

**IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH**
*(Exercising powers of Adjudicating Authority under
The Insolvency & Bankruptcy Code, 2016)*

C.P (IB) No. 132/BB/2022
u/s 7 of the IBC Code r/w Rule 4 of
Insolvency and Bankruptcy Code, 2016

In the matter of

INDUS IND BANK LIMITED

Embassy Heights, Block B,
3rd Floor, 13 MC Grath Road,
Bengaluru – 560025 ---

FINANCIAL CREDITOR/PETITIONER

Versus

M/S. COFFEE DAY GLOBAL LIMITED,

K.M Road,
Chikkamagalur - 577101 ---

CORPORATE DEBTOR/ RESPONDENT

Order delivered on: 20th July, 2023

Coram:

1. Hon'ble Justice (Retd.) T Krishnavalli, Member (Judicial)
2. Hon'ble Shri Manoj Kumar Dubey, Member (Technical)

Parties/Counsels Present:

For the Petitioner : Ms. Chitra Nirmala
For the Respondent : Shri Bibhas V. Kittur

ORDER

Per: Manoj Kumar Dubey, Member (Technical)

1. The present petition is filed on 18.04.2022 under Section 7 of the Insolvency and Bankruptcy Code, 2016 (for brevity '**IBC/ Code**'), r/w Rule 6 of the I & B (Application to Adjudicating Authority) Rules, 2016, by **Indus Ind Bank Limited** (for brevity 'Financial Creditor/Petitioner') interalia seeking Corporate Insolvency Resolution Process against **M/s. Coffee Day Global Limited** (hereinafter referred as 'Corporate Debtor/Respondent) on the ground that the Corporate Debtor has committed a default for a total outstanding amount of

Rs.94,01,79,117.26/- (Rupees Ninety-Four Crores One Lakh Seventy- Nine Thousand One Hundred and Seventeen and Twenty Six paise only) as on 30.04.2020.

2. Brief facts of the case, which are relevant to the issue in question, and as narrated by the Petitioner as follows:
3. The Financial Creditor is a listed public company and is a new-generation Indian Bank. The Bank offers commercial, transaction and electronic banking products and services. The Corporate Debtor M/s. Coffee Day Global Limited is an unlisted public limited company and is located in Chikmagalur, Karnataka. The Corporate Debtor from 24.04.2018 onwards had obtained various credit facilities both fund based and non-fund based on various dates including Secured overdraft EPC/PSFC/PCFC/FBD/FBP, Bank Guarantee, Performance Guarantee, short term loan as export advance and also derivative limits/ forward cover. Further, vide its sanction letter dated 24.04.2018 under No. CO/MCG/BLR/40/04/2018 the following facilities were granted to the Corporate Debtor:

Nature of limit	Limits sanctions (Amt. In Crs.)
Overdraft	25.00
EPC/PSFC/PCFC/FBD/FBP	40.00
Bank Gurantee-1	0.50
Bank Guarnatee-2 (sub-limit of EPC and BG limit for takeover limit)	(40.50)
Total Fund Based + Non Fund Based Exposure	65.50
Forward Cover/Derivative Limit (Regular)	(25.00)
PFE	(2)
MTM	1.25
Forward Cover/Derivative Limit (Regular)	(90)
PFE	(7.2)
MTM	4.50
Total Exposure	71.25

4. It is stated that the Corporate Debtor availed all of the said facilities and had executed Master General Terms Agreement and also multi-facility Loan Agreement on 02.05.2018 wherein the Corporate Debtor had agreed that it shall abide by all terms and conditions as specified in the sanction letter including without limitation to General and Special commandants

mentioned therein and which shall form an integral of the agreement. The Corporate Debtor hypothecated all its current assets to secure the multi-facilities sanctioned to it by the Applicant Bank on 24.04.2018 and executed the Deed of Hypothecation in favour of the applicant Bank.

5. It is stated that in the year 2019 the Corporate Debtor sought for sanction of Short-term Loan of Rs.115 crores vide its letter dated 20.02.2019 and the request of the Corporate Debtor was considered by the Applicant bank and the existing facilities were renewed and an additional short-term loan of Rs.115 cores was granted with the facilities amounting to Rs. 186.25 crores and the said sanction was communicated vide letter dated 26.02.2019 in CO/MCG/BLR/68/02/2009. The Corporate Debtor executed a term loan agreement on 27.02.2019 to secure the Term Loan facility of Rs. 115 crores and the said document recorded the terms and conditions governing the term loan.
6. Subsequently during November 2019, the Corporate Debtor sought to continue the existing facilities with the Applicant Bank by renewal and also enhancing the existing limit from Rs. 180.50 crores to Rs. 190.50 crores. The Applicant Bank considering the request of the Corporate Debtor had reviewed the performance of the Corporate Debtor and granted a limit of Rs. 130.59 crores. The Corporate Debtor executed a supplemental Memorandum of Entry on 02.12.2019 extending the mortgage of the property belonging to M/s. Classic Coffee curing works to secure the facility granted to the Corporate Debtor. The Corporate Debtor and the Guarantor also executed a letter of acknowledgement of debt confirming the outstanding payable by them as on 04.12.2019.
7. It is stated that the Corporate Debtor owed the liabilities arising out of the facilities obtained by it. The Financial Creditor had through various reminders called upon the Corporate Debtor to satisfy its liabilities. However, the Corporate Debtor and its Guarantor failed to satisfy its liability, inspite of having more than sufficient resources. Due to continuous default of the Corporate Debtor, the Financial Creditor classified the account of the Corporate Debtor as non-performing asset on 30.06.2020 in terms of prudential guidelines of the Reserve Bank of India

on Income Recognition and Asset Classification dated 01.07.2015. The Applicant subsequent to classification of NPA Issued a demand cum loan recall notice on 07.12.2020 calling upon the Corporate Debtor and the Guarantors to make payment of their liabilities within 15 days. However, the Corporate Debtor and its guarantors failed to make payment of the same and thereby default of the facilities occurred.

8. It is stated that as on the date of petition, the total outstanding amount is Rs. 94,01,79,117.26/- (Rupees Ninety-Four Crores One Lakh Seventy-Nine Thousand One Hundred and Seventeen and Twenty Six paise only) as on 06.04.2022 along with interest at 11.25% per annum with monthly rests from 07.04.2022 apart from penal interest of 2% till repayment of the entire amount. Hence the petition.
9. The Respondent/Corporate Debtor has filed the reply for the petition vide Diary No. 947 dated 17.02.2023 interalia contending as follows:
 - a. It is submitted that the instant petition is hit under Section 10A of the IBC in terms of Ordinance dated 5th June 2020. The Corporate Debtor has not committed any default of debt for the period before 25.03.2020 during which period the loan facility was serviced or for the period commencing from 25.02.2019 to 25.03.2021 as mandated under Section 10A of the IBC. In the absence of any default as required under Section 10A the instant petition is not maintainable either on law or on facts and entire petition is contrary to the basic framework of the IBC, 2016, and the amendment to the same made from time to time and hence is liable to be dismissed.
 - b. Further submitted that the default occurred during the period of suspension of IBC petition is also admitted and declared by the Financial Creditor at Sl. No.2 Part IV of Form-I (Page 0035 to 0036) of the petition. It is further stated that the Petitioner in the entire petition does not allege or avers regarding the financial ill health of the Respondent. A prima facie reading of the petition would make it clear that the intention of the Petitioner to treat this forum to recover their dues, which is contrary to the essence of IBC. The

learned Counsel for the Respondent has also relied upon the following judgement in the reply:

- i. *Ramesh Kymal vs. Siemens Gamesa Renewable Power Private Limited (2021) 3 SCC 224*
- ii. *Vidarbha Industries Private Limited vs. Axis Bank Limited 2022 SCC Online SC 841;*
- iii. *B.K Educational Service Private Limited v. Parag Gupta and Associates (2019) 11 SCC 633,*
- iv. *Vashdeo R.Bhojwani v. Abhyudaya Co-operative Bank Ltd., (2019) 9 SCC 158*
- v. *Gaurav Hargovindbhai Dave v. Asset Reconstruction Co., (Indi) and anr. (2019) SCC (a) online SC 1239*
- vi. *Swiss Ribbons v. Union Bank of India and ors 2019 4 SCC 17;*

10. The Learned Counsel for the Petitioner filed rejoinder vide Dy. No. 1585 dt. 20.03.2023 and the same is taken on record.
11. On 26.05.2023 vide Dy. No. 2740, the Learned Counsel for the Petitioner has filed Memo for Record of Default-Form D received from NeSL in respect of Four Loans. The Record of Default in Form-D is registered under the following Unique Debt Identifier Number:

No.	Unique Debt Identifier NO.	Date of Default	Amount
1	AAACI1314G_822014038424	30.04.2020	1404784.00
2.	AAACI1314G_603014030038	28.02.2020	50,78,54,032.00
3.	AAACI1314G_516003441349	01.05.2020	6,53,87,702.00
4.	AAACI1314G_890000026854	30.04.2020	7,57,01,402.90

12. The Learned Counsel has also filed Additional rejoinder vide Dy. No. 2641 dt. 23.05.2023, the same is taken on record. Subsequently, filed 2nd Additional rejoinder along with various judgement vide Dy. 2819 dt. 31.05.2023 stating that the amended of Section 10A of IBC was brought in to support the business that suffered due to the pandemic and had default due to the ill effects of Pandemic. In the present case, the Corporate Debtor had been defaulting and has been irregular since the year 2018, which was one of the causes for change in management subsequent to the untimely demise of the promoter Mr. V.G Siddharth during July 2019. Hence, the default committed by the Corporate Debtor was not owing to pandemic. Further while introduction of Section 10A was a necessary

measure at that point of time, it cannot be justifiably stated that the need for Section 10A still survives and is still applicable to the cases of continuing default, in the present case, the default is continuing one and even on the date of filing this additional rejoinder, the default committed by the Corporate Debtor still continues. The Corporate Debtor has been continuously admitting the Debt payable to the Financial Creditor Bank and has been attempting for restructuring of the liabilities with the Financial creditor. The Corporate Debtor through its Security Trustee SBI Capital Markets Limited has submitted a restructuring plan on 10.01.2023 for restructuring of its liabilities, the same amounts to acknowledgement of debt by the Corporate Debtor. The Corporate Debtor has also made a payment of Rs. 20.79 Crores on 15.12.2022 towards its offer to make restructuring of the loan liabilities. The Learned Counsel for the Petitioner has relied upon the following judgement/citations:

- i. *Laxmi Pat Surana v. Union Bank of India & anr.* (2021) 8 SCC 481 dt. 26.03.2021;
- ii. *M/s. H.S.Syndicate vs. Real Value Promoters Private Limited* IBA/821/2020 dt. 15.12.2021;
- iii. *IDBI Bank Ltd., vs. Auromatrix Hotels Pvt. Ltd.,* IBA/726/2020 dt. 26.11.2021;
- iv. *Rudra Buildwell Constructions Pvt. Ltd., vs. PSA Impex Pvt. Ltd.* dt. 18.04.2022;
- v. *Sulpa International vs.M/s. Savute Textiles Pvt. Ltd.,*

13. Heard the Learned Counsel for the Petitioner and Learned Counsel for the Respondent and perused the records available.
14. On perusal of the records, it is seen from the petition that the present petition is filed by IndusInd Bank Limited vs. Coffee Day Global Limited for a total outstanding default of Rs. 94,01,79,117.26/- (Rupees Ninety Four Crores One Lakh Seventy Nine Thousand One Hundred and Seventeen and Twenty Six paise). As per Form-1 of the petition the Financial Creditor has obtained various credit facilities both fund based and non-fund based on various dates from the Financial Creditor.

15. Since the Corporate Debtor defaulted in payments of its dues, the Financial Creditor classified the account of the Corporate Debtor as Non-Performing Asset on 30.06.2020 and subsequently issued a Demand cum Loan Recall notice on 07.12.2020 calling upon the Corporate Debtor and Guarantors to make payment of their liabilities within 15 days. It is appropriate to refer Section 5 (8) of the Code, which defines a 'financial debt' as a debt along with interest which is disbursed (i) against the consideration for the time value of money and (ii) includes money borrowed against the payment of interest...etc.
16. In view of the foregoing, the Corporate Debtor has obtained various loan facilities from the Financial Creditor and defaulted in repayment of such 'financial debt' which has become due and payable. Thus, the first ingredient of 'debt' has been satisfied as required under the Code.
17. The date of default as mentioned in the Form-1 is 30.04.2020. However, on perusal of the Form-D of NeSL report filed by the Financial Creditor vide Dy. No. 2740 dated 26.05.2023, the dates of default for the different tranches of loans are as under:

No.	Unique Debt Identifier NO.	Date of Default	Amount
1	AAACI1314G_822014038424	30.04.2020	1404784.00
2.	AAACI1314G_603014030038	28.02.2020	50,78,54,032.00
3.	AAACI1314G_516003441349	01.05.2020	6,53,87,702.00
4.	AAACI1314G_890000026854	30.04.2020	7,57,01,402.90

18. Therefore, as per the NeSL report Form-D produced by the Financial creditor, the one particular date of default for Sl. No.2 above is 28.02.2020 which is prior to the beginning of the period specified under Section 10A of IBC. The amount in default pertaining to this loan tranche is Rs.50,78,54,032.00/- (Rupees Fifty Crores, Seventy Eight Lakhs Fifty Four Thousand and Thirty Two only). Therefore, this Bench is of the view that, since the default in payment by the Corporate Debtor for this particular loan is well above the threshold limit of Rupees One Crore, the threshold requirement is met; and this particular loan is not hit by the provision of Section 10A of the Code.

19. The Respondent in its reply has contended only that the present petition is not maintainable under Section 10A of the IBC, since the default occurred during the period or suspension of the IBC petition. But it has nowhere disputed the default amount, nor contended in its submissions regarding the date of default mentioned in the Nesl report. Therefore, there is a 'Debt' and a 'Default'.
20. The date of default mentioned as per NeSL report for this loan amount of Rs.50,78,54,032.00/- (Rupees Fifty Crores, Seventy Eight Lakhs Fifty Four Thousand and Thirty Two only) is 28.02.2020; and the instant Company Petition has been filed on 18.04.2022, which is within the period of limitation.
21. We have carefully considered the arguments of the Learned Counsel. In view of the facts and circumstances as discussed above, the present petition being complete and having established the default in payment of the financial debt and for the default amount being above Rs.1,00,00,000/- (Rupees One Crore only), the petition is **admitted** in respect of the Respondent **M/s. Coffee Day Global Limited** under section 7 of the I & B Code, 2016. Accordingly, moratorium is declared in terms of Section 14 of the Code. As necessary consequences of the moratorium in terms of Section 14, the following prohibitions are imposed, which must be followed by all and sundry:
- a. *The institution of suits or continuation of pending suits or proceedings against the Corporate Debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;*
 - b. *Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;*
 - c. *Any action to foreclose, recover or enforce any security interest created by the Corporate Debtor in respect of its property including any action under the Securitization and*

Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;

- d. The recovery of any property by an owner or lessor, where such property is occupied by or in the possession of the Corporate Debtor.*
- e. It is further directed that the supply of essential goods or services to the Corporate Debtor as may be specified, shall not be terminated or suspended or interrupted during the moratorium period;*
- f. The provisions of sub-Section (1) shall however, not apply to such transactions, agreements as may be notified by the Central Government in consultation with any financial sector regulator and to a surety in a contract of guarantee to a Corporate Debtor;*
- g. The order of moratorium shall have effect from the date of this order till completion of the Corporate Insolvency Resolution Process or until this Bench approves the Resolution Plan under sub-section (1) of Section 31 or passed an order for liquidation of Corporate Debtor under Section 33 as the case may be;*

22. The Financial Creditor has proposed the name of Mr. Shailendra Ajmera, a qualified Insolvency Professional having Registration No. IBBI/IPA-001/IP-P00304/2017-2018/10568 as the Interim Resolution Professional (IRP) in respect of the Corporate Debtor. Written consent given by the IRP in Form-2 dated 07.04.2022 has been filed along with C.P at Page – 633-636, wherein it is declared that he is eligible to be appointed as IRP in respect of the Corporate Debtor and no disciplinary proceedings are pending against him with the Board or The Indian Institute of Insolvency Professional of ICAI. However, since the Authorisation of Assignment (AFA) shown in Form-B was expired on 27.05.2022, the IRP shall file the copy of the renewed AFA within one week from the receipt of the copy of this order.
23. The Law Research Associate of this Adjudicating Authority has checked the credentials of Mr. Shailendra Ajmera, there is nothing adverse against

him. In view of the above, the Bench appoints **Mr. Shailendra Ajmera**, having Registration No. IBBI/IPA-001/IP-P00304/2017-2018/10568 with registered address at Ernst& Young LLP, 3rd Floor, Worldmark 1, Aerocity Hospitality, New Delhi, National Capital Territory of Delhi – 110037, Email id: Shailendra.ajmera@in.ey.com as the Interim Resolution Professional of the Corporate Debtor. The IRP is directed to take the steps as mandated under Section 15, 17, 18, 20 and 21 of the IBC 2016.

24. The Financial Creditor shall deposit a sum of Rs. 2,00,000/- (Rupees Two Lakh only) with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to approval by the Committee of Creditors.
25. The Interim Resolution Professional shall after collation of all the claims received against the Corporate Debtor and the determination of the financial position of the Corporate Debtor constitute a Committee of Creditors and shall file a report, certifying constitution of the Committee to this Tribunal on or before the expiry of thirty days from the date of his appointment, and shall convene first meeting of the Committee within seven days for filing the report of Constitution of the Committee. The Interim Resolution Professional is further directed to send regular progress reports to this Tribunal every fortnight.
26. A copy of the order shall be communicated to both the parties. The learned Counsel for the Petitioner shall deliver a copy of this order to the Interim Resolution Professional forthwith. The Registry is also directed to send the copy of this order to the Interim Resolution Professional at his e-mail address forthwith.

Sd/-

**MANOJ KUMAR DUBEY
MEMBER (TECHNICAL)**

Sd/-

**T.KRISHNAVALLI
MEMBER (JUDICIAL)**