NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 351 of 2025
& I.A. No. 3064 of 2025, 536 of 2026

[Arising out of the Order dated 20.02.2025 passed by the National Company Law Tribunal, Mumbai Bench Court III in CP (IB)-1028 (MB)/C-III/2022]

IN THE MATTER OF:

Ashutosh Majumdar
(Suspended Director of
Chemstar Organics (India) Limited)
211, Venus Apartments, Cuffe Parade,
Mumbai - 400 005.

...Appellant

Versus

1. **Omkara Asset Reconstruction Private Limited**
Having registered office at:
CI 515, Kanakia Zillion, Junction of LBS Road
And CST Road, BKC Annexe Near Equinox, Kurla (W)
Mumbai - 400 070.

2. **Mr. Indrajeet Mukherjee**
Having registered office at:
B-405, Siddhivinayak Twins, Plot No.9,
Sector 17, Roadpali, Kalamboli,
Navi Mumbai - 410 218

...Respondents

Present:

For Appellant	:	Mr. Abhijeet Sinha and Mr. Gaurav Mitra, Sr. Advocates with Mr. Mahesh Agarwal, Mr. Rishi A., Mr. Shivam Shukla and Mr. Kaustubh Singh, Advocates.
For Respondents	:	Mr. Sanjeev Sen, Sr. Advocate with Mr. Abhishek Anand, Mr. Karan Kohli, Ms. Palak Kalra and Ms. Ridhima Mehrotra, Advocates.

J U D G M E N T
(Hybrid Mode)

[Per: Ajai Das Mehrotra, Member (Technical)]

The present appeal has been filed by Mr. Ashutosh Majumdar, who is the ex-director of Chemstar Organics (India) Limited (hereinafter referred to as the **'Corporate Debtor' or 'CD'**) against the order dated 20.02.2025 of National Company Law Tribunal, Mumbai Bench in CP (IB)-1028 (MB)/C-III/2022 wherein the application under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the **'IBC, 2016'**) filed by Omkara Asset Reconstruction Pvt. Ltd. & Anr. (hereinafter referred to as the **'Financial Creditor'**) was admitted and Corporate Insolvency Resolution Process (hereinafter referred to as the **'CIRP'**) was initiated against Corporate Debtor.

2. The brief facts of the case as noted in the impugned order as under:

> *"i. The Gujrat Industrial Investment Corporate Limited ("GIIC") had sanctioned and disbursed term loan facilities to the Corporate Debtor under Loan Cum Agreement backed by Deed of Hypothecation. Bank of Baroda being a lead Bank to the Consortium while acting for itself and an agent of GIIC was holding all the original title deeds in respect of the mortgaged securities under joint Equitable Mortgage created on 28.07.1998 and 01.07.1999.*
>
> *ii. According to the reply, Rs. 625 lakhs was granted to the Corporate Debtor as Term loan for setting up its expansion project for manufacture of MPB chemical at Vadodara.*
>
> *iii. Subsequently the Corporate Debtor defaulted in payment of interest and repayment instalment and GIIC initiated action to recover dues from the Corporate Debtor by taking possession of mortgaged properties at Nandesari Unit on 0 1.10.2002 and Umaraya Unit on 23.06.2004.*

iv. Thereafter the Corporate Debtor referred the matter to Board of Industrial and Financial Reconstruction ("BIFR") wherein litigation continued till dissolution of BIFR i.e. 30.11.2016.

v. On 19.08.2017 GIIC granted one-time settlement ("OTS") under the OTS Scheme 2015-III of GIIC for an amount of Rs. 987 Lakhs. In terms of the above sanction letter, the Corporate Debtor made payment of Rs. 94 lakhs.

vi. In the meantime, the Government of Gujarat issued a Government Resolution dated 11.09.2017 to provide relief and concessions to viable sick industrial enterprises in the State of Gujarat. The scheme was availed by the Corporate Debtor. Further the Industries Commissionerate also issued a Sanction Letter for settling dues of the Corporate Debtor at 717 Lakhs therefore GIIC approved one-time settlement proposal under its letter dated 15.02.2018. Accordingly, the Corporate Debtor made part payment of Rs. 71. 7 lakhs and the balance amount payable to GIIC stood at Rs. 587 Lakhs (including certain expenses that were incurred by GIIC for completion of transaction).

vii. Subsequently, GIIC vide Tripartite Agreement dated 14.08.2018 assigned its Loan to Omkara Asset Reconstruction Private Limited. The Terms and conditions of Tripartite Agreement were as follows:

a) Financial Creditor (Omkara Asset Reconstruction Private Limited) to give a No-Objection Certificate to the Corporate Debtor for sale of the Nandesari factory;

b) Corporate Debtor to distribute proceeds of the sale consideration among secured creditors in proportion to their charge on the Respondent's assets;

c) Loan amount will stand reduced from Rs. 587 Lakhs to the extent of the sale proceeds received by the Financial Creditor from such sale ("balance loan amount");

d) On receipt of balance loan amount, along with interest as per agreed terms, the Financial Creditor to vacate its charge on the orporate Debtor's assets and return all security documents forthwith;

e) On receipt of balance loan amount, the Financial Creditor shall have no further claims against the Corporate Debtor and/ or its Promoters.

f) Assignment is restricted to prime security only."

2.2 The Ld. NCLT further notes that the Corporate Debtor, after No-Objection Certificate (NOC) from the Respondent and Financial Creditor, sold its Nandesari unit making a payment of Rs. 3.75 crores. The Respondent vide letter dated 04.02.2019 further promised to make OTS payment of Rs. 2.55 crores with interest @ 18% p.a. The Financial Creditor approved OTS vide letter dated 03.04.2019 noting the receipt of Rs. 3.75 crores out of Rs. 6.30 crores, and balance of Rs. 2.55 crores to be paid in two tranches, as under:

Payment	*Date on which payment to be made*	*Amt. in Rupees*
First Tranche	*31.05.2019*	*20 Lakhs*
Second Tranche	*31.08.2019*	*235 Lakhs*

2.3 As per the accepted OTS proposal 90 days grace period was allowed at interest of 24% p.a. It was stated that in the event of failure to honor the repayment schedule (including grace period), the OTS will stand cancelled. The Corporate Debtor vide letter dated 16.04.2019 sought extension of OTS, which was agreed to by the Financial Creditor vide letter dated 19.04.2019 subject to payment of interest @ 24% p.a.

2.4 On 28.08.2019, the Corporate Debtor paid Rs. 21.20 Lakhs. Since no further payment was made, the Financial Creditor through various emails dated 03.10.2019, 14.10.2019, 26.11.2019, 10.12.2019 and 21.12.2019 called upon the Corporate Debtor to clear the overdue amount.

2.5 On 08.01.2020, the Financial Creditor wrote to Corporate Debtor revoking OTS and calling upon the Corporate Debtor to make payment of entire outstanding dues within 10 days.

2.6 The Corporate Debtor entered into various correspondences with the Financial Creditor seeking further time to make the payment.

2.7 Finally, Financial Creditor issued a notice under Section 13(2) of SARFAESI Act, 2002 dated 22.06.2021 calling upon the Corporate Debtor and its guarantors to pay outstanding amount of Rs. 10,51,18,900/- due and payable as on 21.06.2021.

2.8 As the Corporate Debtor failed to pay the outstanding dues, the Financial Creditor filed an application under Section 7 of the IBC, 2016 on 30.06.2022, which was admitted and CIRP initiated vide order dated 06.12.2022 of Ld. NCLT.

2.9 This order dated 06.12.2022 was challenged before this Tribunal in Company Appeal (AT) (Ins.) 1492 of 2022 and vide order dated 01.09.2023, the order of Ld. NCLT was set aside with directions to Ld. NCLT to give one opportunity to the Appellant to file a reply.

2.10 After affording opportunity to the Corporate Debtor to file reply and present its case, through impugned order dated 20.02.2025 the Corporate Debtor was admitted into CIRP. The relevant portion of the order of Ld. NCLT dated 20.02.2025 is as under:

> *"44. We have duly considered the submissions of the parties.*
>
> *45. Two important points are to be noticed. Firstly, while approving the OTS sanction letter dated 03.04.2019, the terms of OTS stated "Grace period of 90 days shall be allowed at simple interest at 24% p.a. for the delayed period", however, upon request of the Corporate Debtor seeking extension of time for payment of final OTS instalment till 31.03.2020 and also assuring that it would be Corporate Debtor will strive to make payment as early*

as possible, the Financial Creditor approved the extension but the language used while granting such extension is "subject to paying interest @ 24% p.a. on reducing balance basis.". Obviously, the Financial Creditor was assured that some payments would be made as early as possible and payment of interest would be on reducing balance. The Financial Creditor was not completely wrong in expecting monthly interest from the Corporate Debtor.

46. Secondly, the Financial Creditor sent various emails dated 03.10.2019, 14.10.2019, 26.11.2019, 10.12.2019 and 21.12.2019 to the Corporate Debtor demanding monthly interest payments. However, the Corporate Debtor neither made any interest payment nor replied to any of the aforementioned emails denying its obligation to pay monthly interest. We also note that it was not in the above-mentioned emails that the demand for monthly interest has been raised by the Financial Creditor for the first time. It is pertinent here to look at the email dated 29.05.2019 sent by the Financial Creditor to the Corporate Debtor:

> *"Dear Sir,*
> *As per repayment schedule, your May month instalment is pending. Please make the payment on or before 31.05.2019 to avoid penalty."*

47. Thereafter, another email was addressed to the Corporate Debtor by Financial Creditor on 26.08.2019 stating as follows:

> *"Dear Sir,*
> *With reference to our sanction letter for OTS dated 03rd April, 2019 wherein we have allowed 90 days grace period at 24% interest. As per repayment schedule May month instalment is not paid by you which was to be paid till 31.05.2019 and now the grace period is going to complete on 31.08.2019. We have already sent many reminders regarding the same. Now) this is the final reminder for the repayment along with interest for delayed period. ln the event of your failure to honour the repayment with interest on or before 31. 08.201 9, the OTS will stand cancelled".*

48. In response, the Corporate Debtor sent an email dated 28.08.20 19 merely enclosing the cheque for Rs. 21,20,000 /- which includes principal amount of Rs. 20 lakhs and interest of Rs. 1.20 lakhs/-. Nowhere, the Corporate Debtor had disputed or denied that the interest payment was not to be made on a monthly basis. The conduct of the Corporate Debtor indicates that there was tacit understanding that Corporate Debtor would be paying *interest. If that was not the understanding, then any prudent person would immediately deny its obligation to pay monthly interest. However, silence on the part of the Corporate Debtor indicates the common understanding of the parties.*

49. Be that as it may be, the Corporate Debtor has not denied the debt. Admittedly, the Corporate Debtor has not returned the principal amount with interest @ 24% even till the final hearing of this matter. In fact, the matter was adjourned on several occasions to facilitate settlements between the parties but parties could not amicably agree to the settlement amount.

50. The Corporate Debtor insists that the debt was not due and payable on 19.01.2020 and but on 30.06.2020 which is within 10A period, hence, section 7 application is not maintainable. In the first place, we observe that in the letter dated 16.04.2020 seeking extension for payment of the second tranche till 31.03.2020, the Corporate Debtor had not requested for any grace period after 31.03.2020 and the Financial Creditor tor had approved extension only till 31.03.2020 without any grace period. Nonetheless, even without adding the grace period, the due date falls in the 10A period.

51. Although the Corporate Debtor is right in stating that no application under section 7 of IBC is maintainable for the debt which occurred during the 10A period, however, we are of considered view that a Financial Creditor is not precluded from filing section 7 petition for a continuous default that occurs even after the 10A period. We are supported by a latest judgment of Hon'ble Madras High Court in Dharamshi K. Patel & Anr. Vs. Indian Bank & Ors. [Writ Petition No. 712/2024], decided on 23.01.2025:

> *"15. Section 10-A of IBC, 2016 is only a moratorium temporarily suspending initiation of CIRP. It is true that Section 10-A prohibits an application for initiation of CIRP of a Corporate Debtor, for any default arising on or after 25.03.2020 for a period of six months. The proviso also indicates that no application can ever be filed for initiation of CIRP of a Corporate Debtor for the said default occurring during the said period, i.e., on or after 25.03.2020 for a period of six months or such further period not extending one year from such date.*
>
> *16. In the instant case, though the default commenced after the period specified in Section 10-A, it is not in dispute that it*

continued even after the moratorium period. The intention of the legislature is to give relief by suspending initiation of CIRP. This Court, from the plain reading of Section 10-A is unable to agree with the learned Senior Counsel that even in a case where the default continued after the period of moratorium, no application can be filed.

17. Learned Senior counsel relied upon the judgment of Hon 'ble Supreme Court in Ramesh Kymal [cited supra] reported in 2021 [3] SCC 224.
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18. From the reading of the initial paragraphs of the said judgment, it is seen that the default by the Corporate Debtor in that case was on 30.04.2020. The application under Section 9 of IBC, 2016 was filed on 11.05.2020 on the ground that there was a default in payment of the operational dues. It was only in the said context, the application filed by the Corporate Debtor seeking dismissal of the application by virtue of Section 10-A of IBC, 2016 was allowed and the' said order was confirmed by Hon'ble Supreme Court. Therefore, the judgment of Hon'ble Supreme Court which is appropriate in the facts of the case, cannot be relied upon to any other case where the default continued even after the moratorium period and the Petition by the Corporate Creditor was filed long after the moratorium period.
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22. Since proviso to Section 10-A mandate that no application shall ever be filed for initiation of CIRP of the Corporate Debtor for the default occurring during the moratorium period, the above judgment relied upon by the learned Senior counsel is in tune with the statutory provision. However, the proviso cannot be extended to cases where the default is continued beyond the moratorium period."

52. In the present case, the Corporate Debtor heavily contended that the revocation of the OTS was illegal and arbitrary and that the Corporate Debtor was ready to pay the second tranche on the agreed extended due date i.e. 31.03.2020 + grace period of 90 days. The entire set of arguments of the Corporate Debtor was based on this premises.

53. However, even if we go by the submission of the Corporate Debtor that the payment was due on 31.03.2020, we note that *even after the said date, a letter dated 27.06.2020 was sent by the Corporate Debtor seeking extension of time for payment of the outstanding dues till 31.12.2020. This request was rejected by the Financial Creditor. Thereafter, on 07.01.2021, the Financial Creditor sent a letter stating that the "dues remain unpaid till date" and cautioned the Corporate Debtor of initiating legal proceedings to recover the dues. In response, the Corporate Debtor sent letter dated 20.01.2021 and stated that "there is no default on our part. We are ready to give the final payment as per our OTS Agreement." However, no payment was made by the Corporate Debtor.*

54. Thereafter, the Financial Creditor issued demand notice dated 22.06.2021 under section 13(2) of the SARFAESI Act, 2002 calling upon the Corporate Debtor to pay the outstanding dues. However, despite that, no payment was made by the Corporate Debtor. Consequently, the present petition has been filed by the Financial Creditor on 01.07.2022. Notably, the issuance of demand notice under SARFAESI Act and the filing of the present petition has been made after the prohibited period under section l0A of the Code. Admittedly, the Corporate Debtor has still not discharged its liability. Thus, the observations of Hon'ble Madras High Court in Dharamshi K Patel (supra) is squarely applicable in the present case. In view thereof, without going into the dispute whether the revocation of OTS by the Financial Creditor vide letter dated 08.01.2020 was valid or not, we can safely conclude that the default continues to exist and the Financial Creditor has established the debt and default.

55. Since we are satisfied that debt and default has been established in the present case, the Corporate Debtor's objections which were majorly based on the absence of default, stand rejected.

56. However, besides the argument on default, the Corporate Debtor also contended that there is novation of the original debt due to settlement/OTS and as such breach in the present case is under the said OTS and therefore, it cannot come within the ambit of 'financial debt' under IBC. We note that the Petitioner is an assignee of the debt which was originally owed by the Corporate Debtor to GIIC. Further, the facts set out in the foregoing paragraphs clearly shows that it was on the basis of the loan amount which was disbursed between 1997 to 2000 that all the subsequent sanction letters, OTS letters, the Assignment deed dated 14.08.2018 and the subsequent OTS letters were exchanged between GIIC, Corporate Debtor and the Petitioner.

Nowhere m any subsequent letters/communications, it is mentioned that the original loan agreement shall stand revoked or superseded.

57. We refer to Mausumi Bhattacharjee vs. Jumbo Chemicals & Allied Industries Private Limited [Company Appeal (AT) (Ins) No. 886 of 2024], decided on 02.07.2024 wherein the Hon'ble NCLAT has observed as follows:

> *"28. We understand that if the contract is altered in material particulars to change its essential character, the modified contract must be read as doing away with the original contract but if the modified contract has no independent contractual force, no new contract comes into play. We do not find any such wording in settlement agreement dated 27.08.2019.*
>
> *29. The question whether a subsequent agreement is an additional to the main agreement or not; as well as the fact whether new contract supersede old contract would depend on the facts and circumstances of each case. In the present case, based on fact and circumstances brought out on record before us, we do not find that old loan agreements or assignment deeds ceased to exist by signing settlement agreement dated 27.08.2019.and therefore we are unable to accept the pleadings of the Appellant that Section 62 of the Indian Contract Act, 1872 will come into play in the present appeal."*

58. Based on the above ruling and considering the fact that there is no document to show that there has been novation of any of the letters/agreements by a subsequent letter/agreement, the contention of the Corporate Debtor in this regard holds no merit.

59. Further since there is a continuing default in the present case the case laws relied upon by the Corporate Debtor is not been dealt with.

60. It is a well-settled position that the Adjudicating Authority has to determine whether there is debt and default and if it is satisfied that a default has occurred, then the application under section 7 of the Code must be admitted unless it lacks other necessities as mandated thereunder.

61. We are supported by the decision of Hon'ble Supreme Court in Innovative Industries Limited vs. ICICI Bank and Anr [(2018) 1 SCC 407] wherein it was held as follows:

> *"28 . ... The moment the adjudicating authority is satisfied that a default has occurred, the application must be admitted unless it is incomplete, in which case it may give notice to the applicant to rectify the defect within 7 days' receipt of a notice from the adjudicating authority.*
> *30 ...... On the other hand, as we have seen, in the case of a corporate debtor who commits a default of a financial debt, the adjudicating authority has merely to see the records of the information utility or other evidence produced by the financial creditor to satisfy itself that a default has occurred. It is of no matter that the debt is disputed so long as the debt is "due" i.e. Payable unless interdicted by some law or has not yet become due in the sense that it is payable at some future date. It is only when this is proved to the satisfaction of the adjudicating authority that the adjudicating authority may reject an application and not otherwise."*

62. As the debt and default is established by the Financial Creditor and the amount is above the threshold limit under section 4(1] of the Code and the petition is within limitation, we are satisfied that the present petition is maintainable.

....

64. We cannot lose the sight that the proceedings before the IBC are not adversarial. The objective of the Code is to resolve the Corporate Persons which are under distress, in a time bound manner for maximization of value of assets of such persons. After implementation of insolvency law for last 8 years, it is seen that delay in admission have resulted in drastic erosion in the value of the assets of the Corporate Debtor. We note that the Corporate Debtor was before BIFR till 2016 when the BIFR was dissolved after enactment of IBC. There have been series of defaults by Corporate Debtor with GIIC before the loan of GIIC was assigned to the Financial Creditor. Even after the assignment of the debt to Financial Creditor on 14.08.2018, out of the outstanding debt of Rs. 2.55 crores, the Corporate Debtor was able to pay only Rs. 21.10 lakhs. This undisputedly proves that the Corporate Debtor is under distress and no case has been made cut by the Corporate Debtor that it has sufficient funds to make payment to the creditors."

3. A request was made by the Appellant that he is willing to settle the debt with the financial creditors. The Appellant expressed willingness to deposit an amount of Rs. 4 crores within 60 days from 27.02.2025 and on this assurance, this Tribunal had directed that the Resolution Professional may proceed to collate claims, however, CoC shall not be constituted. This Tribunal, vide order dated 19.01.2026 after noticing that the Appellant has failed to deposit the requisite amount and has not even sought any extension of time regarding deposit of this amount, vacated the interim order granted on 27.02.2025.

3.2 The Appellant sought time to deposit the balance amount before this Tribunal. Vide letter dated 24.01.2026, the Appellant submitted two FDRs of Rs. 1,50,00,000/- each in favour of Registrar of this Tribunal. However, the Ld. Sr. Counsel for the Respondent submitted that the financial creditor is not willing to settle and requested that the appeal may be decided on merit.

4. In its oral and written submissions, the Ld. Sr. Counsel for Appellant submitted that the Respondent is merely an assignee of the debt originally granted by Gujarat Industrial Investment Corporation Limited (hereinafter referred to as the **'GIIC'**) to the Corporate Debtor.

4.2 It is argued that Government of Gujarat through letter dated 15.02.2018, had proposed a scheme of settlement of Government dues. As per the said scheme of settlement it had agreed for remission of entire amount of interest, penal interest and penalty on payment of principal and other dues as on 31.03.2016 within a period of 6 months. Accordingly, the details of dues and proposed remission were as under:

Sr. no	Government departments	Outstanding as on 31/03/2016	Settlement amount (Principal & other exps)	Remission
1	GIIC	1232.07	717.51	514.56

4.3 Since the Appellant was unable to make the payment within a period of 6 months, it had approached the Respondent who had then made the payments to GIIC and the debt was assigned by GIIC to the Respondent. Two agreements were made on 14.08.2021. Through one such agreement, the debt was assigned by GIIC to the Respondent- Omkara Assets Reconstruction Pvt. Ltd. (in short **'Omkara'**) and another Tripartite Agreement was signed on the same date 14.08.2018 between Corporate Debtor, GIIC and Omkara.

4.4 It is stated that when the debt was assigned by GIIC to Omkara Assets Reconstruction Pvt. Ltd. (in short **'Omkara'**), the Respondent herein, the debt was assigned as per Schedule- 1 and 2 of Assignment Agreement dated 14.08.2021 placed on record through IA No. 1326 of 2026. The relevant clauses of the said Agreement are as under:

> *"ARTICLE-2*
>
> *ASSIGNMENT*
>
> *a) In pursuance of the Agreement and in consideration of the sum of Rs. 5,87,04,000/- (Rupees Five Crores Eighty Lacs Thousand Four thousand Only) (ONE TIME SETTLEMENT AMOUNT) to be paid by the Assignee to the Assignor on or before the execution of these presents (the payment and receipt whereof of the Assignor doth hereby admit and acknowledge), the Assignor hereby assigns, transfers and conveys to the Assignee and the Assignee hereby takes over and acquires from the-Assignor, the claim or claims of the Assignor in the securities presently hypothecated and mortgaged to the Assignor together with all the Assignor's right, title, interest in or in connection therewith as specified in Schedule1.*
>
> *.......*
>
> *2.1 ASSET ASSIGNED*
>
> *a) Nothing other than a "financial assets" as defined in the SARFAESI Act is acquired by 'the Assignee from the Assignor as per this Agreement.*

b) The financial assets as referred to in Schedule 1 are assigned by the Assignor to the Assignee "as. is where is", "as is what is" and "without recourse" basis.

……….

ARTICLE-3

3. RIGHTS OF ASSIGNEE

On and from the date of these presents:-

3. 1 Assignee shall be entitled to execute the securities previously vested with the Assignor, including selling and disposing off the same in any manner deemed fit by the Assignee.

3.2 Assignee shall be entitled to exercise all rights of the Assignor in respect of the security and under the Loan documents.

3.3 Assignee shall be entitled to recover the debts in such manner as deemed fit by the Assignee.

3.4 Assignee shall be bound by and shall be liable to perform and discharge all the obligations and liabilities of the Assignor as would be applicable upon the assignment made hereunder.

ARTICLE-4

4. REPRESENTATIONS

……

4.1.2 The Assignor in respect of the securities mentioned in Schedule 1, has not released any Security Interest, pledge or guarantee in respect of the Loan of the Borrower before the date of this Agreement, except disclosed by the Assignor, in Schedule 2, (or can be modified accordingly)."

The relevant portions of the schedule 1 and 2 of the said Agreement are scanned below:

SCHEDULE I

Being the details of the Financing Documents

1	Name / Details of the Borrower	M/S Chemstar Organics (India) Limited
2	Details of the guarantor / Co-borrower	Shri A. R. Majmudar Smt. A. A. Majmudar
3	A/c No. as per Assignor's records	LF 4514 LF 4578 LF 4686
4	Outstanding amount (Principal O/s + interest) as on cut-off date	As on 14-08-2018. (Rs. In Lacs) Principal -587.04 Uncharged int. –514.56 Total dues **-1101.60**
5	Nature of credit facility	Term Loan
6	Details of Documents	Deed of hypothecation dated 06/10/97 for Rs. 5 Crores Modification agreement supplemental to deed of hypothecation dated 16/07/98 Joint equitable mortgage with BOB on 28/07/98 (title deeds are with BOB) Deed of hypothecation 17/04/99 for Rs. 2 Crores Joint equitable mortgage 01/07/99 (title deeds are with BOB) Deed of hypothecation for term loan of Rs, 1.25 Croresdated 13/10/2000
	Details of pending litigations	Commercial Civil Suit Ahmedabad 159/2017 on promoters
8	Nature of security	Hypothecation of plant and machinery, spares, tools, accessories both present and future situated at all borrowers factories premises and godowns. Factory land and building, plant and machinery situated at Plot No 107 & 108 GIDCNandesariDist Baroda. & Block No 276 at MoujeUmraya.TalukaPadra, Dist Baroda
9	Details of secured assets	As per Point No. 8
10	Details of Security Documents	As per Point No. 6
11	Details of third party litigations as per the knowledge of the Assignor	NIL
12	Details Future Third-party Receipts 2	NIL
13	Party entitled for future Third-party Receipts 3	NIL
14	CERSAI Details	Not available
15	Remarks, if any 4	

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SCHEDULE 2

1. M/S Chemstar Organics (India) Limited

(a) Details of loans/Borrowers wherein set-off has been exercised

i) NA

ii)

(b) Details of loans/Borrowers wherein any reschedule or any other relief are granted

i) As per sanction letter IC/IM/VSIE/41520/TR No 21 dated 15/02/18 relief of Rs. 514.56 has been provided by GIIC.

ii)

(c) Details of loans/Borrowers wherein any security interest, pledge, guarantee, etc are already released.

i) Nil

ii)

(d) Details of loans/Borrowers wherein any proceedings for winding up, bankruptcy or liquidation or restraint or attachment of any borrower, or any action for the appointment of a receiver, liquidator, assignee (or similar official) for any part of its property, or any proceedings hampering the right of the Assignor to enforce the financing Documents or the underlying security Interests, pledges and/ or guarantees, including any proceedings before the Board of Industrial and Financial Reconstruction/Appellate authority for Industrial and Financial Reconstruction are pending

i) Nil

ii)

(e) Details of loans/Borrowers wherein any suits have been filed, or other proceedings initiated by the assignor against the borrower before any court, tribunal, statutory authority or regulatory body.

i)Nil

ii)

(f) Details of loans/Borrowers wherein any suits have been filed, or other proceedings initiated by the borrower against the assignor in respect of the financing Documents before any court, tribunal, statutory authority or regulatory body

i) Nil

ii)

4.5 It is argued that as per clause 1(b) of Schedule 2, it is clearly recorded that vide letter dated 15.02.2018 relief of Rs. 5.14 crores has been provided by GIIC.

4.6. In this connection, the Appellant cited Article-7 of the Tripartite Agreement dated 14th August, 2018 between the Corporate Debtor, GIIC and Omkara. The said Article-7 is as under:

"ARTICLE-7
Letter of sanction of Industries Commissionerate bearing No.IC/IM/VSTE/41520/TR No. 21 dated 15.02 2018

The Confirming party hereby agrees, undertakes and confirms that at the request of confirming partly the Industries Commissionerate vide its letter bearing No.1C/IM/VSIE/41520/TR No.21 dated 15.02.2018 granted the relief and concessions to the viable Sick Industrial Enterprises under Government Resolution dated 11.09.2017. Confirming party hereby confirms all terms and conditions of the aforesaid letter more particularly annexed to this present. The confirming party hereby give an undertaking to restart the production within 12 months from the date of sanction letter, failing which relief and concession granted will be cancelled and in such case the confirming party will be required to make entire payment of dues including principal interest, penal interest, penalty and other dues without any relief and concessions. The confirming party hereby agrees to submit detailed implementation schedule with financial plan to restart the unit and shall submit progress report regarding restarting of the unit."

4.7 It is argued that the amounts of interests and penal interest etc of Rs. 5.14 crores was eligible for remission as per letter dated 15.02.2018.

4.8 It is argued that since the Appellant has already deposited Rs. 4 crores with the Registrar of this Tribunal, there is no case for admission of the Corporate Debtor in CIRP.

4.9 The Appellant relied upon the judgment of this Tribunal in *Achal Kumar Jindal v. Sanjay Kumar Bhuwalka & Anr.* in *Company Appeal (AT) (Ins.) No. 2341 of 2024,* where the Appellant was willing to pay entire amount and it was held that the Tribunal can invoke its power even where the financial creditor is not willing to settle the case even on full payment.

4.10 It is further argued that the interest of 24% claimed by the Respondent is against the RBI Circular applicable to NBFCs and is excessive and extortionate.

4.11 It is argued that in *Sudhir Jain v. R.P. Mittal (2023) 303 DLT 660,* the Hon'ble Delhi High Court has held that where the interest charges are excessive, the courts have authority to remit the interest and relieve the debtor from all liability. The relevant portion of the judgment is as under:

> *"72. This Act provides that if the court finds that the transaction in respect of interest was substantially unfair, it may revise the entire transaction and the interest rate as provided therein, and relieve the debtor of all the liability in respect of the interest amount.*
>
> *.......*
>
> *75. At this point it is pertinent to refer to Section 3 of the Usurious Loans Act, 1918 which gives the power to the Court to re-open any account already taken between the parties and relieve the debtor of all liability in respect of any interest where it has reason to believe that the Interest is excessive. While considering the excessive nature of such an interest, the court can take into account any amounts charged or paid, whether in money or in kind, for expenses, inquiries, fines, bonuses, premia, renewals or any other charges, and if compound Interest is charged, the periods at which it is calculated, and the total advantage which may reasonably be to have been expected from the transaction.*

76. The "excessive nature of Interest" as under Section 3 of the Usurious Loans Act, 1918 was explained by the Apex court in the case of Baidyanath Mandal v. Gajadhar Marwari, (1953) 1 SCC 772. It was observed that there were two requirements under Section 3; 1) the Interest is excessive and ii) the transaction was unfair. In cases where the Interest stipulated under the contract was higher than the rate of interest prevalent on the date of transaction, was sufficient evidence to hold that the transaction was sufficiently unfair.

77. In the case of Geetu Lakhpat v. Jalpal, (2011) 105 AIC 936 this Court had taken into account the provisions of the Usurious Loans Act, 1918 and also the economic scenario, to arrive at this conclusion that the contractual interest of 2% per month was exorbitant and usurious and Instead granted interest @ 7&1/2% p.a."

4.12 It is argued that the amount payable as per Appellant is Rs. 392.30 lakhs only and the Appellant had deposited Rs. 4 crores before this Tribunal, exceeding the entire liability and subsequently, no final debt survives which can be said to be "due and payable".

4.13 The Appellant and the Respondent have entered into OTS agreement as per letter dated 03.04.2019 placed at page 103 of the APB. Under the said agreement, the total amount of OTS was Rs. 6.30 crores out of which Rs. 3.75 crores was received towards release of Nandesari unit and the balance amount of Rs. 2.55 crores was agreed by the Appellant to be paid on or before 31.08.2019 as per following schedule. A grace period of 90 days was allowed subject to simple interest @ 24% p.a.:

Sr. No.	Date	Amount (Rs. In lacs)
1	31.05.2019	20.00

2	31.03.2019	235.00

4.14 The Appellant paid sum of Rs. 21.20 lakhs on 28.08.2019 being original amount of Rs. 20 lakhs payable by 31.05.2019 and interest for grace period of Rs. 1.20 lakh @ 24% p.a. The details are available at page 113 of the APB.

4.15 The Respondent (Omkara) by its communication dated 19.04.2019 agreed to extension till 31.03.2020 for the payment of final OTS amount, subject to paying interest @ 24% p.a. on reducing balance basis. Vide letter dated 08.01.2020, the OTS was pre-maturely revoked on the grounds that interest for the intervening period has not been paid. Vide said OTS revocation letter dated 08.01.2020, the Appellant was asked to pay Rs. 8,68,24,492/- within 10 days. The said letter is available at page 120 of the APB.

4.16 It is argued that since the extended time line expired on 31.03.2020, the earliest date of default is 31.03.2020 which falls under the period of embargo under Section 10A of the IBC, 2016.

4.17 It is pleaded, in view of the above facts, the order of Ld. NCLT deserves to be set aside and petition under Section 7 of the IBC, 2016 deserves to be dismissed.

5. The Ld. Sr. Counsel for the Respondent -Financial Creditor in his oral and written submissions argued as under:

i. The Corporate Debtor depicts 24 years of continuous undisputed default. The Nandesari unit of the Corporate Debtor was taken in possession by GIIC due to default in repayment on 01.10.2002. Subsequently, the Corporate Debtor had defaulted in repayments and in several OTS offered.

ii. On 30.11.2016, proceedings were initiated against the Corporate Debtor before the Board for Industrial Financial Reconstruction (BIFR) and it remained sub-judice till BIFR was dissolved.

iii. The Corporate Debtor also violated the OTS sanctioned by GIIC in 2017/18. The debt of GIIC was assigned to Omkara on 14.08.2018.

iv. On 03.04.2019, Omkara approved OTS, wherein Rs. 2.55 crores was to be paid on or before 31.08.2019. The Corporate Debtor again failed to avail this OTS and sought extension. The extension was granted, subject to payment of Rs. 24% interest p.a. on the outstanding amounts on reducing balance basis. The Corporate Debtor failed to even pay the interest amount and the OTS was revoked on 08.01.2020 and the financial creditor asked Corporate Debtor for repayment of full outstanding amount of Rs. 8.68 crores within 10 days. No payments were made in response to this letter.

v. The financial creditor issued a demand notice under Section 13(2) of SARFAESI Act, 2002 on 22.06.2021. In view of continuous default, the financial creditor filed an application under Section 7 of IBC, 2016 on 30.06.2022, which was admitted vide impugned order.

vi. At no stage before the Ld. NCLT or this Tribunal, the Corporate Debtor had denied existence of financial debt or its own default. The Corporate Debtor has only made submissions regarding levy of interests.

vii. The amount of Rs. 514.56 lakh which Appellant claimed as a relief granted under GIIC sanction letter dated 15.02.2018 was never admissible to the Appellant as it had not paid the amount to GIIC in time and also has failed to revive the company within 12 months of 15.02.2018, as per Article 5 (Proviso).

viii. It was categorically recorded in the GIIC letter dated 15.02.2018 that the relief of waiver was subject to payment within time. Similarly, regarding revival within 12 months of 15.02.2018, as per Article 5 (Proviso), on failure "the concession granted shall be cancelled" and the whole dues, principal, interest and penalty, become payable "without any relief or concession".

ix. Even the OTS entered with the financial creditor was be cancelled on failure of the Appellant to pay the agreed amount within the agreed time along with interest at the rate of 24% p.a. which was agreed to by the Corporate Debtor, as can be clearly seen from the Appellant's request for extension on 16.04.2019. Since the rate of interest was agreed to by the Corporate Debtor, no relief can be claimed on this account.

x. As per Part-IV of the Form filed along with Section 7 petition, an amount of Rs. 11,87,21,370/- was due from the Corporate Debtor as on 28.06.2022. The Appellant's offer of paying Rs. 4 crores does not satisfy the debt and is not acceptable to the financial creditor.

xi. The plea that debt falls in the exclusion period of Section 10A of IBC, 2016 does not hold good as the default has occurred much prior to the said period and has continued beyond the said period.

xii. The Appellant's reliance on the decision of this Tribunal in *Achal Kumar Jindal v. Sanjay Kumar Bhuwalka & Anr.* in *Company Appeal (AT) (Ins.) No. 2341 of 2024* is misplaced as the facts of that case were very different. In *Achal Kumar Jindal* case, the financial creditor was offered complete satisfaction of its claim, and its refusal to accept settlement was held to be unjustified, whereas in the present case, against the demand of Rs. 11.87 crores, the Appellant is willing to pay only Rs. 4 crores which is not acceptable to the financial creditor.

xiii. It is not for the Adjudicating Authority to work out the exact amount of dues and if the dues exceed minimum threshold prescribed under Section 4 of the IBC, 2016, the case should be admitted under Section 7.

xiv. Since in this case, financial debt exists and default exists which exceeds the minimum amount prescribed under Section 4, the Adjudicating Authority has no discretion to refuse admission.

xv. To supplement his arguments, the Ld. Sr. Counsel relied upon the following decisions:

- *Elegna Co-operative Housing & Commercial Society Ltd. v. Edelweiss ARC Ltd., Civil Appeal No. 10261 of 2025;*
- *Power Trust v. Bhuvan Madan, Civil Appeal No. 2211 of 2024;*
- *E.S. Krishnanmurthy v. Tech Hi-Tech Builders, (2022) 3 SCC 161; and*
- *M. Suresh Kumar Reddy v. Canara Bank, (2023) 8 SCC 387.*

6. We have heard the Ld. Sr. Counsels appearing for the parties and have perused the records with their able assistance.

6.2 We note that the Corporate Debtor was under financial stress right from 2002. We also note that there had been repeated attempts at settlements and the Corporate Debtor has failed repeatedly to fulfil commitments regarding repayment of debt. The Corporate Debtor's defence that the interest etc of Rs. 5.14 crores was waived by GIIC, and the financial creditor, who is the successor due to assignment of debt of GIIC cannot claim this amount, has not much relevance in this case as subsequent to the assignment the Corporate Debtor had given OTS proposal to financial creditor on 04.02.2019 offering to pay an amount of Rs. 630 lakhs in instalments towards full and final settlement of dues. This proposal was accepted by the financial creditor on 03.04.2019 wherein Rs. 3.75 crores was adjusted towards release of Nandesari unit and the balance amount of Rs. 2.55 crores was to be paid by 31.08.2019, and a grace period of 90 days was prescribed subject to payment of interests at the rate of 24% p.a. for the delayed period. The Appellant had failed to fulfil the conditions of this OTS.

6.3 In a proceeding under Section 7 of the IBC, 2016 it is not the mandate of the Adjudicating Authority to work out the exact amount which is payable by the Corporate Debtor. It suffices if the amount in default exceeds the threshold prescribed in Section 4 of IBC, 2016, which at the relevant time when the application was filed was Rs. 1 crore. This is a case where the 'debt and default' are admitted and the amount of default is in excess of the threshold. The Appellant has also not challenged the application on the issue of limitation. Regarding plea of exclusion under Section 10A we find that OTS was revoked in January and Appellant was asked to pay the amount within 10 days, much prior to Covid exclusion period. Further, the default had continued and further extension was sought by the Corporate Debtor, and granted by financial creditor, and finally the date of default noted in Part-IV of application is 28.06.2022, beyond the exclusion period and thus, immunity under Section 10A is not available to the Corporate Debtor.

6.4 We seek guidance from the decision of the Hon'ble Supreme Court in *Elegna Co-Op. Housing and Commercial Society Ltd. & Anr. v. Edelweiss Asset*

Reconstruction Co. Ltd. & Anr. reported in *(2026) 264 Comp Cas 239* delivered on 15.01.2026 wherein the Hon'ble Supreme Court held as under:

> *"12.7. In any event, the scope of the Adjudicating Authority's powers stands elaborately discussed by a three-Judge Bench of this court in Indus Biotech P. Ltd. v. Kotak India Venture (Offshore) Fund. While recognising that the National Company Law Tribunal is not expected to act mechanically and is empowered to examine the material on record to satisfy itself that a default has in fact occurred, this court unequivocally held that once the ingredients of section 7, most importantly, default, are satisfied, admission must follow........"*

6.5 We are conscious that this is a case where "debt" and "default" has not been challenged by the Corporate Debtor. The quantum of dues exceeds the prescribed minimum threshold. The Appellant's argument is only regarding the quantum of dues, especially the liability towards interest. The financial creditor has expressly stated that they are not willing to settle the debt at Rs. 4 crores now offered by Corporate Debtor.

6.6 This Tribunal, in similar circumstances in the case of *Surender Pal Singh Mangat v. Oriental bank of Commerce & Ors.* in *Company Appeal (AT) (Ins.) No. 1404 of 2024* has upheld the order of Ld. NCLT in admitting the application under Section 7 in case of clear 'debt' and 'default'. The said order has been affirmed by the Hon'ble Supreme Court in *Civil Appeal No (S). 9981/2026* vide judgment dated 07.08.2026.

6.7 The judgment of this Tribunal in the case of *Achal Kumar Jindal (supra)* is not applicable to the facts of this case as the Appellant is not willing to deposit the amount claimed of Rs. 11.87 crores as stated in Part-IV of the application under Section 7. The financial creditor has also refused to accept the offer, on this ground.

6.8 In the present case as the “debt” and “default” are conclusively established, and the narrow exception carved out in *Vidarbha Industries Power Ltd. v. Axis Bank Ltd.* is not pleaded the Ld. NCLT is justified in admitting the Corporate Debtor into CIRP. We find no infirmity in the order of the Ld. NCLT regarding admission of the Corporate Debtor into CIRP. This appeal *viz.* Company Appeal (AT) (Ins.) No. 351 of 2025 is accordingly dismissed.

6.9 All interim orders are vacated. All pending I.As, if any, are closed. No order as to costs.

[Justice Yogesh Khanna]
Officiating Chairperson

[Mr. Ajai Das Mehrotra]
Member (Technical)

Place: New Delhi
Dated: 18.08.2026
Ram N.