



NATIONAL COMPANY LAW TRIBUNAL
CHANDIGARH BENCH (COURT-I)

CP (IB) 192/CHD/PB/2023

IN THE MATTER OF:

Punjab National Bank

Through its Senior Manager,
Sh. Surender Jangra
Circle Sastra Center, PNB House,
Plot No. 455, Phase-III, Model Town,
Bathinda-151001

... Applicant/Creditor

Versus

M/s Satluj Spintex Limited,

Reg. Office at Post Office Bazar,
Near Post Office, Bathinda-151001.
Corporate Office at Village Gehle,
Talwandi Sabo, Mansa-151505

...Respondent

Judgment Delivered on : 03.07.2024

SECTION: Section 7 of 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
 Mr. Prajwal Chauhan, Advocate
 Ms. Ramneek Kaur Mann, Advocate

For the Respondent : Mr. Ashwani Talwar, Advocate
 Mr. Vishal Singh Tanwar, Advocate



Judgement

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

Punjab National Bank (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 Satluj Spintex Limited (for brevity, the **“Respondent”/“CD”**).

2. The Respondent namely, M/s Satluj Spintex Limited is a Company incorporated on 17.03.2010 under the provisions of the Companies Act, 1956 with CIN U17290PB2010PLC033706 having its registered office at Post Office Bazar, Near Post Office, Bathinda-151001, which is within the jurisdiction of this Tribunal. The Authorized Share Capital of the Respondent Company is Rs. 120,25,00,000/-, and the Paid-up Share Capital is Rs. 110,00,00,000/-, as per the Master Data annexed.

3. It is averred by the Applicant that the Respondent Corporate debtor provides combed, carded, and open-end yarns, core spun, compact, melange, and dyed yarns. In the year 2010, the Respondent needed financial assistance for its business requirements and hence, approached the Applicant, which sanctioned advances/credit facilities as per sanction letter dated 26.06.2010. In the year 2012, the Respondent further approached the Applicant for enhancement of the existing credit facilities/grant of fresh facilities, which were sanctioned vide sanction letter dated 26.10.2012. In respect of the said



facilities, Sh. Sham Lal Goyal, Promotor/Director as authorized vide Resolution dated 26.10.2012 of the Respondent, executed the loaning /security documents in favour of the Applicant. Thereafter, the financial facilities granted in favour of the Respondent were sanctioned/ enhanced/ renewed/ reviewed from time to time at the request of the respondent vide sanction letters dated 30.09.2013, 26.12.2014, 02.02.2016, 13.07.2017, 27.06.2019, 17.04.2020, and lastly on 04.03.2021. Further, the Respondent through its authorized signatory had also executed various loaning and security documents in lieu of the credit facilities sanctioned. The total debt amount disbursed to the Respondent is Rs. 405,50,00,000/-

4. The detailed particulars of the unpaid Financial Debt including the total amount of default and the date of default as 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	Amount claimed to be in default: Rs. 394,22,27,684.00 as on 22.06.2023. Date of default: 31.01.2021. The corporate debtor could not maintain the financial discipline, so the account of the corporate debtor was declared NPA on 02.05.2021. The petitioner financial creditor issued recall notices dated 20.05.2021 (Annexure-31) to the borrower corporate debtor whereby recalled the entire financial facilities and directed the corporate debtor to repay the entire amount within a period of 7 days. But the corporate debtor failed to make the payment. Thereafter, the financial creditor issued 60 days demand
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5. As per Part IV of the application (ibid), the Applicant has claimed an outstanding “financial debt” of Rs. 394,22,27,684/- and relied on 31.01.2021 as the “date of default”. It has also been mentioned that in the absence of financial discipline, the Account of the Respondent Company was declared as NPA on 02.05.2021. It is further submitted that on 20.05.2021, and 24.05.2021, the Applicant Bank issued the recall notice, then on 22.02.2023, the it issued notice under Section 13(2) of SARFAESI Act 2002, followed by corrigendum notice dated 29.04.2023 under Section 13(2) of SARFAESI Act 2002, calling upon the CD and other obligors to pay the defaulted amount.

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

- (i) The copies of various Records of Default held by the NeSL Annexure-6 (Colly.) (pg. 112 to 196);
- (ii) The Recall Notices dated 20.05.2021 & 24.05.2021;
- (iii) The copy of Balance & Security confirmation letters;
- (iv) Sanction Letters dated 26.06.2010, 26.10.2012, 30.09.2013, 26.12.2014, 02.02.2016, 13.07.2017, 27.06.2019, 17.04.2020, 22.12.2020, and 04.03.2021;
- (v) The Demand Notice & Corrigendum Demand Notice under Section 13(2) SARFAESI dated 22.02.2023 and 29.04.2023 respectively;
- (vi) The copy of Board Resolution dated 21.04.2020, 05.03.2021;
- (vii) The copy of Agreement of Guarantee dated 29.06.2019.

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

8. On issuance of the notice, the Respondent filed its Reply dated 13.03.2024 stating mainly the following:



8.1 The present application is liable to be dismissed being time barred as the bank is relying on the sanction letters dated 30.09.2013, 26.12.2014, 02.02.2016 and 13.07.2017 for the purpose of filing of the present petition.

8.2 The applicant bank cannot be allowed to rely on the documents alleged to be executed in respect of CECF Facility and GESL Facility in the year 2020 and 2021 for the purpose of claiming debt.

8.3 The applicant bank is claiming the date of default to be 31.01.2021, however, there is no proof or evidence in respect of the same. Even otherwise, the date of NPA to be 02.05.2021 is in contravention of mandatory RBI circular dated 01.07.2015.

8.4 The application is liable to be dismissed as the Applicant Bank is claiming the date of default to be 31.01.2021 which is falling under the restricted period as mandated under Section 10A of the IBC, in respect of which no insolvency petition can be filed as per the intent of the Legislature.

8.5 On one side, the bank is claiming the date of default to be 31.01.2021, while the GECL facility as being claimed in the present petition was disbursed to the Company only on 04.03.2021, as admitted by the Bank. Thus, in no manner the company can be at default on 31.01.2021. Even if the GECL facility disbursed on 04.03.2021 is considered, the same cannot be classified as NPA on 02.05.2021 without adhering to 90 days' mandatory norm as per RBI Circular dated 01.07.2015.

8.6 The balance confirmation letter dated 05.07.2021 cannot be relied upon for the computation of limitation as neither the averred credit facilities are mentioned nor any stamp duty appended as per the Indian Stamp Act.



8.7 The bank has failed to provide moratorium besides additional finance under the ECGLC Facility as mandated by the RBI during the Covid-19 Pandemic. The bank failed to adhere to the mandatory RBI Circular dated 27.03.2020, 17.04.2020, 23.05.2020 and 07.04.2021 issued by the RBI. Thus, the declaration of account as NPA is itself void.

9. Subsequently, to defeat the objection of the Respondent regarding the date of default falling within the 10A period, the Applicant filed an IA-1036/2024 on 16.04.2024, to change the date of default and pursue the main petition for the default occurring during the subsequent period. This Adjudicating Authority heard the IA-1036/2024 and vide its order dated 06.06.2024 rejected the prayer of the Applicant to change the date of default. The orders remained confined to the prayers in the IA. The relevant extracts of the order dated 06.06.2024 reads thus:

*“13. Thus, in terms of the Judgments of Hon’ble Apex Court in **Ramesh Kymal Vs M/s. Siemens Gamesa Renewable Power Pvt. Ltd.** (2021) 3 SCC 2024; and of Hon’ble NCLAT Delhi in **Ramdas Datta Vs IDBI Bank Ltd.** Company Appeal (AT) (Ins) No. 1285/2022 (supra), the date of default cannot be changed. In the present case, the Applicant Bank while praying to amend the pleadings is actually seeking to change “the date of default” which, as we have seen, is not permissible as per the law laid down. Therefore, in sequel to the above, we find that the Applicant Bank cannot be permitted to amend pleadings entailing the “date of default”, and more so, when the intent of the Applicant admittedly, is to get over its lacunae in the main petition regarding the statutory bar faced by it under Section 10A of IBC vis-a-vis the date of default chosen by it therein”.*



10. In rebuttal, the applicant filed Written submissions dated 11.06.2024 to the reply filed by the Respondent stating mainly the following:

10.1 The captioned application has been filed u/s 7 of IBC, 2016 for a defaulted amount of Rs.394,22,27,684/- outstanding as on 22.06.2023 against the corporate debtor.

10.2 As the CD could not re-pay the amount, the account of CD was declared NPA on 02.05.2021. The Applicant issued recall notice dated 20.05.2021 (Annexure-31) to the borrower CD recalling the entire financial facilities and directing the corporate debtor to repay the entire amount within a period of 7 days. But the corporate debtor failed to make the payment.

10.3 Thereafter, the Applicant issued 60 days' demand notice dated 22.02.2023 under Section 13(2) of the SARFAESI Act, 2002 (Annexure-32) to make the payment of outstanding amount of Rs.370,14,74,168.52 as on 31.01.2023 followed by corrigendum to the demand notice dated 22.02.2023, corrigendum demand notice dated 29.04.2023 u/s 13(2) of the SARFAESI Act, 2002 (Annexure-33). But the corporate debtor failed to make the payment.

10.4 The CD executed Balance and Security confirmation letters from time to time, and lastly on 05.03.2021 confirming the correctness of the balance being outstanding in the loan accounts and acknowledging their liability towards the petitioner financial creditor. As despite repeated request, the corporate debtor failed to regularize the account, the account of the Corporate Debtor was declared NPA on 02.05.2021 by the Applicant Bank.



10.5 The aforesaid default is still continuing, even after the 10A period and as such the date of default for the purposes of present application can be taken as 02.05.2021 i.e. the date of NPA.

10.6 Even in the "Records of Default" issued by NeSL, date of default is recorded as 02.05.2021 and it is the settled position of law that in terms of Section 99(3) of IBC 2016, the debtor cannot dispute authenticity of Record of Default.

10.7 The Debt was never disputed by CD in its reply, rather it took frivolous grounds that the Applicant 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, only the existence of Debt and Default needs to be examined.

11. The Respondent filed its Written Submissions dated 10.06.2024 and submitted mainly the following:

11.1 Since another date is relied as the date of default by the Bank, now the date of NPA cannot be relied as date of default by the Applicant Bank.

11.2 The Respondent has further stated that the Account of the Corporate Debtor was not classified as NPA, as per the norms of RBI. The bank is claiming the date of default to be 31.01.2021, while the GECL facility as being claimed, was disbursed to the company only on 04.03.2021 as admitted by the Bank itself. Thus, in no manner the company can be at default on 31.01.2021. In fact, even if the GECL facility is considered which was disbursed on 04.03.2021, the same cannot be classified as NPA on 02.05.2021



in any manner without adhering to 90 days' mandatory norms as per RBI Circular dated 01.07.2015.

11.3 That the Respondent Company vide its letter dated 31.12.2020 requested the bank to provide restructuring as per the Kamath Committee Recommendation dated 04.09.2020 read with RBI Circular dated 07.09.2020. It is worth to state that the said recommendations were binding upon the bank in light of Section 35 of Banking Regulation Act, but the bank chose to sleep over the same and virtually choked a feasible and viable unit.

11.4 No relaxation in terms of waiver of penal interest as well as charging of simple interest from the period 01.03.2020 to 31.08.2020 has been given by the bank as mandated by the Hon'ble Supreme Court of India in the Writ petition No.476 of 2020 dated 23.03.2021 in the matter titled Small Scale Industries Manufactures Association Vs. Union of India.

11.5 In fact the bank has already filed an original application before the Debt Recovery Tribunal, New Delhi and has already issued sale notice under the SARFAESI Act, 2002 for auctioning the plant and machinery along with land of the company. Thus, the intention of the bank is clear that it wants to recover the outstanding by sale of assets. The bank cannot be allowed to pray for resolution and recovery at the same time in any manner.

11.6 The Respondent company was never at default in any manner and the bank has strangled a fully feasible and viable entity by creating a virtual default by acting completely in contravention of mandatory RBI Circulars and IBC, 2016. Infact, The Hon'ble National Company Law Appellate Tribunal in the matter of M/s Agarwal Veneers Vs. Fundtonic Service Pvt. Ltd. Company



Appeal (AT) (Ns) No.968 of 2020 has already upheld that an application filed for initiation of CIRP against a company which is solvent and is operating as a going concern providing employment and generating revenue shall be dismissed.

11.7 The Hon'ble Apex Court in the matter titled as Vidarbha Industries power Limited V.s Axis Bank Limited [Civil appeal No.4633 of 2021] has already held that the Hon'ble Tribunal has discretionary power to reject the Section 7 application if the same has been filed only with a motive to extract the money as the word used under Section 7 (5) (a) is "May" which gives the discretionary power to the Hon'ble Tribunal and it is not automatic that in case of default the application under Section 7 will be mandatorily admitted. The said principle is applicable in the present case.

12. The present Company Petition (IB) No. 192/2023 was heard in detail on 13.06.2024. The Applicant Bank argued that though the date of default in the present case could be mentioned in the Petition as 31.01.2021, however, it has also mentioned, in the Part IV of the Petition, that due to financial indiscipline on the part of the Corporate Debtor (CD), the Account of the CD was classified as NPA on 02.05.2021, which date is not falling under Section 10A period. To buttress its plea, the Applicant Bank relied upon the Demand Notice and its Corrigendum dated 29.04.2023 issued under Section 13(2) of SARFAESI Act, 2002. It was further contended that even in the various "Records of Default" maintained and issued by NeSL (copies placed on record at Annexure-6 (Colly.) from page 112 to 196 of the Petition), the date of default recorded is as 02.05.2021. It is a settled position of law that in view of Section 99(3) of IBC, 2016, the debtor cannot dispute authenticity of Record of Default.



Ld. Counsel for the Applicant relied upon the order in **Canara bank V. M/s Gurdas Agro Private Limited bearing CP(IB) No. 16/CHD/PB/2022**, in which this Bench held the following:

"Thus, we find that the date of the classification of account of CD as NPA, as reflected in the Demand Notice dated 31.03.2021 issued by the Financial Creditor w/s 13(2) of the SARFAESI Act, 2002 to the Corporate Debtor was 30.03.2021. Thus, we find merit in and accept the contention of the Financial Creditor that the date of NPA as reflected in Part IV was a clerical error and the correct date of NPA is 30.03.2021. Further, we are aware that in catena of judgements, the date of NPA and date of default has been used interchangeably. In this context, it is worthwhile to refer to the judgement passed by the Hon'ble Supreme Court in the matter of Dena Bank (now Bank of Baroda) vs. C. Shivakumar Reddy and Anr.; Civil Appeal No. 1650 of 2020."

The Applicant Bank further argued that the same is the issue in the present matter, as the date of NPA as mentioned in the present Petition, and as reflected in the Demand Notice issued under Section 13(2) of the SARFAESI Act, 2002 is the same i.e., 02.05.2021, which date is not barred by Section 10A period. This Adjudicating Authority has considered in the aforementioned case that in the catena of judgments, the 'Date of NPA' and 'Date of default' has been used interchangeably.

13. We heard the submissions of both the parties at length and perused the pleadings on record including the Written Submissions filed by both the parties. The Respondent/CD has resisted the Applicant Bank's prayer of admission of the present Petition mainly, on the ground that the Application is barred by Section 10A of IBC, 2016, since the date of default i.e., 31.01.2021 mentioned in the Part IV of the Application is falling under the suspension period, for which no application could ever be filed.



Per Contra, the Applicant Bank has contended that due to the continuing default and financial indiscipline, the Account of the Corporate Debtor was classified as NPA on 02.05.2021, which could be taken as date of default, and which date does not fall within the ambit of Section 10A period.

At this stage, when we refer to the Part IV (Particulars of the Financial Debt) of the Petition, we find that the applicant Bank has also mentioned the date of 02.05.2021, when the Account of the Respondent/CD was declared NPA.

14. We are cognizant of the fact that the issue - Whether the “Date of NPA” can be relied as the “date of default”, has already been decided by the Hon’ble NCLAT in the judgement in “**Company Appeal (AT) (Ins) No. 1589 of 2023 Milind Kashiram Jadhav vs State Bank of India & Anr.**”, the conclusions of which reads thus:

“Conclusions:

*74. The loan accounts of the Corporate Debtor were officially classified as Non-Performing Assets (NPA) on September 27, 2019, following 90 days of non-payment, thereby triggering a default event. Despite subsequent partial payments made by the borrower, the NPA status and default persisted, indicating a continuous state of default. **Consistent with established judicial precedents and the specific circumstances of the case, the date of NPA classification serves as the valid "Date of Default" for initiating insolvency proceedings.** Even after the NPA classification, the borrower remained in default. **Consequently, September 27, 2019, the date of NPA classification, stands as the "date of default" under the Insolvency and Bankruptcy Code (IBC), superseding any subsequent events, such as the loan recall notice issued on August 18, 2020.** The Adjudicating Authority's decision to admit the Bank's application for initiating Corporate Insolvency Resolution*



Process (CIRP) against the Company was apt and in accordance with the provisions of the IBC. There are no discernible flaws in the orders issued by the Adjudicating Authority; hence, they are upheld without any alteration. Appeal is dismissed. No costs are imposed in this matter.”

(Emphasis Placed)

Thus, in terms of the judgement (ibid), it is concluded that the date of NPA classification serves as the valid "Date of Default" for initiating insolvency proceedings., and therefore, the Respondent’s contention that the date of NPA cannot be taken as the date of default stands negated.

15. For the purpose of the ‘date of default’, Applicant Bank has further relied upon the various “Records of Default (RODs)” in Form D of NeSL placed at Annexure-6 (Colly.) from pg. 112 to 196 of the Petition, the details of which are given in the following table:

Sr. No.	Page No.	Default Amount (in Rs.)	Date of Default
1.	112	1040253464	02.05.2021
2.	129	1545466003	02.05.2021
3.	141	188545633	02.05.2021
4.	151	232653380	02.05.2021
5.	162	298158514	02.05.2021
6.	185	205155257	02.05.2021
Grand Total		Rs. 351,02,32,251	

One such ROD of NeSL dated 02.05.2021 is reproduced overleaf:



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 PUNJAB NATIONAL BANK in respect of the default of debt as per details given below-

(a) Name of the Submitter:	M/s PUNJAB NATIONAL BANK
(b) Schedule-2 Bank (Y/N):	Y
(c) Name of Corporate Debtor:	M/s SATLUJ SPINTEX LTD
(d) Unique Debt Identifier Number:	AAACP0165G_PNB005000PC09156364
(e) Registered Address:	PLOT NO. 4, SECTOR 10, DWARKA,
(f) Total Outstanding Amount:	1545466003.00
(g) Default Amount:	1545466003.00
(h) Date of Default:	02-05-2021
(i) Status of Authentication of Default:	AUTHENTICATED

Filing of Default (Submission ID No.)	Submitted on	Status of Authentication (Authenticated / Disputed / Deemed to be authenticated)	Authentication completed on
(24)	05-06-2023 20:10:33	AUTHENTICATED Colour Code : GREEN	21-06-2023 07:14:03

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.

Thus, we find from all the RODs of NeSL (ibid) placed on record that the date of default is 02.05.2021, which is the same date as the date of NPA. **Hence, in our considered view, the present Petition is not barred under Section 10A of IBC, 2016.**

Further, it is observed from the above-referred RODs that there is a debt of Rs. 351,02,32,251/- outstanding against the CD, for all of which the date of default mentioned in the RODs is 02.05.2021.



16. It is also contended by the Respondent that the account of the CD was classified as NPA, by violating RBI Guidelines. In this regard, the Applicant Bank has relied upon Demand Notice and Corrigendum dated 29.04.2023 issued under Section 13(2) of the SARFAESI Act 2002, where too, we find the date of NPA is the same as 02.05.2021. The Corrigendum reads thus:

ANNEXURE-33

ਪੰਜਾਬ ਨੈਸ਼ਨਲ ਬੈਂਕ **punjab national bank**

B/O: CIRCLE SASTRA BATHINDA, Plot No 445, Phase –III, Model Town, Bathinda

CORRIGENDUM

SI-4

60 Days' Notice to Borrower

Date: 29.04.2023

M/s Satluj Spintex limited Regd. Address- Office Post Office Bazar, Near Post Office, Bathinda Also, at Work address- Village GEHLE Talwandi Sabo Road, MANSA-151505 e-mail: satlujspintex@gmail.com	Sham Lal Goyal s/o Sh. Hem Raj Goyal, (Promoter Director) Add- W.No.14, H.No.233-A, Sodhi Street, Near ICICI Bank, Water Works Road, Mansa - 151505 Mobile No. 9878711000	Rohit Kumar Goyal S/o Sh. Sham Lal Goyal, (Promoter Director) Add- W.No.14, H.No.233-A, Sodhi Street, Near ICICI Bank, Water Works Road, Mansa - 151505 Mobile No. 9815200121
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Dear Sir,

Corrigendum NOTICE U/S 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act 2002 in continuation of original notice dated 22.02.2023.

Reg: Account No. 3467008700002043, 005000IB00920276, 005000IL00000499, 005000PC09156364, 005000PD09154903, 346700IB00000210, 346700IC00000112 credit facilities availed by M/s SATLUJ SPINTEX LIMITED.

That M/s SATLUJ SPINTEX LIMITED have availed the following credit facilities from BO BANK STREET (005000) BATHINDA:

S. No	Facility	Limit	Rate of Interest	Balance outstanding as on date of NPA i.e., 02.05.2021	Interest from date of NPA i.e., 02.05.2021 to 31.01.2023	Total outstanding as on date of 31.01.2023*(After Adjustment of Recovery if any after NPA)
1	CC (Hypo)	74,00,00,000.00	11.75 %	84,87,80,500.25	21,84,27,990.00	99,00,58,809.96
2	WCDL	1,110,000,000.00	11.85 %	116,13,12,157.00	31,75,16,314.00	147,70,52,992.00
3	DL-COVID	185,000,000.00	7.75%	16,02,24,713.00	2,34,10,623.00	18,35,73,513.00
4	GECL 2.0	460,000,000.00	8.25%	44,39,03,262.00	6,93,56,703.00	51,32,59,965.00
5	Term loan	940,000,000.00	11.85 %	23,34,86,699.24	5,36,51,567.00	28,68,20,096.24

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17. Further, the Respondent has not brought anything on record to show that the abovementioned date of classification of CD's Account as NPA i.e., 02.05.2021, was set aside by any court of competent jurisdiction. **Since the Corrigendum Notice (ibid) issued under Section 13(2) of SARFAESI Act still stands good, we have no reason to disregard the date of classification of account of NPA as averred by the Applicant.**



18. Regarding the reliance placed by the Respondent on the Judgement of Hon'ble Supreme Court in the matter of **"Vidarbha Industries Power Limited V. Axis Bank Limited"** [CIVIL APPEAL NO. 4633 OF 2021], we are conscious of the fact that the same was reviewed subsequently and the following was held by the Hon'ble Supreme Court in the **"Review Petition of Vidarbha Industries Power Limited (Supra) (2023) 7 Supreme Court Cases 321 dated 22.09.2022"**:

"6. The elucidation in para 90 and other paragraphs [of the judgment under review] were made in the context of the case at hand. It is well settled that judgments and observations in judgments are not to be read as provisions of statute. Judicial utterances and/or pronouncements are in the setting of the facts of a particular case."

Since, in our view, the factual matrix in the instant case is different, therefore, the observations in **Vidarbha Industries Power Limited** (supra) are not applicable to the present case.

19. With regard to the next issue raised by the Respondent that the present Application is filed with an intent of recovery, as the Applicant Bank has already proceeded under the SARFAESI Act, 2002 for auctioning the plant and machinery along with land of the company, we are of the view that both are independent proceedings, and in case the petition is admitted, all such actions taken by the Applicant Bank shall be subject to the moratorium getting enforced under Section 14(1) of IBC, 2016.

20. Regarding the next issue raised by the Respondent relating to charging of exorbitant interest by the Applicant Bank, we are of the view that this



Adjudicating Authority is not a debt determining authority. In a Section 7 petition, all this Adjudicating Authority has to see is whether there is any financial debt and default subsisting over the threshold limit prescribed under Section 4 of IBC, 2016, which, in the present case, has been proved from the Records of Default (Form D) issued by NeSL and placed by the Petitioner on record as noted in para 15 of this order.

21. Furthermore, on perusal of reply (para 9), we also notice that the Respondent Company itself has admitted the debt and default by stating *“That the respondent company continued to repay the loan facility within time schedule and as per the mutually agreed terms and conditions, however, due to the Covid-19 pandemic the respondent company suffered huge financial loss which was beyond the control of the respondent company...”*. It is further submitted by the Respondent in its short written submissions that on 31.03.2021 a sum of Rs. 12,00,00,000/- was paid by the respondent company to the applicant bank.

Furthermore, as pleaded by the Applicant Bank, the Respondent/CD has executed “Balance & Security Confirmation Letters” from time to time and lastly, on 05.03.2021 confirming the correctness of the balance being outstanding in its loan accounts and acknowledging its liability towards the Applicant/ Financial Creditor.

The last **“Balance & Security Confirmation Letter”** dated 05.03.2021 executed by the Respondent/CD, as placed by the Petitioner on record, reads thus:



ANNEXURE - 30



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प्रिय महोदय/महोदया,
Dear Sir (s)/Madam(s),

विनिर्दिष्ट _____ को हमारे**/आपके* द्वारा गारंटीकृत _____
_____ है _____
_____ काटे में रुपये _____

आप शेष आपके**/आपके* नाम निकलता है। कृपया उक्त नाम शेष के लंबी होने की पुष्टि करते हुए संलग्न फॉर्म हस्ताक्षर करते
हमें भेज दें।

**Your/The _____ account* of _____
* The _____ (Name of Account) _____ (Name of the Borrower)
guaranteed by you* showed a balance of Rs. _____ to
**your/his/their _____ debit as on close of _____ (Date)
Please sign and return the attached form confirming the correctness of the above balance.

भवदीय/Yours Faithfully,

** ग्राहकों के मामले में इसे काट दें/Delete in case of borrower
** गारंटीकर्ता के मामले में इसे काट दें/Delete in case of Guarantor

शेष एवं प्रतिभूति पुष्टि-पत्र
Balance and Security Confirmation Letter

प्रबंधक/The Manager दिनांक/Date 05-03-2021

पंजाब नेशनल बैंक
punjab national bank MCC Bafra

प्रिय महोदय/Dear Sir,

विषय/Reg. : शर्तबद्ध ऋण/गारंटी क्रेडिट/ओवरड्राफ्ट खाता/Term Loan/Guarantee Credit/Overdraft account of
श्री/श्रीमती Satuj Spintex Limited सं. 005500PC09156314
श्री/श्रीमती
श्री/श्रीमती द्वारा पुष्टि करते हैं/करते हैं कि उक्त खाते के संबंध में निम्न _____ को, मासिक/द्विमासिक/
द्विमासिक विवरण पर _____ प्रतिशत वार्षिक की दर से ब्याज सहित, ग्राहकों (जें) और/गारंटीकर्ता (जें) के रूप में
मेरी/हमारे नाम रुपये _____ रुपये _____
को जो शेष दिखाया गया है और मैं/हम उक्त शेष अपनी जिम्मेदारी समझती समझते हैं/करते हैं।

We hereby confirm the correctness of the balance of Rs. 1173054123 (Rupees one hundred seventeen crore thirty
one hundred twenty thousand) owing from me/us as borrower(s) and/or as guarantor(s) in respect of the
above accounts : inclusive of interest at the rate of 13.35% per cent per annum with monthly quarterly
half-yearly rest as on 05-03-2021 and acknowledge my/our liability for the same.

प्रतिभूति के रूप में बैंक के पास, विनाश _____ के कारण के अर्थ में देय/हमारा संपत्ति/बाजार/
परमाणु _____ इतिहास / गिरवी के और / या विनाश _____
को मेरी/हमारे परिसंपत्ति (यों) पर निर्मित बंधन/मासिक बंधन चिह्नित है।
As security, the Bank is having _____ hypothecation/pledge of my/our stock/
goods/machinery/
agreement dated _____ and/or registered mortgage / equitable mortgage created on _____ of
my/our property/ies.



दिनांक 05-03-2021

हस्ताक्षर : ग्राहकों / गारंटीकर्ता
Signatures of Borrowers(s)/Guarantor(s)

फॉर्म PNB 138 - 21819421700665 (100) SWAN



22. Thus, in terms of the discussion foregoing, we find that the Petitioner Bank has been able to successfully establish the debt and default in repayment of the said debt on the part of the Respondent/Corporate Debtor beyond doubt.

23. In the sequel to the above and in the given facts and circumstances, the present Application being complete and the Applicant having established the default on the part of the Respondent in payment of the Financial Debt for an amount being above the minimum threshold limit, **the present Petition 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 Respondent 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 Respondent 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 Respondent 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 Respondent.”

24. As proposed by the Applicant, this Bench appoints Mr. Pardeep Kumar Lakhani as IRP having Registration No. IBBI/IPA-001/IP-P00541/2017-18/10966, Email ID: pradeep.lakhani1967@gmail.com subject to the condition that no disciplinary proceeding 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. Pardeep Kumar Lakhani, as an IRP having Registration No. IBBI/IPA-001/IP-P00541/2017-18/10966, Email ID: pradeep.lakhani1967@gmail.com is directed to take charge of the CIRP of the Respondent 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.

25. The Applicant is directed to deposit Rs.5,00,000/- (Five Lakhs) only with the IRP to meet the initial 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.

26. A copy of this Order shall immediately be communicated to the Applicant Bank, the Respondent Company, the IRP named above by the Court Officer/Registry of this Tribunal.

27. In addition, a copy of the Order shall also be forwarded by the Court officer/Registry to IBBI for their records.



28. **In terms of the above, the present application stands admitted and the matter is accordingly disposed of.**

Sd/-
(L. N. GUPTA)
MEMBER (T)

Sd/-
(HARNAM SINGH THAKUR)
MEMBER (J)