

NATIONAL COMPANY LAW TRIBUNAL : JBF Industries Limited versus Mr. Anup Kumar Singh and Ors. 1

RESERVE BANK OF INDIA : Voluntary Retention Route' (VRR) for Foreign Portfolio Investors (FPIs) investment in debt 3

INSOLVENCY AND BANKRUPTCY BOARD OF INDIA: Insolvency Professionals to act as Interim Resolution Professionals and Liquidators (Recommendation) Guidelines, 2019 11

NATIONAL COMPANY LAW TRIBUNAL

The Hon'ble National Company Law Tribunal ("NCLT") has delivered its Order May 5, 2019 in the matter of JBF Industries Limited (Applicant/Petitioner) versus Mr. Anup Kumar Singh (Resolution Professional) & Ors. (Respondent).

Facts:

The Application was filed by one of the creditor of the corporate debtor under Section 60(5) of the code read with Rule 11 of NCLT Rules, 2016 for seeking following relief (a) Delay to be condoned for filing the claim before Resolution Professional. (b) Respondent directed to accept and admit the Proofs of claim filed by the Applicant in Form 'C' on February 4 2019 under Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations 2016. In this matter the Applicant filed the claim after the expiry of time prescribed under the Regulation 12, but non-submission of claim with in time by the Applicant was because of Applicant had no knowledge to submit the claim in Form-C to the IRP. The Resolution Professional had not considered the claim of the Applicant on the ground that the claim was submitted beyond 90 days. The Resolution Professional had not decided the claim on merits whether the claim is to be admitted or to be rejected. The Resolution Professional had not gone into this question because he considered that the claim filed by the Applicant was beyond 90 days from the date of admission of the petition. It was an undisputed fact that the Applicant submitted claim beyond 90 days. Regulation 12(2) of Insolvency and Bankruptcy Board of India ("IBBI") (Insolvency Resolution Process for Corporate Persons) Regulations, 2016

provides that claims by creditors to be filed within 90 days from the date of commencement of insolvency. The Applicant was filed for seeking condonation of delay in submitting the claim before the Resolution Professional. **NCLT allowed the Application.** The delay in submitting the claim by Applicant/ creditor was condoned and the Resolution Professional to decide accordingly to law whether the claim submitted by the Applicant to be admitted or not.

RESERVE BANK OF INDIA

Voluntary Retention Route' (VRR) for Foreign Portfolio Investors (FPIs) investment in debt

A. Foreign Exchange Management (Permissible Capital Accounts Transactions) Regulations, 2000 notified vide Notification No. FEMA 1/2000-RB dated May 03, 2000;

B. Foreign Exchange Management (Borrowing and Lending) Regulations, 2018 notified vide Notification No. FEMA 3(R)/2018-RB dated December 17, 2018; Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) Regulations, 2017 notified vide Notification No. FEMA.20 (R)/2017-RB dated November 07, 2017; and

C. Foreign Exchange Management (Foreign Exchange Derivative Contracts) Regulations, 2000 notified vide Notification No. FEMA 25/RB – 2000 dated May 03, 2000.

A.P.(DIR Series) Circular No. 21 dated March 01, 2019 on 'Voluntary Retention Route' (VRR) for Foreign Portfolio Investors (FPIs) investment in debt have been revised as given in the Annex. These changes include, inter alia, the following:-

I. Introduction of a separate category, viz., VRR-Combined (see para 2.x, Annex).

II. The requirement to invest at least 25% of the Committed Portfolio Size within one month of allotment has been removed (see para 6.a, Annex).

III. FPI are provided with an additional option at the end of the retention period, viz., continue to hold their investment until the date of maturity or the date of sale, whichever is earlier (see para 6.c, Annex).

Annex

Voluntary Retention Route' (VRR) for Foreign Portfolio Investors (FPIs) investment

Introduction

The Reserve Bank, in consultation with the Government of India and Securities and Exchange Board of India (SEBI) introduced a separate channel, called the 'Voluntary Retention Route' (VRR), to enable FPIs to invest in debt markets in India. Broadly, investments through the Route will be free of the macro-prudential and other regulatory norms applicable to FPI investments in debt markets, provided FPIs voluntarily commit to retain a required minimum percentage of their investments in India for a period. The features of the Route are explained below in detail.

- i. 'Committed Portfolio Size' (CPS), for an FPI, shall mean the amount allotted to that FPI.
 - ii. 'General Investment Limit', for any one of the three categories, viz., Central Government Securities, State Development Loans or Corporate Debt Instruments, shall mean FPI investment limits announced for these categories under the Medium Term Framework, in terms of [A.P. \(DIR Series\) Circular No. 22 dated April 6, 2018](#), as modified from time to time.
 - iii. 'Minor violations' shall mean violations that are, in the considered opinion of the custodians, unintentional, temporary in nature or have occurred on account of reasons beyond the control of FPIs, and in all cases are corrected on detection.
- 'Related FPIs' shall mean 'investor group' as defined in Regulation 23(3) of SEBI (Foreign Portfolio Investors) Regulations, 2014.

iv. 'Related FPIs' shall mean 'investor group' as defined in Regulation 23(3) of SEBI (Foreign Portfolio Investors) Regulations, 2014.

v. 'Repo' shall have the same meaning as defined in Section 45U (c) of RBI Act, 1934; and for the purpose of this regulation excludes repo conducted under the Liquidity Adjustment Facility and the Marginal Standing Facility.

vi. 'Retention Period' shall mean the time period that an FPI voluntarily commits for retaining the CPS in India.

vii. 'Reverse Repo' shall have the same meaning as defined in Section 45U (d) of RBI Act, 1934; and for the purpose of this regulation excludes reverse repo conducted under the Liquidity Adjustment Facility and the Marginal Standing Facility.

viii 'VRR-Corp' shall mean Voluntary Retention Route for FPI investment in Corporate Debt Instruments.

ix. 'VRR-Govt' shall mean Voluntary Retention Route for FPI investment in Government Securities.

x. 'VRR-Combined' shall mean Voluntary Retention Route for FPI investment in instruments eligible under both VRR-Govt and VRR-Corp.

3. Eligible investors

Any FPI registered with SEBI is eligible to participate through this Route. Participation through this Route shall be voluntary.

4. Eligible instruments

- Under VRR-Govt, FPIs will be eligible to invest in any Government Securities i.e., Central Government dated Securities (G-Secs), Treasury Bills (T-bills) as well as State Development Loans (SDLs). Under VRR-Corp, FPIs may invest in any instrument listed under Schedule 5 of Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) Regulations, 2017 notified vide [Notification No. FEMA.20\(R\)/2017-RB dated November 07, 2017](#), other than those specified at 1A(a) and 1A(d) of that Schedule.
- Repo transactions, and reverse repo transactions.

5. Features

- a. Investment through this Route shall be in addition to the General Investment Limit. Investment under this route shall be capped at ₹ 75,000 crore or higher, which amount shall be allocated among VRR-Govt, VRR-Corp, and VRR-Combined as may be decided by the Reserve Bank from time to time. The investment limit shall be released in one or more tranches.
- b. Allocation of investment amount to FPIs under this Route shall be made on tap or through auctions. Details of the auction mechanism are given in [Appendix](#).
- c. The mode of allotment, allocation to VRR-Govt and VRR-Corp categories and the minimum retention period shall be announced by the Reserve Bank ahead of allotment.

- d. No FPI (including its related FPIs) shall be allotted an investment limit greater than 50% of the amount offered for each allotment by tap or auction in case there is a demand for more than 100% of amount offered.
- e. The minimum retention period shall be three years, or as decided by RBI for each allotment by tap or auction.
- f. FPIs shall invest the amount allocated, called the Committed Portfolio Size (CPS) in the relevant debt instruments and remain invested at all times during the voluntary retention period, subject to the following relaxations:
 - The minimum investment of an FPI during the retention period shall be 75% of the CPS (The flexibility for modulating investments between 75%-100% of CPS is intended to enable FPIs to adjust their portfolio size as per their investment philosophy).
 - The required investment amount shall be adhered to on an end-of-day basis. For this purpose, investment shall include cash holdings in the Rupee accounts used for this Route.
- g. Amounts of investment shall be reckoned in terms of the face value of securities.

6. Management of portfolio

- Successful allottees shall invest at least 75% of their CPS within three months from the date of allotment. The retention period will commence from the date of allotment of limit.

Prior to the end of the committed retention period, an FPI, if it so desires, may opt to continue investments under this Route for an additional identical

retention period. In that case, it shall convey this decision to its custodian.

- In case an FPI decides not to continue under VRR at the end of the retention period, it may: (a) liquidate its portfolio and exit, or (b) shift its investments to the 'General Investment Limit', subject to availability of limit under the 'General Investment Limit', or (c) hold its investments until its date of maturity or until it is sold, whichever is earlier.
- FPIs that wish to exit their investments, fully or partly, under the Route prior to the end of the retention period may do so by selling their investments to another FPI or FPIs. However, the FPI (or FPIs) buying such investment shall abide by all the terms and conditions applicable to the selling FPI under the Route.
- Any violation by FPIs shall be subjected to regulatory action as determined by SEBI. FPIs are permitted, with the approval of the custodian, to regularize minor violations immediately upon notice, and in any case, within five working days of the violation. Custodians shall report all non-minor violations as well as minor violations that have not been regularised to SEBI.

7. Other relaxations

- Investments made through the Route shall not be subject to any minimum residual maturity requirement, concentration limit or single/group investor-wise limits applicable to corporate bonds as specified in paragraphs 4(b), (e) and (f) respectively of [A.P. \(DIR Series\) Circular No. 31 dated June 15, 2018](#).
- Income from investments through the Route may be reinvested at the discretion of the FPI. Such investments will be permitted even in excess of the CPS.

8. Access to other facilities

- FPIs investing through the Route will be eligible to participate in repos for their cash management, provided that the amount borrowed or lent under repo shall not exceed 10% of their investment under VRR.
- FPIs investing under this route shall be eligible to use any currency or interest rate derivative instrument, OTC or exchange traded, to manage their interest rate risk or currency risk.

9. Other operational aspects

- Utilisation of limits and adherence to other requirements of this Route shall be the responsibility of both the FPI and its custodian.
 - Custodians shall not permit any repatriation from the cash accounts of an FPI, if such transaction leads to the FPI's assets falling below the minimum stipulated level of 75% of CPS during the retention period.
 - Custodians shall have in place appropriate legal documentation with FPIs that enables them (custodians) to ensure that regulations under VRR are adhered to.
 - FPIs shall open one or more separate Special Non-Resident Rupee (SNRR) account for investment through the Route. All fund flows relating to investment through the Route shall reflect in such account(s).
 - FPIs may open a separate security account for holding debt securities under this Route.
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Appendix

Auction process for allocation of investment amount under VRR

The auction process for allotment of investment amounts under VRR shall be as under:

- a. An FPI shall bid two variables - the amount it proposes to invest and the retention period of that investment, which shall not be less than the minimum retention period applicable for that auction.
- b. FPIs are permitted to place multiple bids.
- c. The criterion for allocation under each auction shall be the retention period bid in the auction.
- d. Bids will be accepted in descending order of retention period, the highest first, until the amounts of accepted bids add up to the auction amount.
- e. Allotment at margin (i.e., at the lowest retention period accepted), in case the amount bid at margin is more than the amount available for allotment, shall be as below:
 - The marginal bid shall be allocated partially such that the total acceptance amount matches the auction amount.
 - In case there are more than one marginal bids, allocation shall be made to the bid with the largest amount, and then in descending order of amount bid until the acceptance amount matches the auction amount.
 - In case the amount offered is the same for two or more marginal bids, the amount will be allocated equally.
- f. If an FPI has been allotted multiple bids in an auction, the CPS shall be reckoned for each bid separately.
- g. FPI which has got CPS allocated under an auction will be eligible to participate in subsequent auction as well.

INSOLVENCY AND BANKRUPTCY CODE, 2016

Insolvency Professionals to act as Interim Resolution Professionals and Liquidators (Recommendation) Guidelines, 2019

1. Section 16(3)(a) of the Insolvency and Bankruptcy Code, 2016 (Code) requires the Adjudicating Authority (AA) to make a reference to the Insolvency and Bankruptcy Board of India (Board) for recommendation of an insolvency professional (IP) who may act as an interim resolution professional (IRP) in case an operational creditor has made an application for corporate insolvency resolution process (CIRP) and has not proposed an IRP. The Board, within ten days of the receipt of the reference from the AA, is required under section 16(4) of the Code to recommend the name of an IP to AA against whom no disciplinary proceedings are pending.

2. Section 34(4) of the Code requires the AA to replace the resolution professional, if (a) the resolution plan submitted by the resolution professional under section 30 was rejected for failure to meet the requirements mentioned in subsection (2) of section 30; (b) the Board recommends the replacement of a resolution professional to the AA for reasons to be recorded in writing; or (c) the resolution professional fails to submit written consent under section 34(1). For the purposes of clause (a) and clause (c) of section 34(4), the AA may direct the Board under section 34(5) of the Code to propose the name of another IP to be appointed as a liquidator. The Board is required under section 34(6) to propose the name of another IP along with written consent from him within ten days of the direction issued by the AA under section 34(5).

Guidelines

3. When a reference or direction is received under section 16 or 34 of the Code from the AA for recommending / proposing the name of an IP, the Board has no

In such a situation, the Board is unlikely to add much value by recommending an IP for a CIRP / Liquidation. In fact, the bill titled “The Insolvency and Bankruptcy Code, 2015”, as introduced in Lok Sabha, provided that the Board shall recommend the name of an IP who has the relevant expertise for various processes under the Code. These provisions were dropped based on the recommendations of the Joint Parliamentary Committee, which observed that there are sufficient safeguards to ensure that the competent persons are enrolled as insolvency professionals.

4. Further, it takes some time for a reference or a direction from the AA to reach the Board. The Board may take up to ten days to identify an IP for the purpose. It takes also some time for the recommendation of the Board to reach the AA, after which the AA could appoint the recommended IP. The process of appointment of an IRP or Liquidator may entail 2-3 weeks, which could be saved if the AA has a ready panel of IPs recommended by the Board and it can pick up any name from the Panel while issuing the Order.

5. Given that every IP is equally qualified to be appointed as the IRP/Liquidator of any CIRP/Liquidation, if otherwise not disqualified, and in the interest of avoiding administrative delays, it is necessary to have guidelines to prepare a Panel of IPs for the purpose of section 16(4) and 34(6) from amongst the registered IPs. Page 2 of 5 Panel of IPs

6. The Board will prepare a common Panel of IPs for appointment as IRPs and Liquidators and share the same with the AA. The AA may pick up any name from the Panel for appointment of IRP or Liquidator, as the case may be, for a CIRP or Liquidation process, respectively. The Panel will have Bench wise list of IPs based on the registered office of the IP. It will have a validity of six months and a new Panel will replace the earlier Panel every six months. For example, the first panel under these Guidelines will be valid for appointments during July - December, 2019, the next panel will be valid for January – June 2020 and so on.

7. An IP will be eligible to be in the Panel of IPs if –

(a) there is no disciplinary proceeding, whether initiated by the Board or the IPA of which he is a member, pending against him;

(b) he has not been convicted at any time in the last three years by a court of competent jurisdiction;

(c) he expresses his interest to be included in the Panel for the relevant period; and

d) he undertakes to discharge the responsibility as IRP or Liquidator, as he may be appointed by the AA.

(e) he has made the compliance under Regulation 7(2) (ca) of the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016 for the year 2018-19.

8. An IP will be included in the Panel against the Bench under whose jurisdiction his registered office (his address as registered with the Board) is located. For example, an IP located in Kolkata will be included in Panel against the Kolkata Bench of the AA. The areas covered in respect of different Benches of the AA are as under:

Benches at	Area Covered
New Delhi	Union territory of Delhi
Ahmedabad	State of Gujarat State of Madhya Pradesh Union territory of Dadra and Nagar Haveli Union territory of Daman and Diu
Allahabad	State of Uttar Pradesh State of Uttarakhand
Bengaluru	State of Karnataka
Chandigarh	State of Himachal Pradesh State of Jammu and Kashmir State of Punjab Union territory of Chandigarh 5 State of Haryana
Cuttack	State of Chhattisgarh State of Odisha
Chennai	State of Tamil Nadu Union territory of Puducherry
Guwahati	State of Arunachal Pradesh State of Assam State of Manipur State of Mizoram State of Meghalaya State of Nagaland State of Sikkim State of Tripura
Hyderabad	State of Andhra Pradesh State of Telangana
Jaipur	State of Rajasthan
Kochi	State of Kerala Union territory of Lakshadweep

Kolkata	State of Bihar State of Jharkhand State of West Bengal Union territory of Andaman and Nicobar Islands
Mumbai	State of Goa State of Maharashtra

9. The Board shall invite expression of interest from IPs in Form A to act as an IRP or Liquidator by sending an e-mail to IPs at their email addresses registered with the Board. The expression of interest must be received by the Board in Form A by the specified date. For example, the Board shall invite expression of interest by 7th June, 2019 from IPs for inclusion in the Panel for –July-December, 2019. The interested IPs shall express their interest by 15th June, 2019. The Board will send the Panel to the AA by 25th June, 2019.

10. It must be explicitly understood that an IP, who is included in the Panel based on his expression of interest, must not: (a) withdraw his interest to act as IRP or Liquidator, as the case may be; (b) decline to act as IRP or Liquidator, as the case may be, if appointed by the AA; or (c) surrender his registration to the Board or membership to his IPA during the validity of the Panel.

11. It must be explicitly understood that:

(a) the AA may require the Board to recommend an IP from or outside the Panel and in such cases, the Board shall accordingly recommend an IP;

(b) an IP in the Panel can be appointed as IRP or as Liquidator, at the sole discretion of the AA;

(c) the submission of expression of interest is an unconditional consent by the IP to act as an IRP or Liquidator, for any corporate debtor; and

(d) an IP who declines to act as IRP or Liquidator, as the case may be, on being appointed by the AA, shall not be included in the Panel for the next five years, without prejudice to any other action that may be taken by the Board. Ongoing Assignments

12. The eligible IPs will be included in the Panel in order of the volume of ongoing processes they have in hand. The IP who has the lowest volume of ongoing processes will get a score of 100 and will be at the top of the Panel. The IP who has the highest volume of ongoing processes will get a score of 0. The difference between the highest volume and the lowest volume will be Page 4 of 5 equated to 100 and other IPs will get scores between 0 and 100 depending on volume of their ongoing assignments

13. An ongoing assignment shall be valued as under:

Ongoing assignments	Volume
IRP of a Corporate Insolvency Resolution Process	05
RP of a Corporate Insolvency Resolution Process	10
IRP of a Fast Track Process	03
RP of a Fast Track Process	06
Liquidation / Voluntary Liquidation	05
Individual Insolvency	01
Bankruptcy Trustee	01

14. Where two or more IPs get the same score, they will be placed in the Panel in order of the date of their registration with the Board. The IP registered earlier will be placed above the IP registered later.

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Warm Regards,

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