of 03 years on 30.05.2020. However, we are cognizant 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 from15.03.2020 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."*

(Emphasis supplied)

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."

In the normal circumstances, the limitation of the present Applicant would have expired on 30.05.2020, 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. This takes us to 30.05.2022. Further, from the record, we find that the Respondent/Corporate Guarantor has itself acknowledged the debt in its Audited Financial Statement/Balance Sheet on record (page 130 of Rejoinder) for the period from 01.04.2022 to 31.03.2023 (F.Y. 2022-23), the relevant extract of which reads thus:

[illegible] Standalone Financial Statements for period 01/04/2022 to 31/03/2023

Textual information (45)

Disclosure of additional balance sheet notes explanatory [Text Block]

Note 27 Additional information to the financial statements

Note	Particulars	(Amount in Lacs) As at 31 March, 2023	As at 31 March, 2022
27.1	Contingent liabilities and commitments (to the extent not provided for)		
(i)	Contingent liabilities		
(a)	Claims against the Company not acknowledged as debt	-	-
(b)	Guarantees		
	Corporate Guarantee for the Loans & Advances from Financial Institution/Banks to M/s Cheema Spintex Limited, Chandigarh.	3,030.00	3,030.00
(ii)	Commitments		
	Estimated amount of contracts remaining to be executed on capital account and not provided for		
	Tangible assets(Order for Purchase of Capital Items)	6.05	307.88

[200800] Notes - Disclosure of accounting policies, changes in accounting policies and estimates

Unless otherwise specified, all monetary values are in Lakhs of INR

	01/04/2022 to 31/03/2023
Disclosure of accounting policies, change in accounting policies and changes in estimates explanatory [TextBlock]	Textual information (46) [See below]

Thus, in nutshell, the position regarding limitation, which emerges is summarised below:

S. No.	Documents	Date	Period of Limitation till
1.	Date of Recall/Invocation of Guarantee by the Bank	31.05.2017	30.05.2020
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.	Acknowledgement of debt in the Audited Financial Statement/Balance Sheet of Corporate Guarantor for the F.Y. 2022-23 (01.04.2022 to 31.03.2023)	01.04.2022	30.03.2025
4.	Date of Filing of Present Application		31.03.2023

In terms of the aforesaid analysis, we find the present Application, being filed on 31.03.2023, well within the Limitation period.

12. Now, we would like to examine the contention of the respondent that 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:

V. IBC RELATED MATTERS

Sr.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 *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)*	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 February23, 2021*

IDBI BANK
CIN L65190MH2004GOI148838

आईडीबीआई बैंक लिमिटेड
पंजीकृत कार्यालय : आईडीबीआई टॉवर,
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मुंबई - 400 005
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(+91 22) 6655 3405, 3410, 3404
फैक्स (+91 22) 2218 0411
वेबसाइट www.idbibank.in

IDBI Bank Limited
Regd. Office : IDBI Tower,
WTC Complex, Cuffe Parade,
Mumbai - 400 005
TEL - (+91 22) 6655 3355
(+91 22) 6655 3405, 3410, 3404
FAX (+91 22) 2218 0411
Website www.idbibank.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

The Applicant bank has also placed on record, the following Specific authorization letter on Page 193 in its Rejoinder:

IDBI BANK
CIN: L65190MH2004GOI148838

आईडीबीआई बैंक लिमिटेड
केंद्रीकृत कार्यालय : आईडीबीआई टॉवर,
डब्ल्यूटीसी कॉम्प्लेक्स, कफ परेड,
मुंबई - 400 005.
टेलिफोन : (+91 22) 6655 3355
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TEL.: (+91 22) 6655 3355
(+91 22) 6655 3405, 3410, 3404
FAX : (+91 22) 2218 0411
Website : www.idbibank.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.

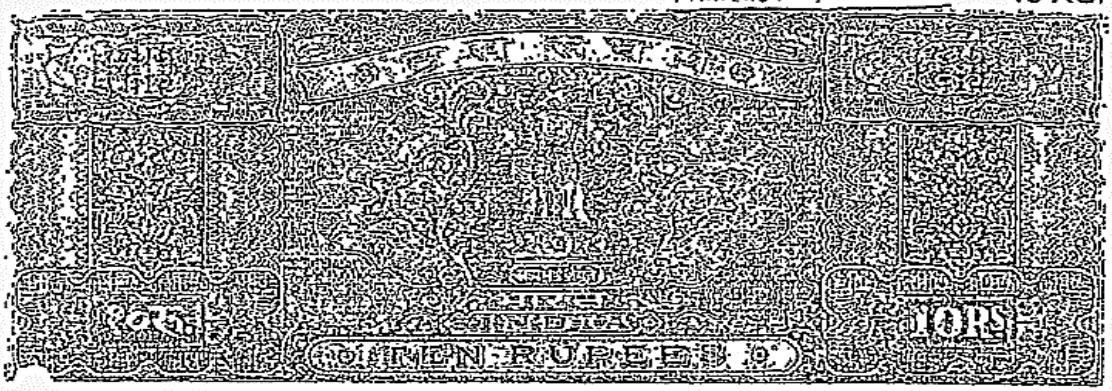
Dated: January 18, 2024

(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.

13. Now, we proceed to examine the next objection of the Respondent regarding no guarantee Agreement for the alleged debt and default of the Corporate Debtor placed on record to the claimed extent. In this context, we refer to the relevant excerpts of the "Irrevocable Guarantee Agreement (Annexure-15 pg no. 205-218)" placed on record by the Applicant Bank, which reads thus:

3 Annexure/ER-A-15 215



GUARANTEE AGREEMENT

THIS GUARANTEE AGREEMENT executed at New Delhi this 15th day of February, 2000 by Shri Hardyal Singh Cheema S/o Shri Amarjit Singh Cheema aged about 39 years residing at H No 260, Sector 9-C, Chandigarh and Shri Partap Singh Cheema S/o Shri H.S. Cheema, aged about 29 years resicing at H.No. 260, Sector 9-C, Chandigarh (hereinafter referred to as "the Guarantors", which expression shall, unless it be repugnant to the subject or context thereof, include their respective heirs, executors and administrators)

IN FAVOUR OF

INDUSTRIAL DEVELOPMENT BANK OF INDIA, a Corporation established under the Industrial Development Bank of India Act, 1964 (18 of 1964) and having its Head Office at IDBI Tower, W.T C.complex, Cuffe Parade, Mumbai - 400 005 and a Branch Office at Indian Red Cross Society. Building, 1 Red Cross Road, New Delhi-110001(hereinafter referred to as "" Debenture Holder"", which expression shall, unless it be repugnant to the subject or context thereof, include its successors and assigns)

XXXX XXXX XXXX XXXX

220

20 Any demand for payment or notice under this Guarantee shall be sufficiently given if sent by post to or left at the last known address of the Guarantors or its successors or assigns as the case may be, such demand or notice is to be made or given, and shall be assumed to have reached the addressee in the course of post, if given by post, and no period of limitation shall commence to run in favour of the Guarantors until after demand for payment in writing shall have been made or given as aforesaid and in proving such notice when sent by post it shall be sufficiently proved that the envelope containing the said notice was so posted and a certificate by any of the responsible officers of " Debenture Holder" that to the best of his knowledge and belief, the envelope containing the said notice was so posted shall be conclusive as against the Guarantors even though it was returned unserved on account of refusal of the Guarantors or otherwise

21. The Guarantee herein contained shall be enforceable against the Guarantors notwithstanding the securities aforesaid or any of them or any other collateral securities that " Debenture Holder" may have obtained or may obtain from the Borrower or any other person shall at the time when proceedings are taken against the Guarantors hereunder be outstanding and/or remain unrealised

22 The Guarantors affirm, confirm and declare that any balance confirmation and/or acknowledgement of debt and/or admission of liability given or promise or part payment made by the Borrower or the authorised agent of the Borrower to " Debenture Holder" shall be deemed to have been made and/or given by or on behalf of the Guarantors itself and shall accordingly be binding upon the Guarantors

XXXX XXXX XXXX XXXX

Thus, on perusal of the clause 22 of the Guarantee Agreement (ibid), this Bench observes that the Corporate Guarantor has duly signed an irrevocable guarantee agreement, in which it has been clearly stated that the guarantor affirm, confirm and declare that any balance confirmation and/or acknowledgment of debt by the main borrower shall be deemed to have been made/ or given by or on behalf of the Guarantors itself and shall accordingly be binding upon the Guarantors. Even otherwise, liability of the Corporate Guarantor M/s. Cheema Papers Ltd. is joint, several and co-extensive to the liability of Principal Borrower, which is already under CIRP. Thus, we find the contention raised by the Respondent in this regard devoid of merit.

14. The next contention of the Respondent made during the hearing that the OTS proposal is pending consideration with IDBI Bank Ltd., [though not pleaded by Respondent in its Reply to the present petition], has already been examined in this order while dealing with IA No. 1286/2024. From the affidavit filed by the Financial Creditor IDBI Bank, this Bench found that no valid OTS proposal of the Respondent/ Corporate Guarantor Cheema Papers Ltd is pending with them. Hence, we find the submission regarding pendency of a valid OTS proposal misleading and therefore, rejected.

15. Now, we examine the next contention that the Corporate Guarantor did not receive the Letter of Invocation of Guarantee dated 31.05.2017. In this regard, the Petitioner has pleaded that it had issued letter of Invocation of Guarantee dated 31.05.2017 to the Guarantors including the Respondent/ Corporate Guarantor of the Principal Borrower and called upon them to pay forthwith an amount aggregating to Rs. 97,79,71,717/- together with further

interest thereon w.e.f. 01.03.2017. The Applicant has placed the "SARFAESI Notice dated 15.09.2017 on record, which reads thus:

IDBI BANK
CIN: L65190MH2004GOI148838

Annexure - 37

REGISTERED POST WITH ACKNOWLEDGEMENT DUE

Ref: IDBI/BKC/NMG/CSL/No./679 Dated – September 15, 2017

Cheema Spintex Ltd. SCO 64-65, 3rd Floor, Sector 17-A, Chandigarh - 160017.	**Cheema Spintex Ltd.** H. No. 167, Sector 19-A, Chandigarh - 160019.	**Cheema Spintex Ltd.** Village Kauli Majra Lalru, District Mohali Punjab – 140501.

Kind Att. – Sh. Hardayal Singh Cheema

Dear Sir,

Financial assistance sanctioned to you by IDBI Bank Limited – Defaults committed - Statutory notice under Section 13(2) of the Securitisation and Reconstruction of the Financial Assets and Enforcement of Security Interest Act, 2002.

We, IDBI Bank Limited (**"IDBI Bank"**), through the Authorised Officer, do hereby issue this statutory notice to you, under Section 13(2) of the Securitisation and Reconstruction of the Financial Assets and Enforcement of Security Interest Act, 2002 (**"the Act"**) in the circumstances narrated below :

2. IDBI Bank, had inter alia granted financial assistance to you, the Addressee viz. Cheema Spintex Limited, comprising of Rupee Term loan and Foreign Currency Loan (collectively **"the Financial Assistance"**) on the terms and conditions contained in the Loan Agreement (s) dated August 4, 1995 and July 23, 1997 (collectively referred to as **"the Loan Agreements"**) and the security documents including the guarantee(s) and other securities (**"the Security Documents"**), the particulars whereof are given in **Annexure 1A**.

एनएमजी, आईडीबीआई टावर, 1ली मंजिल, प्लॉट सी-७, जी ब्लॉक, एन.एस.ई. के सामने, बी.के.सी., बांद्रा (पूर्व), मुंबई - ४०० ०५१.
NMG, IDBI Tower, 1st Floor, Plot No. C-7, G Block, Opposite NSE, BKC, Bandra (East), Mumbai - 400051.
आईडीबीआई टॉवर, डब्ल्यूटीसी कॉम्पलेक्स, कफ परेड, मुंबई - 400 005. वेबसाईट : www.idbi.com
IDBI Tower, WTC Complex, Cuffe Parade, Mumbai - 400 005 Website - www.idbi.com

XXXX XXXX XXXX XXXX

Endt. No./680 of dated

Copy forwarded to:-

A. **Corporate Guarantor's:**

Cheema Paper Mills Pvt. Ltd. Corporate Guarantor Reg. Off – Kashipur District, Nanital, Uttar Pradesh	Cheema Paper Mills Pvt. Ltd. Corporate Guarantor Reg. Off – Keshawala Agricultural Farm, Beejpur, Nainital.	Cheema Paper Boards Pvt. Ltd., Corporate Guarantor, Reg. Off – Kashipur District, Nanital, Uttar Pradesh
Cheema Paper Boards Pvt. Ltd., Corporate Guarantor, Reg. Off. – 2nd Km Stone, Bajpur Road, Kashipur District, Udham Singh Nagar, Uttrakhand	Cheema Papers Ltd., Corporate Guarantor Reg. Off. - 9 Km Stone, Bajpur Road, Kashipur, Uttrakhand 244713	Cheema Papers Ltd., Corporate Guarantor Reg. Off. - 2nd Km Stone, Bajpur Road, Kashipur District, Udham Singh Nagar, Uttar Pradesh 244713

XXXX XXXX XXXX XXXX

Thus, we find that Copy of the Notice issued under SARFAESI Act by the Applicant Bank is marked to the Respondent/Corporate Guarantor herein.

15.1 Further, it has been pleaded by the Financial Creditor that it has filed an OA No. 1258/2021 (IDBI Bank vs Cheema Spintex Ltd., Cheema Papers Limited and others) before the DRT-II Chandigarh. As the said OA is having debt of more than Rs. 100 Crore, the DRT-II, Chandigarh transferred the same to DRT-III, Delhi, where the same is pending adjudication. Since, the Respondent-Cheema Paper Limited is a party to the OA pending in DRT-III Delhi, the last order in TA/522/2022 dated 04.06.2024 of DRT III New Delhi, available in public domain, reads thus:

Debts Recovery Tribunal-III, Delhi
TA/522/2022
IDBI BANK Vs M/S CHEEMA SPINTEX LTD

04.06.2024 Item no.04

Present: Mr. Sagar Diwan, Ld. counsel for applicant bank.
Mr. Arvind Sharma, counsel for defendant no. 1 & 2.

This matter is taken up by this Tribunal through video conferencing.

As per direction given by Hon'ble Presiding Officer vide order dated 15.03.2024, the status of pleadings in the matter is presented as under: -

Defendants	Date of service of OA notice/ paperbook & mode of service	Date of filing of WS
Defendant no. 3 (Harbhajan)	OA notice (40gm) was dispatched through regd. post on 25.08.2021 & 03.03.2022, but no track report was filed to ensure delivery OA notice was served through paper publication in Chandigarh edition of Business Standard (Hindi) on 15.06.2022 & in New Delhi edition of Business Standard (English) on 15.06.2022, **Whereas defendant no. 6 to 15 are located in Uttarakhand.**	Not filed
Defendant no. 4 (Amarjit)		Not filed
Defendant no. 5 (Pratap Singh)		Not filed
Defendant no. 6 (Cheema Paper Board Ltd)		Not filed
Defendant no. 7 (Cheema Paper Ltd)		Not filed
Defendant no. 8 (Cheema Paper Mills)		Not filed
Defendant		Not filed

Sd/-

xxxx xxxx xxxx xxxx

Thus, on perusal of the document (ibid), this Bench observes that Respondent/ Corporate Guarantor (Defendant No.7 in the case) has been

served through paper publication. Hence, the Corporate Guarantor is deemed to be served of the invocation of guarantee notice and cannot take plea of being unaware of that. Moreover, as detailed while dealing with the IA No. 1286/2024 and, also in next paragraph, when CD itself has offered OTS proposal to the Applicant Bank, it can be safely inferred that the Corporate Guarantor is well aware of and has acknowledged invocation of guarantee.

16. Furthermore, from the pleadings as well as, as argued by the Respondent during the hearing, the Respondent/ Corporate Guarantor, vide its letter dated 09.05.2024 addressed to the General Manager IDBI Bank Ltd. (annexed at page No. 8 of IA No. 1286/2024), had made an offer of OTS to the Applicant Bank (though incomplete as per the Affidavit filed by the Bank), which reads thus (quality of the copy annexed is poor but legible and also a true copy is placed on record):

CHEEMA PAPERS LIMITED

Regd. & Admn. Office:
1st KM Stone, Bazpur Road, Kashipur (Distt. Udham Singh Nagar, Uttarakhand)

PAN- AAACC7163P
AAACC7163P1ZO

CIN- 21012UR1988PLC009679

GSTN-

Email- cheema_kashipur@yahoo.in

CPL/IDBI/2024-25/

Date:- 09th May 2024

Chief General Manager
IDBI Bank Ltd
IDBI Tower, Cuffe Parade
Mumbai -400005

Sub:- Request for OTS —Account M/s Cheema Papers Ltd, Kashipur, being Corporate Guarantor of M/s Cheema Spintex Ltd, Chandigarh

Sir,

With reference to meeting held with undersigned at your office on the captioned subject, we principally agree to the terms and conditions for the OTS-Scheme, applicable to the Corporate Guarantor and we hereby give our consent for the said OTS. We are also interested in early start of the OTS proceedings.

Now you are requested to please arrange the details of formalities to operationalize the above said OTS.

Your kind action in this regard, will be highly obliged

Thanking You

For Cheema Papers Ltd

(Tejok Singh Cheema)
Managing Director

Thus, this Bench finds that the Respondent Corporate Guarantor i.e., M/s Cheema Papers Limited itself had sent a letter on 09.05.2024 stating therein that they principally agree to the terms and conditions for the OTS-Scheme applicable to the Corporate Guarantor and give their consent for the said OTS; which, offer of OTS, in terms of the judgment of the Hon'ble Supreme Court in **"Dena Bank (now Bank of Baroda) vs. C. Shivakumar Reddy and Anr."** is an 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)*

Thus, we find that the Respondent Corporate Guarantor has duly acknowledged the debt and default.

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 Guarantor in repayment of its financial debt due.

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 Guarantor 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 Guarantor 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 Guarantor 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 Guarantor 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 Guarantor."

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 (Email ID: irp@parshotamandassociates.com), as an IRP having Registration No. IBBI/IPA-001/IP- P00039/2017-18/10100, 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 Spintex Ltd., the Principal Borrower has already been admitted into CIRP for the same debt vide order dated 17.05.2024 of this Adjudicating Authority, the RP would ensure that the total recovery from the CIR Process of the Principal Borrower and its Guarantors including M/s. Cheema Papers Ltd., Corporate Guarantor herein, shall not exceed the total amount of debt of the Principal Borrower/Guarantors for the debt due and payable.

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, Respondent/Corporate Guarantor, the Principal Borrower M/s. Cheema Spintex Ltd., 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)