

IN THE NATIONAL COMPANY LAW TRIBUNAL, BENGALURU BENCH

[Through Physical hearing/VC Mode (Hybrid)]

ITEM No.4

IA(IBC)722/2025

CP(IB) No. 232/BB/2024

IN THE MATTER OF:

Coffee Day Gastronomie Und Coffee

Day Global Ltd

... Applicant

Vs.

Coffee Day Global Ltd

... Respondent

Petition under Sec 9 of I & B Code, 2016

Order delivered on: 01.06.2026

CORAM:

**SHRI SUNIL KUMAR AGGARWAL
HON'BLE MEMBER (JUDICIAL)**

**SHRI RADHAKRISHNA SREEPADA
HON'BLE MEMBER (TECHNICAL)**

COUNSELS PRESENT:

For the respondent company : M/s. Skanda Legal
For the operational creditor : Ms. Prerna Rawat

ORDER

1. **IA (IBC)722/2025:** The amendment moved by the petitioner is allowed vide separate order.
2. Let the amendment be carried out by the petitioner to which the respondent to file additional objection, if any within 3 weeks with a copy to Ld. Counsel for the other side.
3. List on 21.07.2026.

**Sd/-
RADHAKRISHNA SREEPADA
MEMBER (TECHNICAL)**

**Sd/-
SUNIL KUMAR AGGARWAL
MEMBER (JUDICIAL)**

IN THE NATIONAL COMPANY LAW TRIBUNAL, BENGALURU BENCH,

*(Exercising powers of Adjudicating Authority under
The Insolvency and Bankruptcy Code, 2016)
(Through Physical Hearing/ VC Mode (Hybrid))*

I.A. No. 722 of 2025

in

C.P. (IB) No. 232/BB/2024

(Application under Rules 11, 32 and 55 of the NCLT Rules, 2016)

BETWEEN

RECHTSANWALT DR. CHRISTIAN BACHMANN

As the Insolvency Administrator of

Coffee Day Gastronomic und Kaffeehandels GmbH

Opernring 8, 1010 Vienna,

Austria

...Applicant/Financial Creditor

Versus

COFFEE DAY GLOBAL LIMITED

Registered Office at no. 23/2,

Coffeeday Square, Vittal Mallya Road,

Bangalore, Karnataka -560001

...Respondent/Corporate Debtor

Order delivered on: 01.06.2026

CORAM:

Shri Sunil Kumar Aggarwal, Hon'ble Member (Judicial)

Shri Radhakrishna Sreepada, Hon'ble Member (Technical)

O R D E R

This Application has been filed by the Applicant under Rule 11 of the NCLT Rules, 2016 read with Section 60(5) of Insolvency and Bankruptcy Code 2016, seeking the following prayers:

(a) Allow the present application and permit the Operational Creditor to amend the Date of Default to 30.09.2019; and

(b) Any other order this Hon'ble Tribunal may deemed fit and proper in the interest of justice.

1. This application has been filed on 11.08.2025 by **Mr. Devendra Singh**, who has been authorized vide Letter of Authorization dated 26.07.2025 by **Dr. Jorg Armin Sebendel**, Power of Attorney dated 22.05.2025 holder of the Petitioner/Insolvency Administrator of **Coffee Day Gastronomic und Kaffeehandels GmbH**.
2. Brief facts of the Application are as follows: -
 - i. The Petitioner has filed a Petition under Section 9 of Insolvency & Bankruptcy Code, 2016 against the respondent by citing the date of default to be 27.11.2020. This Applicant seeks amendment of the said date to 30.09.2019 in Part IV, Sl. No. 1 and Sl. No. 2 of Form-5 being necessary for proper adjudication of the matter and to correctly reflect the actual date on which the Corporate Debtor had first committed the default.
 - ii. It is submitted that pursuant to the Letter of Comfort dated 02.05.2019 issued by the Corporate Debtor, regular payments were made to the Operational Creditor through AM Coffee Day International Ltd. till August 2019, with the last payment having been made on 28.08.2019. Thereafter, no further payments were made. The Applicant contends that the next payment had fallen due on or before 30.09.2019, however the Corporate Debtor failed to make any payment from September 2019 onwards and completely ceased to honour its obligations under the Letter of Comfort.
 - iii. Due to stoppage of payments by the Corporate Debtor, the Operational Creditor is rendered unable to meet its operational expenses including rent, salaries, statutory dues and vendor payments, ultimately resulting in commencement of insolvency proceedings against the Operational Creditor before the Vienna Commercial Court. Consequently, the present Insolvency Administrator came to be appointed by order dated 11.03.2020 passed by the said Court.

- iv. It is submitted that thereafter extensive correspondence ensued between the parties. Since disputes under the Letter of Comfort were agreed to be subject to the jurisdiction of the Vienna Commercial Court, the Petitioner had instituted proceedings before the said Court on 12.03.2021 seeking recovery of the outstanding dues. The Corporate Debtor failed to appear despite service of summons and consequently the Vienna Commercial Court by its judgment dated 09.06.2022 directed the Corporate Debtor to pay **EUR 328,766.62** along with interest at 9.2% per annum calculated from 27.11.2020 and legal costs. The said judgment has attained finality on 25.11.2022.
 - v. The date 27.11.2020 came to be mentioned in the Section 9 application only because the Vienna Commercial Court had awarded interest from the said date for ease of calculation of interest on the claimed amount. However, according to the Applicant, the actual first default had occurred on 30.09.2019 itself when the Corporate Debtor had completely stopped making payments under the Letter of Comfort.
 - vi. The proposed amendment does not introduce any new facts or claims and the material supporting the actual date of default is already part of the record, including the General Audit Report filed before the Vienna Commercial Court reflecting that the last payment was made on 28.08.2019 and no payments were received thereafter. The Applicant therefore contends that the amendment is only clarificatory in nature and necessary for proper adjudication of the petition.
 - vii. Reliance upon the judgment of Hon'ble Supreme Court in ***Dena Bank (Now Bank of Baroda) v. C. Shivakumar Reddy*** to contend that there is no bar on amendment of pleadings or filing of additional documents in proceedings under the IBC and that this Tribunal has ample power to permit such amendments in appropriate cases.
3. The Respondent has filed objections to the application contending as follows: -
- a. The present application for amendment of the date of default is an afterthought and has been filed only after the Respondent had pointed out

that the originally pleaded date of default falls within the period covered under Section 10A of the IBC. It is a deliberate attempt to circumvent the statutory bar under Section 10A and continue the insolvency proceedings against the Corporate Debtor.

- b. The Petition under Section 9 as well as the Record of Default obtained from National E-Governance Services Limited (NeSL) specifically mention the date of default as 27.11.2020 but latter is not amended, therefore the proposed amendment is contrary to the material placed on record by the Applicant.
- c. The Applicant has failed to produce any documentary evidence that any amount had fallen due on 30.09.2019 or that the Corporate Debtor was under any contractual obligation to make monthly payments to the Operational Creditor. It is submitted that no agreement, guarantee or supporting document has been produced to substantiate the alleged default from September 2019.
- d. The Applicant himself has pleaded that a demand for payment was made on 27.11.2020 and that interest was claimed from the said date before the Vienna Commercial Court. The present attempt to shift the date of default to 30.09.2019 is contrary to the original pleadings and would introduce a fresh case as well as cause of action through an amendment application.
- e. The Applicant has consistently relied upon the date 27.11.2020 before the Vienna Commercial Court, including for the purpose of claiming interest, and therefore cannot now resile from its earlier stand by asserting a different date of first default.
- f. The legal enforceability of the Letter of Comfort dated 02.05.2019 is already disputed as the same does not satisfy the requirements of a contract of guarantee under Section 126 of the Indian Contract Act, 1872. The Letter of Comfort merely expressed support towards continuation of the business of the Operational Creditor and did not create any legally enforceable obligation upon the Respondent to discharge liabilities of the Operational Creditor.

- g. Reference to the judgment of the Hon'ble High Court of Karnataka in **United Breweries (Holding) Ltd. v. Karnataka State Industrial Investment and Development Corporation Ltd.** has been made to contend that a letter of comfort cannot automatically be construed as a guarantee in the absence of a specific undertaking to discharge the liability of a third party.
 - h. Further, the proceedings before the Vienna Commercial Court and the decree passed therein are not enforceable in India in as much as Austria is not a reciprocating territory under Section 44A of the Code of Civil Procedure, 1908. According to the Respondent, the present insolvency proceedings are being misused as an indirect method of enforcing a foreign decree before this Tribunal.
 - i. The authority of the persons filing the present application is itself in question as the Power of Attorney dated 22.05.2025 and subsequent Letter of Authorization dated 26.07.2025 are invalid and insufficient in law. The Insolvency Administrator could not have delegated his powers without approval of the Competent Court or Creditors and therefore the present application is not maintainable. Moreover, the alleged claim does not fall within the ambit of "Operational Debt" as defined under Sections 5(20) and 5(21) of the IBC.
 - j. The proposed amendment is unsupported by contemporaneous documentary evidence as no agreement or material has been produced evidencing any contractual obligation upon the Corporate Debtor to make monthly payments to the Operational Creditor which was allegedly due on 30.09.2019.
4. The Applicant has filed rejoinder controverting the objections raised by the Respondent and stated as follows: -
- a. The proposed amendment of the date of default is neither an afterthought nor an attempt to circumvent Section 10A of the IBC. It has consistently been his case that the financial support extended by the Respondent

ceased after the last payment made on 28.08.2019 and therefore the first default had occurred on 30.09.2019 when the Respondent failed to make the next payment due under the Letter of Comfort.

- b. The amendment merely seeks to correctly reflect the actual date of first default and does not introduce any new cause of action, fresh liability or additional claim. The factual foundation regarding cessation of payments after August 2019 already forms part of the original pleadings and documents filed along with the Section 9 application.
- c. The Letter of Comfort dated 02.05.2019 formed part of a continuing arrangement under which the Respondent had historically issued similar letters assuring financial support to Coffee Day Gastronomie und Kaffeehandels GmbH and that the sudden stoppage of such support resulted in insolvency proceedings before the Vienna Commercial Court and appointment of the Applicant as Insolvency Administrator.
- d. The contention regarding Section 10A has been refuted as the actual default had occurred in September 2019 itself, which is prior to the commencement of the Section 10A period. According to the Applicant, the amendment only seeks to align the pleadings with the contemporaneous financial records already placed on record.
- e. With respect to the Record of Default and the date 27.11.2020 mentioned therein, the Applicant submits that the said date pertains only to the date from which interest was awarded by the Vienna Commercial Court and not the actual date of first default. The Respondent is deliberately conflating the “date of first default” with the date from which interest became payable under the foreign judgment.
- f. The Applicant further contends that reliance upon the judgment of the Vienna Commercial Court is not for execution of a foreign decree under Section 44A CPC, but only as evidence demonstrating the existence of debt and default. The present proceedings under Section 9 of the IBC are independent insolvency proceedings and not execution proceedings.

- g. The Applicant has refuted the Respondent's contention that the Letter of Comfort is unenforceable under Indian law and submitted that the rights and liabilities arising therefrom are governed by Austrian law in terms of the contractual arrangement between the parties. The Vienna Commercial Court has already recognized the binding nature of the Letter of Comfort and decreed the claim in favour of the Applicant.
 - h. The Applicant reiterates that it falls within the definition of an "Operational Creditor" under Section 5(20) of the IBC and the debt claimed constitutes an "Operational Debt" arising from operational costs and liabilities which the Respondent had undertaken to support under the Letter of Comfort.
 - i. The Applicant also denies the objections regarding authorization and submits that the Power of Attorney dated 22.05.2025 validly authorizes Dr. Jorg Armin Schendel with further powers of delegation and that Mr. Devendra Bisht has been duly authorized to prosecute the present proceedings in India on behalf of the Applicant.
 - j. On the aforesaid grounds, the Applicant has sought allowing of the present application and permission to amend the date of default in Form-5 from 27.11.2020 to 30.09.2019.
- 5. Heard the Learned Counsels for the parties and carefully perused the pleadings and documents on record.
 - 6. The Applicant may have been chastened by the objections of the respondent to clamour for change of default and thus the application, in one sense, is also belated yet there is absolutely no basis available for relying on, an out of blue date of 27.11.2020 to be the date of default. Just because the Petitioner has been awarded interest from that date by Vienna Commercial Court, probably when the proceedings before it may have been commenced, would not have justifiably provided the threshold constituting the date of default.
 - 7. The settled proposition of law of amendment of pleadings is that the merits of proposed amendment in itself are not to be examined/assessed at the time of considering the amendment application. Only the factors that the amendment is

relevant and aimed at putting forth the facts that will assist in real, effective and complete adjudication of disputes between the parties. Of course, generally it should not tantamount to withdrawal of admission or setting up an altogether new cause of action. Tested on these parameters, the proposed amendment as against shifting the cause of action, appears to be to align the date of default with set up pleadings. The alteration is permissible as per the dictum of Hon'ble the Apex Court relied upon by the Petitioner and does not displace the Respondent from its disclosed standpoint.

8. The efficacy of Letter of Comfort, implementation of foreign judgement, authorisation of signatory to petition etc. are not germane for being discussed herein and better left for being taken up at the time of hearing on the main Petition. Even if the petitioner may have realised the folly on going through the objections of respondent yet the proposed amendment cannot be termed to be at tangent to either the petition or withdrawal of admission to the irretrievable prejudice of Respondent.
9. In the light of above reasons the amendment application is allowed and the petitioner is permitted to rectify the date of default as 30.09.2019 at appropriate places in the petition. An updated Petition be submitted within three weeks of which copy be forwarded to the Respondent in advance.

-Sd-

**RADHAKRISHNA SREEPAD
MEMBER (TECHNICAL)**

-Sd-

**SUNIL KUMAR AGGARWAL
MEMBER (JUDICIAL)**