

**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**BENGALURU BENCH, BENGALURU**  
**(Exercising powers of Adjudicating Authority under**  
**the Insolvency and Bankruptcy Code, 2016)**  
**(Through Web-based Video Conferencing Platform)**

**C.P. (IB) No.19/BB/2021**

U/s 7 of I&B Code, 2016

R/w Rule 4 of I&B (AAA) Rules, 2016

**&**

**I.A. No.261 of 2021**

U/s 10A of I&B Code, 2016

R/w Rule 11 of NCLT Rules, 2016

**In the matter of:**

**M/s. Coöperatieve Rabobank U.A.**

Registered Office:

Croeselaan 18, Utrecht,  
Netherlands.

Branch Office:

32/F, Three Pacific Place,  
1 Queen's Road East,  
Wanchai, Hong Kong.

... Petitioner/Financial Creditor

**Versus**

**M/s. Coffee Day Global Limited**

Registered Office:

K.M. Road, Chikmagalur,  
Karnataka – 577 101.

... Respondent/Corporate Debtor

**In the matter of IA No.261 of 2021:**

**M/s. Coffee Day Global Limited**

Rep. by its CFO, Mr. Jayaraj C. Hubli

- Applicant

**Versus**

**M/s. Coöperatieve Rabobank U.A.**

- Respondent

**Order delivered on: 29<sup>th</sup> March, 2022**

**Coram:**

1. Hon'ble Shri Ajay Kumar Vatsavayi, Member (Judicial)

2. Hon'ble Shri Manoj Kumar Dubey, Member (Technical)

**Present:**

For the Petitioner in CP/  
Respondent in IA No.261 of 2021 : Shri Rajiv Nayar, Sr. Adv.

For the Respondent in CP /  
Applicant in IA No.261 of 2021 : Shri A. Murali, Adv.

**ORDER**

**Per: Ajay Kumar Vatsavayi, Member (J)**

1. The present petition is filed u/s 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as 'IBC/Code') r/w Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 by Coöperatieve Rabobank U.A. (hereinafter referred to as 'Financial Creditor/ Petitioner'), with a prayer to initiate Corporate Insolvency Resolution Process (CIRP) against Coffee Day Global Limited (hereinafter referred to as 'Corporate Debtor/Respondent').
2. The Corporate Debtor namely, 'Coffee Day Global Limited' is a Company incorporated on 06.12.1993 with CIN No.U85110KA1993PLC015001 with its registered office at K.M. Road, Chikmagalur, Karnataka-577101. Hence the jurisdiction lies with this Adjudicating Authority. The Authorised Share Capital of the Respondent Company is Rs. 2,35,48,60,635/- and its Paid up Share Capital is Rs.19,15,08,844/-.
3. Brief facts of the case, as stated in the Petition, are that Coöperatieve Rabobank U.A., the Applicant, is a Company registered as an overseas Company in Hong Kong where it maintains a branch. The Applicant, through its branch in Hong Kong, had extended two facilities amounting to USD 4,50,00,000 (INR 3,30,66,00,000 computed at the rate of USD 1 = INR 73.48) to the Corporate Debtor by way of the facility agreement dated 29.07.2015 and 27.03.2018. The Corporate Debtor is a Company registered under the Companies Act, 1956 having its registered office as mentioned above. Under the Facility Agreement dated 29.07.2015, the Applicant had disbursed USD 2,00,00,000 ('Facility 1') to the Corporate Debtor, while USD 2,50,00,000 ('Facility 2') was disbursed under the other Facility Agreement.



4. The Principal amount and the overdue interest amount were required to be paid at different intervals as per the terms of Facility 1 (clauses 6.1 and 9.1) and Facility 2 (clauses 6.1 and 9.1). Since mid-2019, the Corporate Debtor has defaulted on various payments due to the Applicant (principal amount and interest) under the above-mentioned facility agreements. As on 06.01.2021, the total amount due to the Applicant from the Corporate Debtor including default interest is USD 1,49,42,788 (INR 1,09,79,96,062.24 computed at the rate of USD 1 = INR 73.48).
5. For the purpose of proving the existence of debt and consequent default under the aforementioned Facilities, the Petitioner *inter alia* filed the following documents:
  - i.) Extracts of resolutions passed by the Board of Directors of the Corporate Debtor in respective meetings held on 14.07.2015 and 26.03.2018, resolving to borrow Facility 1 and Facility 2 from the Applicant, are annexed as Annexure A-18 and Annexure A-19.
  - ii.) Facility 1 Agreement dated 29.07.2015 executed between the Applicant and the Corporate Debtor is annexed as Annexure A-5.
  - iii.) Facility 2 Agreement dated 27.03.2018 executed between the Applicant and the Corporate Debtor is annexed as Annexure A-6.
  - iv.) The workings for the computation of the total amount of default as well as the days of default as on 06.01.2021 are annexed as Annexure A-7 (Colly).
  - v.) Under the Facilities, the Corporate Debtor's payment obligations were required to be secured through creation of securities over certain movable and immovable assets. Further, Vistra ITCL Limited (earlier known as IL&FS Trust Company Limited) ('Security Trustee') was appointed as a Security Trustee to hold securities for the benefit of the Applicant in view of the Facilities extended by the Applicant by way of Amended and Restated Security Trustee Agreement dated 02.07.2018, and the same is annexed as Annexure A-10.
  - vi.) List of the movable assets hypothecated in favour of the Security Trustee in respect of Facility 1 and 2 are annexed as Annexure A-11

and Annexure A-13. Further, the Deed of Hypothecation in respect of Facility 1 and 2 are annexed as Annexure A-12 and Annexure A-14 respectively.

- vii.) As regards Immovable Assets, some immovable assets secured the Facilities by deposit of title deeds with the Security Trustee. A Director's declaration dated 02.07.2018 by Mr. V.G. Siddhartha in favour of the Security Trustee stating that the title deeds for the stated immovable properties are deposited with the Security Trustee to secure, inter alia, the Facilities, is annexed as Annexure A-20.
  - viii.) Copies of Personal Guarantee issued by Mr. V.G. Siddhartha (now deceased) in respect of Facility 1 and 2 were annexed as Annexure A-15 and Annexure A-16.
  - ix.) Letter dated 06.08.2020 issued by the Applicant to the Corporate Debtor mentioning the payment defaults by the Corporate Debtor under the Facilities is annexed as Annexure A-35.
6. In light of the continuing defaults by the Corporate Debtor under the said Facilities, the Applicant initiated the present proceedings as a Financial Creditor of the Corporate Debtor by filing this Petition on 18.01.2021.
7. The Corporate Debtor has filed its preliminary objections on 27.07.2021 by *inter alia* contending as under:
- i.) It is submitted that Yes Bank Limited, Respondent's lender, along with other lenders such as RBL Bank, Karnataka Bank, IndusInd Bank and Kotak Mahindra Bank have taken the initiative of debt resolution process of the Respondent Company vide RBI's Circular dated 07.06.2019, under the 'Prudential Framework for Resolution of Stressed Assets', which provides a robust mechanism for timely resolution of stressed assets. This Circular requires the lenders to sign an Inter Creditor Agreement (ICA) which brings all the lenders on a common platform and pursue a comprehensive resolution. It stipulates a window of 180 days to implement the resolution plan, which drives the lenders to take collective decision and resolve the stressed asset in a time bound manner.



- ii.) In view of the above circular, the Lenders have formulated a resolution plan involving sale of the Vending Division of the Respondent through a bid process. Hence, the lenders have already signed the ICA on 06.01.2021 and Kotak Mahindra Bank also proposes to enter into ICA. As on 31.12.2020, the lenders constitute about 51% of the total outstanding debt of the Respondent Company. Other foreign lenders are also in support of the resolution process initiated by domestic leaders.
  - iii.) A Steering Committee comprising of Yes Bank, RBL Bank and Karnataka Bank has been formed to oversee the resolution process on behalf of the Lenders and it has held 5 meetings till date. Further, to facilitate the resolution process, the Lenders have appointed various advisors. There has been significant progress in the resolution process and several prospective buyers have shown interest in the Vending Business and submitted Non-Binding Offers.
  - iv.) Average Sales Per Day of Café business has already reached pre-Covid level and that of Vending division is also witnessing strong month-on-month. Despite being aware that the Lenders are undertaking a debt resolution process, the Petitioner filed the instant Petition.
8. In response to the said preliminary objections, the Financial Creditor through its rejoinder dated 06.08.2021 has *inter alia* stated that the Corporate Debtor does not deny that it owes a financial debt to the Applicant under the Facilities, it defaulted on its repayment obligations and the amount in default is greater than Rs.1 crore. It is stated that foreign lenders of the Corporate Debtor i.e., the Applicant and DEG, as late as 18.05.2021, informed the Corporate Debtor's other lenders that they do not wish to participate in the resolution process under the Circular as they refused to release their respective charges over the Corporate Debtor's assets which are part of the restructuring. Even if it is assumed that the resolution process was initiated on 06.01.2021, the timelines specified in ICA for implementation of resolution plan (180 days) have expired on 05.07.2021. Till date, the resolution process under the Circular is in

preliminary stages as no unconditional offer for the Corporate Debtor's vending division is received despite the process being pending since April, 2020.

9. The Corporate Debtor also filed the statement of objections dated 03.12.2021 by *inter alia* contending as under:

- i.) In order to restructure its businesses, the Respondent has already taken steps to hive-off all non-core businesses, to conserve liquidity and improve the profitability of core businesses of the Company, namely, operating of Café Coffee Day outlets and operating of Coffee Vending machine business, etc. In this regard, the Respondent reached out to all its lenders (despite not having recovered from the impact of the Covid-19 pandemic), and offered to restructure its business and assets so as to pay the dues.
- ii.) The Respondent has held several meetings with its lenders including the Petitioner, even as recently as on 17.11.2021. The meeting was successful where the lenders promised to co-operate with the Respondent SBI Capital Markets Ltd. is heading the resolution process and the Respondent has sought for details such as the minutes of meetings, etc. At the meetings, the Respondent explained that the Respondent Company has, with the other lenders and advisors, devised a plan to 'Revive the businesses and Repay the Lenders'.
- iii.) Apart from reviving the business, efforts were being made to sell one of the business verticals, viz., 'coffee vending machine business', to prospective buyers. However, due to Covid-19 pandemic the Respondent did not get any favourable offers from the prospective buyers. On account of the devastating impact on the economy which the Covid-19 pandemic had, guidelines were issued to the Ministry of Corporate Affairs, Reserve Bank of India, etc. among other regulators to grant extensions to companies to pay debts and restructure the finances which were tendered to the borrowers.



- iv.) In consonance with the Ordinance dated 05.06.2020, Section 10A was inserted to the IBC, 2016 by way of an amendment. From the proviso to Section 10A, it is clear that no Petition under Sections 7, 9 and 10 of the IBC could ever be filed against a Corporate Debtor for any default occurring between the period 25.03.2020 and 24.03.2021. ('Period of Suspension'). The Petitioner filed the present Petition u/s 7 of the Code on 13.01.2021 allegedly on the ground that the Respondent had failed to pay a sum of Rs.88,17,60,000/- as Principal amount against two loan facilities and a sum of Rs.16,03,02,326.45/- as Interest.
- v.) As per the Petitioner's own admission, the debt fell due during the Period of Suspension and that the alleged debt is barred u/s 10A of the Code. As per the Petitioner's document on '*Note on the Amounts Outstanding*', only an alleged debt of Rs.55,72,14,554/- is due before the Period of Suspension and the remainder debt of Rs.54 Crores fell due during the Period of Suspension. Therefore, Petition which was filed for Rs.109 Crores now came to be reduced to half its value.
- vi.) Further, the Petitioner misled this Tribunal on several occasions by arguing that the Respondent does not deserve to be covered u/s 10A of the Code as their financial health was poor even before filing of the said Petition. The Petitioner averred that Rs.54 crores of alleged debt falling in the period of suspension has been included in the Petition for the 'sake of completeness', without even a whisper of such an averment in the Petition.
- vii.) The Hon'ble High Court of Delhi has expressed the view that when a particular installment fell due during a suspension period (despite of defaults of previous instalments before a suspension period) declared by the RBI, the concerned bank ought not to have classified the defaulter's account as an NPA.
- viii.) It is submitted that Yes Bank Ltd., Respondent's key lender along with other lenders have taken initiative of debt resolution process of the Respondent in terms of RBI's Circular dated 07.06.2019 under

the Prudential Framework for Resolution of Stressed Assets, which provides a robust mechanism for timely resolution of stressed assets. The said Prudential Framework binds all lenders with the resolution plan if the same has been agreed to by 75% of lenders in value and 60% of lenders in number. The lenders had a detailed meeting on 17.11.2021, regarding the restructuring of the Respondent and there has been a considerable progress in this regard. However, the Petitioner filed the instant Petition despite being aware that the lenders including the Petitioner are undertaking a resolution process for achieving the same result which is, debt restructuring albeit under the framework of Code.

- ix.) When the Respondent came to note that the Petitioner had filed the present Petition (in the month of March 2021), the Respondent agreed to cooperate with the Petitioner regarding the sale of the charged assets, without any modifications to the Engagement Letter proposed by the Petitioner. The Parties agreed to engage JLL, the property management Company. However, the Petitioner refused to cooperate in this regard. In the month of September 2021, the top management of the Petitioner has seemed cooperative with respect to formulating a resolution plan of the Respondent. The Petitioner has also been actively participating in lenders' meetings. While on one hand, the Petitioner has extended cooperation, on the other the Petitioner is strongly contesting the present Petition, which is defective.

10. In response to the aforesaid objections, the Financial Creditor vide its rejoinder dated 09.12.2021 has *inter alia* stated that the Corporate Debtor has failed to deny the existence of financial debt owed to the Financial Creditor and the defaults highlighted in the Petition. The Corporate Debtor has mischaracterised the Petitioner's email dated 01.09.2020 as having been issued in September, 2021. Under Section 7 of the Code, a Financial Creditor has to establish only the very limited case of there being existence of a default equivalent to or greater than Rs. 1 Crore pursuant to a financial debt as stated above. The Petitioner was a Financial Creditor that had



extended financial debt to the Respondent under the 'Facilities', against the consideration for the time value of money. The said financial debt was not cured by the Corporate Debtor till date.

11. It is also submitted by the Petitioner that u/s 10A of the Code, an application seeking initiation of insolvency cannot be filed under Sections 7, 9 or 10 of the Code basis defaults arising in the Suspension Period. There is an 'Explanation' to the section which states that this provision is inapplicable to defaults arising prior to the Suspension Period. The Petition deserves to be admitted because the value of the defaults which were committed prior to the Suspension Period were far above Rs.1 Crore. The Petitioner reiterates that the Corporate Debtor had committed 7 distinct defaults prior to 25.03.2020 and the value of said defaults were USD 75,83,213.86 (INR 55,72,14,554). The Corporate Debtor has craftily sought to misinterpret Section 10A of the Code on mere technicalities to avoid admission of the Petition.
12. The Petitioner further submits that the Hon'ble Supreme Court has held in the case of *Swiss Ribbons v. Union of India and Ors.*, (2019) 4 SCC 17 that legislative policy has shifted from the concept of 'inability to pay debts' as under the Companies Act, 1956 to 'determination of default'. Therefore, the Corporate Debtor's submissions regarding its solvency/profitability are irrelevant under the Code. The Corporate Debtor had defaults amounting to Rs.211.65 crores as on 31.03.2020. According to the Corporate Debtor's credit rating, as per CARE Ratings as on 02.12.2020 is 'CARE D: ISSUER NOT COOPERATING'. According to the Prudential Framework Circular, a resolution plan, if any, is required to be implemented by the participating lenders of Corporate Debtor within 180 days. However, till date no such plan has been implemented by it and further seeks an additional six months' time for the same.
13. Subsequently, the Respondent in the main Petition namely, M/s. Coffee Day Global Limited, has filed an I.A., being **I.A. No.261 of 2021**, u/s 10A of the I&B Code, 2016 r/w Rule 11 of the National Company Law Tribunal

Rules, 2016, seeking to dismiss the instant Company Petition for not being maintainable under law briefly on account of the following grounds:

- i.) The Promoter of the Respondent, Mr. VG Siddhartha, and his family were mainly in the business of coffee plantation and export and is presently one of the India's leading 'coffee café' chain companies with over 572 outlets across 165 cities and employing around 5,150 personnel, as on 31.03.2021. The Respondent has had a blemishless track record for over three decades, and also enjoyed an excellent credit rating as it was prompt in repaying the loans which it had received. The Respondent is the founder and owner of the iconic brand 'Café Coffee Day'.
- ii.) The Respondent enjoyed continued profits just before the unfortunate outbreak of Covid-19 pandemic in early 2020, which crippled majority of the businesses across the world. Audited Financial statements for the years ended 31.03.2016, 31.03.2017 and 31.03.2018 are placed on record as Annexure-R1, R2 and R3.
- iii.) Being in a large business, the Respondent had borrowed sums of money from banks and other lenders. Subsequent to the unfortunate demise of the Chairman of the Coffee Day Group, the Board of Directors and the management of the Respondent have been proactively involved with improving the business of the Respondent and clearing all its outstanding debts. However, due to Covid-19 pandemic, the Respondent's businesses were severely affected on account of which only 816 café outlets out of 1752 café outlets were allowed to reopen and run.
- iv.) It is stated that the present Petition is not maintainable as the same is contrary to Section 10A of the I&B Code, 2016. On account of the devastating impact on the economy which the Covid-19 pandemic had, the Government of India, promulgated an Ordinance dated 05.06.2020, with the main intention to suspend the Petitions u/ss 7, 9 and 10 of the IBC, 2016 against Corporate Persons under distress due to the unprecedented situation caused by the Covid-19



pandemic. In consonance with the said Ordinance, Sec.10A was inserted to the IBC, 2016 by way of an amendment, wherein, it *inter alia* states that for any default arising on or after 25<sup>th</sup> March, 2020 for a period of six months or such further period, not exceeding one year from such date, as may be notified in that behalf. Provided that no Petition shall ever be filed for initiation of CIRP of a Corporate Debtor for the said default occurring during the said period. Section 10A of the IBC, 2016 is prefaced with a non obstante provision which has the effect of overriding Sections 7, 9 and 10. On 04.04.2021, the IBC (Amendment) Ordinance, 2021 was issued notifying the suspension of filing petitions u/ss 7, 9 and 10 of the IBC, 2016 ended on 24.03.2021.

- v.) From the proviso to Section 10A, it is clear that no Petition under Sections 7, 9 and 10 of the IBC, 2016 can ever be filed against a Corporate Debtor for any default occurring between the period 25.03.2020 and 24.03.2021 (*'Period of Suspension'*).
- vi.) Therefore, the present Petition u/s 7 of the Code, is not maintainable against the Respondent since the debt fell due during the period of suspension of IBC Petitions. As per the Applicant's own admission, the Respondent had failed to pay a sum of Rs.88,17,60,000/- as principal amount against two loan facilities and a sum of Rs.16,03,02,326.45/- as interest, and therefore this debt fell during the Period of Suspension. Further, the present Petition is also filed during the Period of Suspension i.e. in January, 2021.
- vii.) It is further stated that the Respondent was in the process of restructuring its business so that the Respondent can make up the losses and lack of business on account of the Covid-19 pandemic and repay the debts which are due to its lenders from it. As part of the said process, a resolution plan was formulated involving sale of the 'Vending Machine Division' of the Respondent through a bid process. It is stated that the said vending machine business of the

Respondent would fetch the Respondent a sum of around Rs.2,400 Crores, which is in excess of the debt due to all lenders put together.

- viii.) It is stated that while the Respondent had proposed the sale of its Vending Machine Business to prospective buyers, the Applicant opposed the said sale, for reasons best known to it. Further, the Petitioner filed the instant Petition with the sole motive to scuttle the resolution process already being undertaken by the other lenders. The Respondent has also relied upon the following decisions of the Hon'ble Supreme Court:

- (a) *Mobilox Innovations Private Limited v Kirusa Software Private Limited* (2018) 1 SCC 353;
- (b) *B.K. Educational Services Private Limited v Parag Gupta and Associates* (2019) 11 SCC 633;
- (c) *Vashdeo R. Bhojwani v Abhyudaya Co-operative Bank Limited & Anr.* (2019) 9 SCC 158;
- (d) *Gaurav Hargovindbhai Dave v Asset Reconstruction Company (India) & Anr.* (2019) SCC OnLine SC 1239 and
- (e) *Swiss Ribbons v Union of India & Ors.* (2019) 4 SCC 17.

**14.** While opposing the aforesaid I.A, the Financial Creditor has filed a reply dated 27.09.2021, by *inter alia* contending as under:

- i.) As regards maintainability, it is apparent from the 'Explanation' to Section 10A that the restrictions prescribed in the section are not applicable to defaults which have occurred prior to 25.03.2020. Accordingly, a Financial Creditor can file an application u/s 7 of the Code during the Suspension Period if it pertains to a default that occurred before 25.03.2020. This view has also been consistently adopted by the Hon'ble Supreme Court of India and the Hon'ble NCLAT.
- ii.) It is submitted that the restriction on filing a petition u/s 7 of the Code during the Suspension Period is inapplicable as the Petition is filed because the Corporate Debtor committed several defaults before 25.03.2020, as detailed in pages 13-16 of the Petition. A mere mention of defaults committed after 25.03.2020 does not in any



manner dilute or undermine the maintainability of the Petition pursuant to the defaults committed before the Suspension Period.

- iii.) The Corporate Debtor defaulted on multiple repayment obligations which started from 06.08.2019. Further, till 06.02.2020, which is before the commencement of the Suspension Period, the Corporate Debtor had defaults amounting to Rs.55,72,14,554/-.
- iv.) The Corporate Debtor's objections in the preliminary objections were limited to stating that the Petition is premature as certain lenders of the Corporate Debtor are attempting resolution of Corporate Debtor's debt under the circular titled 'Prudential Framework for Resolution of Stressed Assets' (Circular) issued by the Reserve Bank of India on 07.07.2019. However, the preliminary objections which did not contain any objection to the maintainability of the Petition. Given that a frivolous maintainability challenge is raised by the Corporate Debtor after 8 months from the date of filing of the Petition, it is apparent that the Corporate Debtor filed the instant IA with the malafide intention of delaying the adjudication of the Petition and thus ought to be rejected.

**15.** The learned Counsel for the Petitioner, in support of his submissions, placed reliance on the following decisions:

- (a) *Ramesh Kymal vs. Siemens Gamesa Renewable Power Private Limited*, (2020) SCC OnLine NCLAT 695;
- (b) *Ramesh Kymal vs. Siemens Gamesa Renewable Power Private Limited*, (2021) 3 SCC 224;
- (c) *Apya Capital Services Private Limited vs. Guardian Homes Private Limited (Company Appeal (AT) (Insolvency) No.412 of 2020 dt. 8 December 2020*;
- (d) *Innoventive Industries Limited vs. ICICI Bank & Anr.*, (2018) 1 SCC 407;
- (e) *Swiss Ribbons Private Limited and Anr. vs. Union of India*, (2019) 4 SCC 17.

**16.** Heard Shri Rajiv Nayar, learned Senior Counsel for the Financial Creditor and Shri A. Murali, learned Counsel for the Respondent/Corporate Debtor and carefully perused the pleadings on record.

17. The Hon'ble Supreme Court of India in *M/s. Innoventive Industries Ltd. vs. ICICI Bank & Anr.* in Civil Appeal Nos.8337-8338 of 2017 observed as under:

*"27. The scheme of the Code is to ensure that when a default takes place, in the sense that a debt becomes due and is not paid, the insolvency resolution process begins. Default is defined in Section 3(12) in very wide terms as meaning non-payment of a debt once it becomes due and payable, which includes non-payment of even part thereof or an instalment amount. For the meaning of "debt", we have to go to Section 3(11), which in turn tells us that a debt means a liability of obligation in respect of a "claim" and for the meaning of "claim", we have to go back to Section 3(6) which defines "claim" to mean a right to payment even if it is disputed. The Code gets triggered the moment default is of rupees one lakh or more (Section 4). The corporate insolvency resolution process may be triggered by the corporate debtor itself or a financial creditor or operational creditor. A distinction is made by the Code between debts owed to financial creditors and operational creditors. A financial creditor has been defined under Section 5(7) as a person to whom a financial debt is owed and a financial debt is defined in Section 5(8) to mean a debt which is disbursed against consideration for the time value of money. As opposed to this, an operational creditor means a person to whom an operational debt is owed and an operational debt under Section 5 (21) means a claim in respect of provision of goods or services.*

*28. When it comes to a financial creditor triggering the process, Section 7 becomes relevant. Under the explanation to Section 7(1), a default is in respect of a financial debt owed to any financial creditor of the corporate debtor – it need not be a debt owed to the applicant financial creditor. Under Section 7(2), an application is to be made under sub-section (1) in such form and manner as is prescribed, which takes us to the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. Under Rule 4, the application is made by a financial creditor in Form 1 accompanied by documents and records required therein. Form 1 is a detailed form in 5 parts, which requires particulars of the applicant in Part I, particulars of the corporate debtor in Part II, particulars of the proposed interim resolution professional in part III, particulars of the financial debt in part IV and documents, records and evidence of default in part V. Under Rule 4(3), the applicant is to dispatch a copy of the application filed with the adjudicating authority by registered post or speed post to the registered office of the corporate debtor. The speed, within which the adjudicating authority is to ascertain the existence of a default from the records of the*



*information utility or on the basis of evidence furnished by the financial creditor, is important. This it must do within 14 days of the receipt of the application. It is at the stage of Section 7(5), where the adjudicating authority is to be satisfied that a default has occurred, that the corporate debtor is entitled to point out that a default has not occurred in the sense that the "debt", which may also include a disputed claim, is not due. A debt may not be due if it is not payable in law or in fact. 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 of receipt of a notice from the adjudicating authority. Under sub-section (7), the adjudicating authority shall then communicate the order passed to the financial creditor and corporate debtor within 7 days of admission or rejection of such application, as the case may be."*

18. In view of the above enunciation of Law, it is sufficient for this Adjudicating Authority if the debt and default is proved in order to accept or reject an application under section 7 of the I&B Code, 2016.
19. However, Shri A. Murali, learned Counsel appearing for the Respondent-Corporate Debtor while not disputing the above referred settled principle of law, and while opposing the CP on various other grounds *inter alia* submitted that the CP is liable to be dismissed on the ground that the same was filed not for resolution of the Corporate Debtor but for recovery of the alleged debt due to the Petitioner-Bank. It is the specific case of the Respondent that all the lenders of the Respondent-Corporate Debtor, including the Petitioner in the instant CP already initiated the process for resolution of the Corporate Debtor in terms of the "Reserve Bank of India (Prudential Framework for Resolution of Stressed Assets) Directions 2019, dated 07.06.2019" (hereinafter referred as 'Prudential Framework') and when the said resolution process is in advanced stage, the Petitioner taken a U-turn and filed the instant CP with the sole purpose of recovery of its alleged debt. The learned Counsel submits that since the instant CP is filed for the purpose of recovery of the debt but not for resolution of the Corporate Debtor, which is the sole object of the I&B Code, 2016, the same is liable to be dismissed.

— Sd —

20. The Circular dated 07.06.2019 of the Reserve Bank of India, under which the Prudential Framework for Resolution of Stressed Assets was issued, reads as under:



भारतीय रिजर्व बैंक  
RESERVE BANK OF INDIA  
[www.rbi.org.in](http://www.rbi.org.in)

RBI/2018-19/203

DBR.No.BP.BC.45/21.04.048/2018-19

June 7, 2019

### Prudential Framework for Resolution of Stressed Assets

#### Introduction

In exercise of the powers conferred by the Banking Regulation Act, 1949 and the Reserve Bank of India Act, 1934, the Reserve Bank, being satisfied that it is necessary and expedient in the public interest so to do, hereby, issues the directions hereinafter specified.

#### Short title and commencement

1. These directions shall be called the Reserve Bank of India (Prudential Framework for Resolution of Stressed Assets) Directions 2019.
2. These directions shall come into force with immediate effect.

#### Applicability

3. The provisions of these directions shall apply to the following entities:
  - (a) Scheduled Commercial Banks (excluding Regional Rural Banks);
  - (b) All India Term Financial Institutions (NABARD, NHB, EXIM Bank, and SIDBI);
  - (c) Small Finance Banks; and,
  - (d) Systemically Important Non-Deposit taking Non-Banking Financial Companies (NBFC-ND-SI) and Deposit taking Non-Banking Financial Companies (NBFC-D).

वैकिंग विनियमन विभाग, कन्द्रीय कार्यालय, 12वीं मंजिल, शहीद भगत सिंह मार्ग, मुंबई - 400001  
Department of Banking Regulation, Central Office, 12th Floor, Shahid Bhagat Singh Marg, Mumbai - 400001  
Tel No: 22661602 Fax No: 22705691 Email ID: [cgmicdbr@rbi.org.in](mailto:cgmicdbr@rbi.org.in)

हिंदी आस्न है, इसका प्रयोग नहोकर

— Sd —



**Purpose**

4. These directions are issued with a view to providing a framework for early recognition, reporting and time bound resolution of stressed assets.
5. These directions are issued without prejudice to issuance of specific directions, from time to time, by the Reserve Bank to banks, in terms of the provisions of Section 35AA of the Banking Regulation Act, 1949, for initiation of insolvency proceedings against specific borrowers under the Insolvency and Bankruptcy Code, 2016 (IBC).

**I. Framework for Resolution of Stressed Assets****A. Early identification and reporting of stress**

6. Lenders<sup>1</sup> shall recognise incipient stress in loan accounts, immediately on default<sup>2</sup>, by classifying such assets as special mention accounts (SMA) as per the following categories:

SMA Sub-categories	Basis for classification – Principal or interest payment or any other amount wholly or partly overdue between
SMA-0	1-30 days
SMA-1	31-60 days
SMA-2	61-90 days

7. In the case of revolving credit facilities like cash credit, the SMA sub-categories will be as follows:

SMA Sub-categories	Basis for classification – Outstanding balance remains continuously in excess of the sanctioned limit or drawing power, whichever is lower, for a period of:
SMA-1	31-60 days
SMA-2	61-90 days

<sup>1</sup> For the purpose of these directions, 'lenders' shall mean all entities mentioned at paragraph 3, unless specified otherwise.

<sup>2</sup> 'Default' means non-payment of debt (as defined under the IBC) when whole or any part or instalment of the debt has become due and payable and is not paid by the debtor or the corporate debtor, as the case may be.

For revolving facilities like cash credit, default would also mean, without prejudice to the above, the outstanding balance remaining continuously in excess of the sanctioned limit or drawing power, whichever is lower, for more than 30 days.

— sd —

8. As provided in terms of the circular<sup>3</sup> DBS.OSMOS. No.14703/33.01.001/2013-14 dated May 22, 2014 and subsequent amendments thereto, lenders shall report credit information, including classification of an account as SMA to Central Repository of Information on Large Credits (CRILC), on all borrowers having aggregate exposure<sup>4</sup> of ₹ 50 million and above with them. The CRILC-Main Report shall be submitted on a *monthly* basis. In addition, the lenders shall submit a weekly report of instances of default by all borrowers (with aggregate exposure of ₹ 50 million and above) by close of business on every Friday, or the preceding working day if Friday happens to be a holiday.

**B. Implementation of Resolution Plan**

9. All lenders must put in place Board-approved policies for resolution of stressed assets, including the timelines for resolution. Since default with any lender is a lagging indicator of financial stress faced by the borrower, it is expected that the lenders initiate the process of implementing a resolution plan (RP) even before a default. In any case, once a borrower is reported to be in default by any of the lenders mentioned at 3(a), 3(b) and 3(c), lenders shall undertake a *prima facie* review of the borrower account within thirty days from such default ("**Review Period**"). During this Review Period of thirty days, lenders may decide on the resolution strategy, including the nature of the RP, the approach for implementation of the RP, etc. The lenders may also choose to initiate legal proceedings for insolvency or recovery.
10. In cases where RP is to be implemented, all lenders shall enter into an inter-creditor agreement (ICA), during the above-said Review Period, to provide for ground rules for finalisation and implementation of the RP in respect of borrowers with credit facilities from more than one lender.<sup>5</sup> The ICA shall provide that any decision agreed by lenders representing 75 per cent by value of total outstanding

<sup>3</sup> In these directions, wherever a reference is made to the circulars addressed to banks, other lenders indicated at paragraph 3 should refer to corresponding circulars applicable to them, if any.

<sup>4</sup> Aggregate exposure under the guidelines would include all fund based and non-fund based exposure, including investment exposure with the lenders.

<sup>5</sup> In cases where asset reconstruction companies (ARCs) have exposure to the borrower concerned, they shall also sign the ICA and adhere to all its provisions.

— *sd* —



credit facilities (fund based as well non-fund based) and 60 per cent of lenders by number shall be binding upon all the lenders. Additionally, the ICA may, *inter alia*, provide for rights and duties of majority lenders, duties and protection of rights of dissenting lenders, treatment of lenders with priority in cash flows/differential security interest, etc. In particular, the RPs shall provide for payment not less than the liquidation value<sup>6</sup> due to the dissenting lenders.

11. In respect of accounts with aggregate exposure above a threshold with the lenders, as indicated below, on or after the 'reference date', RP shall be implemented within 180 days from the end of Review Period. The Review Period shall commence not later than:

- (a) The reference date, if in default as on the reference date; or
- (b) The date of first default after the reference date.

12. The reference dates for the above purpose shall be as under:

Aggregate exposure of the borrower to lenders mentioned at 3(a), 3(b) and 3(c)	Reference date
₹ 20 billion and above	Date of these Directions
₹ 15 billion and above, but less than ₹ 20 billion	January 1, 2020
Less than ₹ 15 billion	To be announced in due course

13. The RP may involve any action / plan / reorganization including, but not limited to, regularisation of the account by payment of all over dues by the borrower entity, sale of the exposures to other entities / investors, change in ownership and restructuring<sup>7</sup>. The RP shall be clearly documented by the lenders concerned (even if there is no change in any terms and conditions).

<sup>6</sup> Liquidation value would mean the estimated realisable value of the assets of the relevant borrower, if such borrower were to be liquidated as on the date of commencement of the Review Period.

<sup>7</sup> Restructuring is an act in which a lender, for economic or legal reasons relating to the borrower's financial difficulty, grants concessions to the borrower. Restructuring would normally involve modification of terms of the advances / securities, which would generally include, among others, alteration of payment period / payable amount / the amount of instalments / rate of interest; roll over of credit facilities; sanction of additional credit facility/ release of additional funds for an account in default to aid curing of default / enhancement of existing credit limits; compromise settlements where time for payment of settlement amount exceeds three months.

C. Implementation Conditions for RP

14. RPs involving restructuring / change in ownership in respect of accounts where the aggregate exposure of lenders is ₹ 1 billion and above, shall require independent credit evaluation (ICE) of the residual debt<sup>8</sup> by credit rating agencies (CRAs) specifically authorised by the Reserve Bank for this purpose. While accounts with aggregate exposure of ₹ 5 billion and above shall require two such ICEs, others shall require one ICE. Only such RPs which receive a credit opinion of RP4<sup>9</sup> or better for the residual debt from one or two CRAs, as the case may be, shall be considered for implementation. Further, ICEs shall be subject to the following:

- (a) The CRAs shall be directly engaged by the lenders and the payment of fee for such assignments shall be made by the lenders.
- (b) If lenders obtain ICE from more than the required number of CRAs, all such ICE opinions shall be RP4 or better for the RP to be considered for implementation.

15. A RP in respect of borrowers to whom the lenders continue to have credit exposure, shall be deemed to be 'implemented' only if the following conditions are met:

- (a) A RP which does not involve restructuring/change in ownership shall be deemed to be implemented only if the borrower is not in default with any of the lenders as on 180<sup>th</sup> day from the end of the Review Period. Any subsequent default after the 180 day period shall be treated as a fresh default, triggering a fresh review.
- (b) A RP which involves restructuring/change in ownership shall be deemed to be implemented only if all of the following conditions are met:
  - i. all related documentation, including execution of necessary agreements between lenders and borrower / creation of security

<sup>8</sup> The residual debt of the borrower entity, in this context, means the aggregate debt (fund based as well as non-fund based) envisaged to be held by all the lenders as per the proposed RP.

<sup>9</sup> Annex – 2 provides list of RP symbols that can be provided by CRAs as ICE and their meanings.

— sd —



charge / perfection of securities, are completed by the lenders concerned in consonance with the RP being implemented;

- ii. the new capital structure and/or changes in the terms of conditions of the existing loans get duly reflected in the books of all the lenders and the borrower; and,
- iii. borrower is not in default with any of the lenders.

16. A RP which involves lenders exiting the exposure by assigning the exposures to third party or a RP involving recovery action shall be deemed to be implemented only if the exposure to the borrower is fully extinguished.

D. Delayed Implementation of Resolution Plan

17. Where a viable RP in respect of a borrower is not implemented within the timelines given below, all lenders shall make additional provisions as under:

Timeline for implementation of viable RP	Additional provisions to be made as a % of total outstanding, if RP not implemented within the timeline
180 days from the end of Review Period	20%
365 days from the commencement of Review Period	15% (i.e. total additional provisioning of 35%)

18. The additional provisions shall be made over and above the higher of the following, subject to the total provisions held being capped at 100% of total outstanding:

- (a) The provisions already held; or,
- (b) The provisions required to be made as per the asset classification status of the borrower account.

19. The additional provisions shall be made by all the lenders with exposure to such borrower.

20. The additional provisions shall also be required to be made in cases where the lenders have initiated recovery proceedings, unless the recovery proceedings are fully completed.

21. The above additional provisions may be reversed as under:

- (a) Where the RP involves only payment of overdues by the borrower – the additional provisions may be reversed only if the borrower is not in default for a period of 6 months from the date of clearing of the overdues with all the lenders;
- (b) Where RP involves restructuring/change in ownership outside IBC – the additional provisions may be reversed upon implementation of the RP;
- (c) Where resolution is pursued under IBC – half of the additional provisions made may be reversed on filing of insolvency application and the remaining additional provisions may be reversed upon admission of the borrower into the insolvency resolution process under IBC; or,
- (d) Where assignment of debt/recovery proceedings are initiated – the additional provisions may be reversed upon completion of the assignment of debt/recovery.

#### E. Prudential Norms

22. The prudential norms applicable to any restructuring/change in ownership, whether under the IBC framework or outside the IBC, are contained in Annex-1<sup>10</sup>.

#### II. **Supervisory Review**

23. Any action by lenders with an intent to conceal the actual status of accounts or evergreen the stressed accounts, will be subjected to stringent supervisory / enforcement actions as deemed appropriate by the Reserve Bank, including, but not limited to, higher provisioning on such accounts and monetary penalties<sup>11</sup>.

#### III. **Disclosures**

24. Lenders shall make appropriate disclosures in their financial statements, under 'Notes on Accounts', relating to RPs implemented.

<sup>10</sup> During the period when the RP is being finalised and implemented, the usual asset classification norms would continue to apply subject to additional provisioning requirements of this circular. The process of re-classification of an asset should not stop merely because RP is under consideration.

<sup>11</sup> This may be in addition to direction to bank/s to file insolvency application under the IBC.



#### IV. Exceptions

25. Restructuring in respect of projects under implementation involving deferment of date of commencement of commercial operations (DCCO), shall continue to be covered under the guidelines contained at paragraph 4.2.15 of the Master Circular No. DBR.No.BP.BC.2/21.04.048/2015-16 dated July 1, 2015 on 'Prudential norms on Income Recognition, Asset Classification and Provisioning pertaining to Advances'.
26. Section I(B), I(C) and I(D) of the framework shall not be applicable to revival and rehabilitation of MSMEs covered by the instructions contained in Circular No. FIDD.MSME & NFS.BC.No.21/ 06.02.31/ 2015-16 dated March 17, 2016, as amended from time to time. Section I(E) of the framework shall not be in derogation to the provisions of the circular DBR.No.BP.BC.18/21.04.048/ 2018-19 dated January 1, 2019.
27. Restructuring of loans in the event of a natural calamity, including asset classification and provisioning, shall continue to be guided as per the extant instructions.
28. The framework shall not be available for borrower entities in respect of which specific instructions have already been issued or are issued by the Reserve Bank to the banks for initiation of insolvency proceedings under the IBC. Lenders shall pursue such cases as per the specific instructions issued to them.

#### V. Withdrawal of extant instructions

29. The extant instructions on resolution of stressed assets such as Framework for Revitalising Distressed Assets, Corporate Debt Restructuring Scheme, Flexible Structuring of Existing Long Term Project Loans, Strategic Debt Restructuring Scheme (SDR), Change in Ownership outside SDR, and Scheme for Sustainable Structuring of Stressed Assets (S4A) stand withdrawn with immediate effect. Accordingly, the Joint Lenders' Forum (JLF) as mandatory institutional mechanism for resolution of stressed accounts also stands discontinued.

— Sd —

30. The list of circulars/directions/guidelines that stand repealed is given in Annex - 3.

31. The lenders shall not reverse the provisions maintained as on April 2, 2019 in respect of any borrower unless the reversal is a consequence of an asset classification upgrade or recovery or resolution following the instructions of this circular. Any RP under consideration as on the date of this circular may be pursued by lenders under this revised framework subject to meeting the requirements/conditions specified in this framework.

Yours faithfully,

(Saurav Sinha)  
Chief General Manager-in-Charge

**21.** In terms of the above referred Prudential Framework, Yes Bank, one of the Financial Creditors of the Respondent-Corporate Debtor, along with the Petitioner-Bank and others, had taken the initiative along with all other Lenders to undertake the debt resolution process of the Corporate Debtor; and, in pursuance of the same, issued the following letter:

— Sd —



**YES BANK**

Ref. No. YBL/ARM/21-22/29

April 16, 2021

To,  
Coffee Day Global Limited,  
Registered office:  
K.M. Road, Chikmagalur,  
Karnataka 577101



Corporate Address:  
Coffee Day Square,  
Vittal Mallya Road,  
Bengaluru 560001

Kind Attn: - Mr. Jayaraj C. Hubli, CFO, Coffee Day Global Limited

Subject: Update on debt resolution process

Dear Sir,

As you are aware, Yes Bank along with other lenders have taken the initiative ("Lenders") to undertake a debt resolution process for Coffee Day Global Ltd. ("CDGL" or the "Company") under RBI's June 07 circular ("Prudential Framework for Resolution of Stressed Assets"), which provides a robust mechanism for timely resolution of stressed assets.

The circular requires the lenders to sign an Inter Creditor Agreement (ICA) which brings all the lenders on a common platform and pursue a comprehensive resolution. The circular stipulates a window of 180 days to implement the resolution plan, which drives the lenders to take collective decision and resolve the stressed asset in a timebound manner. This helps in best-possible recovery for all the lenders while preserving the value of the Company.

For CDGL, the Lenders have formulated a resolution plan involving sale of the Vending division through a bid process. In this regard, various domestic lenders of CDGL viz. Yes Bank, RBL Bank, Karnataka Bank and IndusInd Bank have already signed the ICA. Further, Kotak Mahindra Bank is also expected to sign the ICA shortly. These five domestic lenders constitute ~51% of the total outstanding debt of CDGL (as on Dec 31, 2020). Other foreign lenders (DEG, FMO, Media Flag) are also in support of the resolution process initiated by domestic lenders, as the same is expected to provide better value for the Vending business.

A Steering Committee comprising of three banks (Yes Bank, RBL Bank and Karnataka Bank) has been formed to oversee the resolution process, on behalf of the Lenders. The committee has held 5 meetings since its formation (dated- Dec 28 2020, Jan 14 2021, Jan 27 2021, Mar 09 2021 and April 05 2021) to review the progress of the resolution process and discuss the way forward. Further, there have been several consortium meetings of the Lenders (dated- Sep 02 2020, Dec 08 2020, Dec 21 2020, Feb 04 2021 and April 09 2021), where all the lenders have been updated on the developments in the resolution process.

**TRUE COPY**

Id. & Corporate Office: YES BANK Limited, YES BANK Tower, JFC 2, 15<sup>th</sup> Floor, Senapati Bapat Marg, Elphinstone (W), Mumbai 400 013, India.  
Tel: +91 (22) 3366 9000 Fax: +91 (22) 2421 4500  
Website: www.yesbank.in Email: communications@yesbank.in CIN - L65190MH2003PLC143249



**YES / BANK**

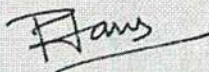
Further, to facilitate the resolution process, the Lenders have appointed various advisors (Yes Securities Ltd., SBI Capital Markets Ltd., and L&L Partners). While Yes Securities Ltd. is assisting the Lenders in finding prospective buyers, SBI Capital Markets Ltd. is assisting Lenders in formulating and finalizing the Resolution Plan and coordinating with various stakeholders. L&L Partners is acting as the Legal Counsel for the Lenders and is advising on various legal aspects related to the resolution. The Lenders have also appointed one of the 'Big4' auditors, to conduct the pro-forma audit of carved-out financials of the Vending division.

We wish to update you that there has been significant progress in the resolution process and several prospective buyers have shown interest in the Vending business and have submitted Non-Binding Offers (NBOs). Currently, the prospective buyers are in various stages of due-diligence and are expected to submit the Binding Offers by April 30, 2021. Based on the feedback from our advisors, we expect to receive offers from most of the bidders.

Further, as you are aware, Deloitte has been appointed as the Cash flow monitoring agency to assist the Lenders in monitoring the business performance of the Company, tracking cash flows, preparing fund utilization summary, post audit and pre audit of cash flows as per lenders guidance etc. As per the latest update provided by them, we understand that both Vending and Café businesses are recovering well from Covid induced slowdown. Average Sales Per Day (ASPD) of Café business has already reached pre-Covid level and that of Vending division is also witnessing strong growth month-on-month. Given the consistent recovery in the business and active interest from the prospective buyers, we believe the process for sale of Vending division can be concluded shortly.

In the view of above developments, we request your continuing support on data/information sharing with the advisors and prospective buyers, so that the transaction gets completed in a timely manner.

For YES Bank Limited



Authorized Signatory



CC:

Steering Committee Lenders

1. Karnataka Bank
2. RBL Bank

Advisors

Yes Securities (India) Limited  
SBI Capital Markets Limited

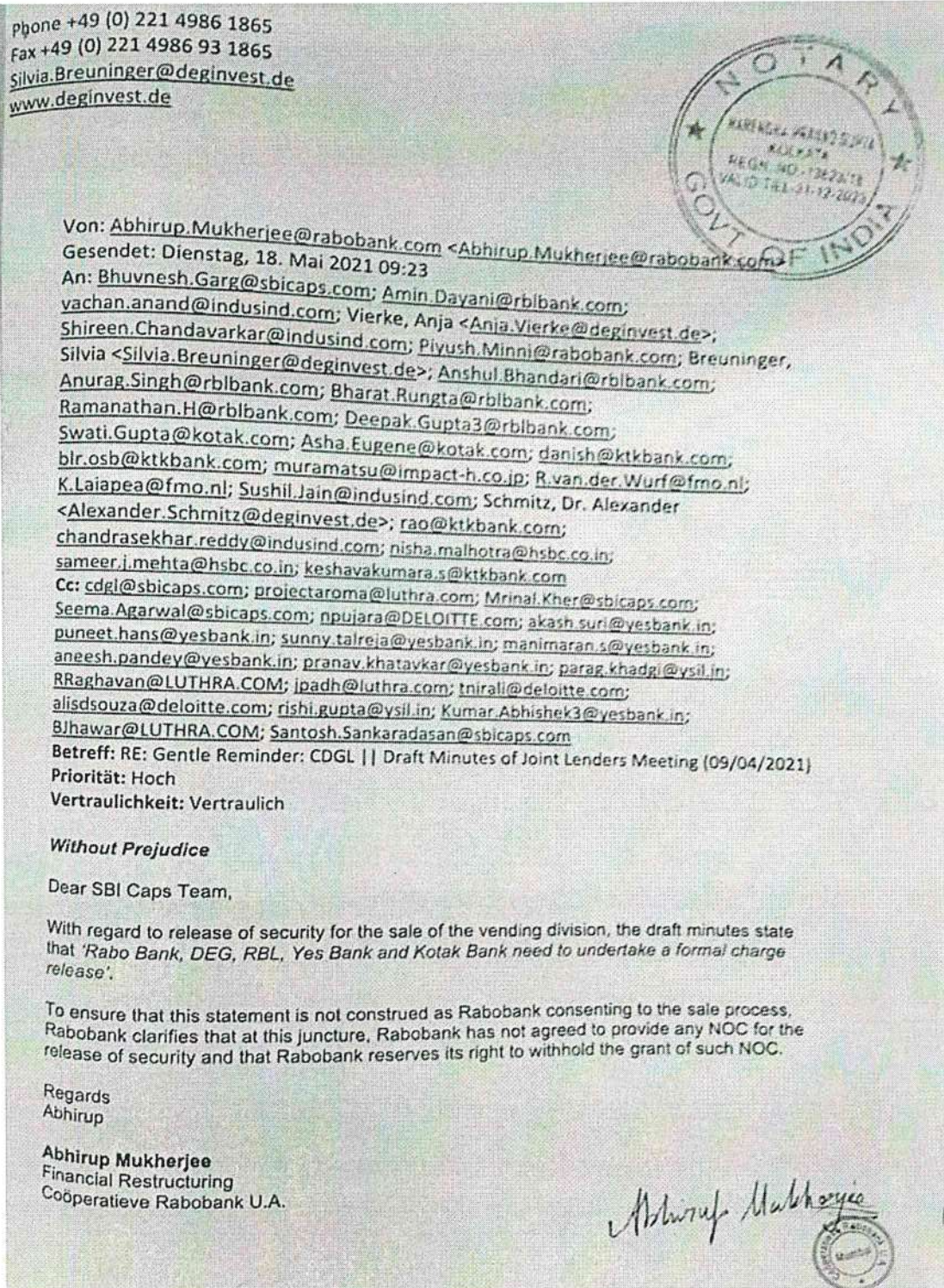
*Handwritten signature*  
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2

22. The Petitioner-Bank has also actively participated in the process of resolution of the Corporate Debtor in terms of the Prudential Framework, along with all other lenders of the Corporate Debtor. However, during the process of the said Prudential Framework resolution process, and when a



proposal was made for selling its vending machine business which may fetch about Rs. 2,400 Crores, which is sufficient for repayment of the debts of all the creditors, Petitioner-Bank has not agreed to give a formal No Due Certificate for the release of charge. The relevant correspondence read as under:





23. Even after filing of the instant CP also, the resolution process of the Corporate Debtor in terms of the Prudential Framework continued and a Joint Lenders Meeting wherein the Petitioner-Bank also attended was conducted on 17.11.2021 and wherein a decision to appoint Valuers for conducting independent valuation of all the assets charged to Lenders and to appoint an agency for carrying out a Techno-Economic Viability study to validate the business plan proposed by the Respondent which were the pre-requisites before taking any decision by the Lenders in relation to the proposed Resolution Plan were noted. The letter of the Lead Bank i.e., Yes Bank addressed to all other Lenders including the Petitioner updating the debt resolution process of the Respondent-Corporate Debtor reads as under:

1

**YES BANK**  
 December 3, 2021

Ref.No. YBI/ARM/21-22/784

To,  
**Coffee Day Global Limited,**  
*Registered office.*  
 KM. Road,  
 Chikmagalur,  
 Karnataka 577101

*Corporate Address:*  
 Coffee Day Square,  
 Vittal Mallya Road,  
 Bengaluru 560001

N.C.L.T, BENGALURU BENCH	
Dairy No.	3485
Dairy Date	09.12.2021
Bharatkosh Ref. No.	
Bharatkosh Date:	
For Rg.	
Sign of Counter Clerk:	

Kind Attn: - Mr. Jayaraj C. Hubli, CFO, Coffee Day Global Limited

Subject: Update on debt resolution process

Dear Sir,

This holds reference to your letter dated November 30, 2021, wherein you have requested for an update on the debt resolution process. In this regard we would like to inform you that the Lenders including the Steering Committee (Steerco) comprising of Yes Bank, RBL Bank and Karnataka Bank has been closely working with all the advisors and is overseeing the resolution process.

As you are aware that a Joint Lenders Meeting ("JLM") was held on November 17, 2021, wherein the Resolution Plan proposed by you was discussed and deliberated by Lenders. The list of Lenders attending the JLM is attached as Annexure for your reference.

As next steps, Lenders are planning to appoint valuers for conducting independent valuation of all the assets charged to Lenders. Further, Lenders shall also be appointing an agency for carrying out an independent Techno-Economic Viability (TEV) study to validate the business plan proposed by You. The above are prerequisites before any decision can be taken by Lenders in relation to the proposed resolution plan.

We request your support for sharing the required data/ information with the advisors to enable the Lenders to take a considered view on the viability of the proposed Resolution Plan.

For Yes Bank Limited

*Kumar Abhinav*  
 Authorized Signatory

CC: Steering Committee Lenders

1. Karnataka Bank
2. RBL Bank

Enclosure: Letter No. YBI/ARM/21-22/29 dated April 16, 2021

Registered & Corporate Office: YES BANK Limited, YES BANK House, Off Western Express Highway,  
 Santacruz (East), Mumbai - 400055 Tel: +91 (22) 5091 9800 / +91 (22) 6507 9800 Fax: +91 (22) 2619 2866  
 Website: www.yesbank.in Email: communications@yesbank.in CIN: L65190MH2003PLC143249



2



Annexure: List of Lenders attending JLM dated November 17, 2021

Name of Institution
Yes Bank
RBL
Rabo Bank ✓
IndusInd Bank
Kotak Mahindra Bank
Karnataka Bank
HISBC
Media Flag
DEG
Axis Bank

24. A bare perusal of the above referred correspondence clearly establishes that keeping in view the Covid-19 situation and the impact of the same on the Respondent-Corporate Debtor and the sudden demise of the Chairman of the Corporate Debtor and the various sincere and *bona fide* efforts taken by the succeeding management of the Corporate Debtor and the progress of speedy recovery of the Corporate Debtor after the initial period of Covid-19, all the Lenders of the Corporate Debtor including the Petitioner chosen to adopt the debt resolution process under the Prudential Framework against the Corporate Debtor. It is further revealed that the Petitioner-Bank has also participated along with all other Lenders in the process of the resolution of the Corporate Debtor in terms of the Prudential Framework before filing the instant CP and even thereafter. A perusal of the guidelines / norms of the resolution process under the Prudential Framework also reveals that the same is not in derogation to the provisions of the I&B Code, 2016.
25. The Hon'ble Supreme Court of India in *Swiss Ribbons Pvt. Ltd. & Anr. vs. Union of India & Ors. (2019) 4 SCC 17*, has explicitly opined that the primary focus of the legislation is to ensure revival and continuation of the Corporate Debtor and that the object of the Code is the resolution of the Corporate Debtor but not simply the recovery of debt of a Creditor.

— Sd —



- 26.** The Hon'ble Apex Court as well as the Hon'ble NCLAT and various Benches of this Tribunal time and again have observed that no creditor is permitted to utilise the provisions of the I&B Code, 2016 for a mere recovery of its debts as the same is meant for the resolution and benefit of the Corporate Debtor.
- 27.** Whether an application under section 7 of the Code is filed with *bona fide* intention for the resolution of the Corporate Debtor or for recovery of debt can be determined by examining the facts of the case. In the present case, the Petitioner had actively participated in the resolution process of the Corporate Debtor in terms of the Prudential Framework, along with all other Lenders before filing the CP and even thereafter. This conduct of the Petitioner puts a question on the *bona fides* of the instant Petition. The conduct of the Petitioner made us to believe that it has been trying to utilise this forum as a 'recovery mechanism'. We further believe that it is pertinent to take into consideration the financial position of the Respondent and the repercussions if the Respondent Company, a going concern, is admitted into CIRP more so when all other Lenders, who comprises the required majority percentage, in the event of constitution of the Committee of Creditors, seriously pursuing for the resolution of the Corporate Debtor under the Prudential Framework, with the active consent and participation of the Petitioner. In the present case, the Respondent is willing and trying to repay the debts of all the Creditors and to show its *bona fides* when it was ready to sell its vending business, and when other Lenders accepted the said move, but the Petitioner refused to cooperate in that process. This action of the Petitioner clearly establishes that its intention was recovery of its debt but not the resolution of the Corporate Debtor. Therefore, though, a Creditor can choose its own forum, but in the peculiar facts of the present case, we are of the view that the Petitioner is trying to utilise the provisions of the I&B Code, 2016, for recovery of debt, which is impermissible.
- 28.** In view of our above finding, we are of the view that there is no need to delve upon other issues of the Company Petition.



- 29.** In the circumstances and for the aforesaid reasons, the Company Petition bearing CP (IB) No.19/BB/2021 is dismissed.
- 30.** In view of the orders passed in the main Company Petition, I.A. No.261 of 2021 is also disposed of as no further orders are necessary.

— Sd —

**(MANOJ KUMAR DUBEY)**  
**MEMBER (TECHNICAL)**

— Sd —

**(AJAY KUMAR VATSAVAYI)**  
**MEMBER (JUDICIAL)**

Krishna