

Shephali

REPORTABLE

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION (L) NO. 4051 OF 2023

- 1. VJ JINDAL Cocoa Pvt Ltd,**
A private limited company incorporated under the provisions of the Companies Act 2013, having its Registered Office at 6th Floor, Bakhtawar, B & C, 229, Nariman Point, Mumbai 400 021
- 2. Vijay JINDAL,**

...PETITIONERS

SHEPHALI
SANJAY
MORMARE

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SHEPHALI
SANJAY
MORMARE
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~ VERSUS ~

- 1. UNION OF INDIA THROUGH THE
MINISTRY OF FINANCE,**
Branch Secretariat, Mumbai 2nd Floor,
Aayakar Bhavan, New Marine Lines,
Mumbai 400 020
- 2. RESERVE BANK OF INDIA,**
A bank established and incorporated under the provisions of the Reserve Bank of India Act 1934 having its Office at Central Office Building, Shahid Bhagat Singh Road, Fort, Mumbai 400 001

- 3. PUNJAB NATIONAL BANK,**
A body corporate/banking company established and incorporated under the provisions of the Banking Regulations Act 1949 and the Banking Companies (Acquisition and Transfer of Undertakings) Act 1970 having its Head Office at 7, Bhikaji Cama Place, New Delhi 110 066 and having its Mumbai Zonal Office at 11th Floor, Dalamal House, Jamnalal Bajaj Marg, Nariman Point, Mumbai 400 021
- 4. JAMMU AND KASHMIR BANK,**
A body Corporate / banking company established and incorporated under the provisions of the Jammu and Kashmir Companies Regulations No. XI of Samvat 1977, having its Registered Office at Corporate Headquarters, Maulana Azad Road, Srinagar, Kashmir 190 001 and having its Mumbai Zonal Office at National Business Centre Bandra Kurla Complex Bandra East, Mumbai, Maharashtra 400 051
- 5. CANARA BANK,**
A body corporate/banking company established and incorporated under the provisions of the Banking Regulations Act 1949 and the Banking Companies (Acquisition and Transfer of Undertakings) Act 1970 having its Head Office at 112, JC Road, Bangalore, Karnataka 560 002 having its Branch Office at Plot No. 227, Nariman Bhavan, Nariman Point, Mumbai 400 021

6. HDFC Bank Ltd,

A banking company body corporate /banking company established and incorporated under the provisions of the Companies Act and the Banking Regulations Act 1949 having its Registered Office at HDFC Bank House, Senapati Bapat Marg, Lower Parel, Mumbai 400 013

...RESPONDENTS

WITH

WRIT PETITION (L) NO. 5049 OF 2023

1. VJ JINDAL Cocoa Pvt Ltd,

A private limited company incorporated under the provisions of the Companies Act 2013, having its Registered Office at 6th Floor, Bakhtawar, B & C, 229, Nariman Point, Mumbai 400 021

2. Vijay JINDAL,

PETITIONERS

~ VERSUS ~

1. RESERVE BANK OF INDIA,

A bank established and incorporated under the provisions of the Reserve Bank of India Act 1934 having its Office at Central Bank Office Building, Shahid Bhagat Singh Road, Fort, Mumbai 400 001

**2. UNION OF INDIA THROUGH THE
MINISTRY OF COMMERCE AND
INDUSTRY,**

Department of Commerce, Directorate
General of Foreign Trade,
Branch Secretariat, 2nd Floor, Aayakar
Bhavan, New Marine Lines,
Mumbai 400 021

3. BANKING OMBUDSMAN,

Being an officer Appointed by the
Reserve Bank of India under the
Reserve Bank—Integrated Ombudsman
Scheme, 2021 c/o Reserve Bank of
India, 4th Floor, RBI Byculla office
building, Opp. Mumbai Central Railway
Station, Byculla, Mumbai 400 008

4. HDFC BANK Ltd,

A banking company /body corporate /
established and incorporated under the
provisions of the Companies Act and
the Banking Regulations Act 1949
having its Registered Office at HDFC
Bank House, Senapati Bapat Marg,
Lower Parel, Mumbai 400 013

...RESPONDENTS

APPEARANCES

**FOR THE PETITIONER
IN BOTH PETITIONS**

Mr Navroz Seervai, Senior

*Advocate, with Gulnar Mistry,
Saket Mone, Shrey Shah, Aksha
Hudda, Srushti Thorat &
Devansh Sha, i/b Hudda &
Associates.*

**FOR RESPONDENT NO.1
IN WP(L)/4051/2023**

**Mr Mohamedali Chunawala, with
Ashok Verma, i/b AA Ansari.**

**FOR RESPONDENT 2 IN
WP(L)/4051/2023**

**Mr Ashish Kamat, Senior
Advocate, with Akshay
Puranik, Vivek Shetty, Amey
Mirajkar & Parimal Kashyap,
i/b AZB & Partners.**

**FOR RESPONDENT 3 IN
BOTH PETITIONS**

**Ms Sabiha Ansari, with Aisha
Shaikh & Tanvi Rane.**

**FOR RESPONDENT 4 IN
WP(L)/4051/2023**

**Mr Dharmesh S Jain, i/b Anil T
Agrawal.**

**FOR RESPONDENT 5 IN
BOTH PETITIONS**

**Mr Nishit Dhruva, with Prakash
Shinde, Niyati Merchant, Yash
Dhruva & harsh Sheth, i/b
MDP & Partners.**

**FOR RESPONDENT 6 IN
WP(L)/4051/2023**

**Mr Ravi Kadam, Senior Advocate,
with Gaurav Mehta, CD Metha,
Aamir Ali Shaikh, i/b Dhruve
Liladhar & Co.**



LEGALERA
BY THE PEOPLE. FOR THE PEOPLE. WITH THE PEOPLE.

**CORAM : G. S. Patel &
Neela Gokhale, JJ**

DATED : 10th March 2023

ORAL JUDGMENT (Per GS Patel J):

1. The 1st Petitioner imports and exports Cocoa products of various kinds. Some of its business involves exports. Petitioner No. 2 is a director of Petitioner No. 1, VJ Jindal Cocoa Private Limited (“Jindal Cocoa”).

2. The Petition, brought under Article 226 of the Constitution of India, seeks the following reliefs:

“(A1) This Hon’ble Court be pleased to issue a Writ of Mandamus or any other appropriate writ or order or direction in the nature of Mandamus under Article 226 of the Constitution of India, 1950 thereby directing Respondent Nos. 3 to 5 to refrain from acting and /or taking any coercive steps with respect to Petitioner No. 1’s respective Accounts maintained/operated with Respondent Nos. 3 to 5, in furtherance of Respondent No. 6’s aforesaid Email dated 2nd February 2023 and two e-mails both dated 4th February 2023;

(A2) This Hon’ble Court be pleased to issue a Writ of Certiorari or any other appropriate writ or order or direction in the nature of Certiorari under Article 226 of the Constitution of India, 1950 thereby calling for the records and proceedings in respect of the aforesaid Email dated 8th February 2023 and Letter dated 7th February 2023 addressed by Respondent Nos. 3 and 5, respectively, and after going through the legality, validity and propriety thereof, be pleased to quash and set aside the same;

(B) This Hon’ble Court be pleased to issue a Writ of Mandamus or any other appropriate writ or order or direction in the nature of Mandamus under Article 226 of the Constitution of India, 1950 thereby directing Respondent Nos. 3 and 5 to forthwith de freeze Petitioner No. 1’s respective Accounts maintained with them;

(C) This Hon’ble Court be pleased to issue a Writ of Mandamus or any other appropriate writ or order or direction in the nature of Mandamus under Article 226 of the Constitution of India, 1950 thereby directing Respondent No. 2 to direct Respondent No. 6 to withdraw the aforesaid email dated 2nd February 2023 and 2 Emails both dated 4th February 2023 addressed to Respondent Nos. 2 to 5.

(D) This Hon'ble Court be pleased to issue a Writ of Mandamus or any other appropriate writ or order or direction in the nature of Mandamus under Article 226 of the Constitution of India, 1950 thereby directing Respondent No. 2 to restrain Respondent No. 6 from addressing any similar communications to Respondent Nos. 3 to 5 and/or any banks with whom Petitioner No. 1 maintains/operates Accounts with, in relation to Respondent No. 2's aforesaid circular dated 6th August 2020;

(E) This Hon'ble Court be pleased to issue a Writ of Mandamus or any other appropriate writ or order or direction in the nature of Mandamus under Article 226 of the Constitution of India, 1950 thereby directing Respondent No. 2 to take strict action against Respondent No. 6."

3. Ms Mistry on behalf of the Petitioners has instructions to state that the second prayer (a) (shown as (A2) above) for a certiorari is not pressed. What remain, therefore, are the various reliefs for mandamus.

4. The 1st Respondent is the Union of India through the Ministry of Finance. It has almost no role to play in this. The 2nd Respondent is the Reserve Bank of India ("**RBI**") represented by Mr Kamat. The Respondents Nos. 3, 4 and 5 are, respectively, the Punjab National Bank ("**PNB**"), the Jammu and Kashmir Bank ("**J&K**") and Canara Bank ("**CanBank**"). As we shall presently see, they are not active participants in the present litigation. It is the 6th Respondent, HDFC Bank Limited ("**HDFC Bank**"), not a state-controlled bank, that is really the focus of the Petition. Jindal

Cocoa is aggrieved by certain communications that HDFC Bank sent to PNB, J&K Bank and CanBank. These were by an email dated 2nd February 2023 and two emails of 4th February 2023. To put this as compactly as possible, what HDFC Bank said in these emails to the three other banks was that there was a circular issued by the RBI circular that not allow any banking customer to have a current account with other banks if that customer already had credit facilities in the form of Cash Credit/Export Packing Credit (“CC/EPC”) in the banking system. According to HDFC Bank, all transactions had to be routed through the account of the borrowing customer with its principal lending bank. HDFC Bank said that it was the Bank with whom Jindal Cocoa had a EPC account and therefore any amounts in current accounts with any of the other three banks, i.e., PNB, J&K Bank and CanBank had to be remitted to Jindal Cocoa’s account with HDFC Bank. The Petition tells us that with HDFC Bank, Jindal Cocoa has a current account. It also had availed certain Export Packing Credit facilities.

5. According to Jindal Cocoa, before it opened its account and began its banking relationship with HDFC Bank, it had a current account with PNB at its Jammu branch opened on 30th January 2017. It also had a current account with CanBank at Nariman point and this was opened on 2nd March 2017. It similarly had an overdraft account with J&K Bank in Jammu which is opened on 1st August 2021. Lastly, there is a reference to an Exchange Earners Foreign Currency account that Jindal Cocoa established with CanBank’s Nariman point branch but that was much later, on 1st August 2022.

6. According to Jindal Cocoa, there is in place and applicable to its credit facility with HDFC Bank some scheme of interest subvention. We are not concerned with the details of this. Jindal Cocoa claims that HDFC Bank wrongfully reversed and withheld some amounts of interest subvention and wrongfully levied penal interest and other charges, debiting these to Jindal Cocoa's current account and EPC facilities. Jindal Cocoa has been in correspondence since April 2022 and has in fact invoked the jurisdiction of the Banking Ombudsman. That was the subject matter of a separate petition on which we have made a separate order. There is some reference to this correspondence between paragraphs 11 to 18.

7. Paragraph 19 of the Petition sets out the controversy. On 2nd February 2023, HDFC Bank emailed PNB (copy at Exhibit "N" to the Petition at page 93), referencing RBI revised instructions and a circular dated 6th August 2020. HDFC Bank said that, under the circular, no bank was permitted to open a current account for customers who had credit facilities in the form of CC/EPC from the banking system. All transactions had to be routed through account with the creditor bank. Then the email says that Jindal Cocoa has a EPC facility with HDFC Bank and therefore, following the RBI circular, Jindal Cocoa could not have current accounts with any other bank. HDFC Bank said that it had found that Jindal Cocoa also held a current account with PNB Bank. Therefore, the PNB Bank current account of Jindal Cocoa had be closed. HDFC Bank asked PNB to arrange this closure immediately and to remit the balance to Jindal Cocoa's account with HDFC Bank. It also noted

that Jindal Cocoa's group company was classified as a Non-Performing Asset ("NPA").

8. On 4th February 2023, HDFC Bank sent similar emails to J&K Bank and to CanBank. Copies of these are at Exhibit "O" and "P" to the Petition at pages 95 and 97 respectively. There is no material difference for our purposes between these and the email sent to PNB.

9. All three banks, PNB Bank, J&K Bank and CanBank forwarded the mails that they had received from HDFC Bank to Jindal Cocoa. It replied on 6th and 7th February to the three banks. In substance, it said that it had maintained accounts with these three banks for several years earlier, well before it set up its banking relationship with HDFC Bank. Jindal Cocoa said that the RBI circular in question would not and did not apply to Jindal Cocoa and there was therefore no question of acting on HDFC Bank's demand nor of Jindal Cocoa having violated any circular or guidelines. It also pointed out that there were pending disputes between Jindal Cocoa and HDFC Bank which were being taken up by the Banking Ombudsman and, therefore, Jindal Cocoa requested that no action should be taken on HDFC Bank's email. On 6th February 2023, Jindal Cocoa wrote to the Governor of the RBI. A copy of that correspondence is also annexed. Then on 7th February 2023, Jindal Cocoa wrote to HDFC Bank, broadly repeating what it had said to the other three banks.



10. According to Jindal Cocoa, it then received an email from CanBank on 8th February 2023, saying that it had blocked Jindal Cocoa's accounts and directed Jindal Cocoa not to issue further cheques. CanBank demanded a no-objection certificate ("NOC") from HDFC Bank to resume operations of Jindal Cocoa's account with CanBank. A copy of that email is at Exhibit "Z" to the Petition. The complaint is that CanBank has virtually frozen Jindal Cocoa's account with it and has stopped all remittances for imports and exports.

11. A similar letter came to Jindal Cocoa on 9th February 2023 from J&K Bank also saying that Jindal Cocoa's account with that bank had been frozen "as per RBI guidelines" since Jindal Cocoa had credit facilities with HDFC Bank. J&K Bank called on Jindal Cocoa to get its account with J&K Bank closed within a week. The assertion was that there was non-compliance with the HDFC Bank NOC.

12. In paragraph 28 of the Petition, there is an apprehension expressed that PNB would similarly act on HDFC Bank's demand unless restrained. Therefore, this Petition.

13. The RBI has filed an Affidavit in Reply. In this, it maintains that the action by HDFC Bank is correct and calls for no interference. Mr Kamat has taken us through some portions of the Affidavit. Importantly, to this Affidavit as also to the Affidavit filed by the HDFC Bank is a copy of the complete consolidated circular in question to which we will be shortly making reference. Mr Kamat

for RBI and Mr Kadam for HDFC Bank have both placed before us what according to them is a correct interpretation of the circular to show that it is fully applicable in the facts and circumstances of the case. As we shall presently see the circular deals with certain specified situations and for a clear understanding annexes a flow chart.

14. Mr Seervai and Ms Mistry have contended that the circular in its entirety is inapplicable. If it is applicable, the safeguards in it must be followed and there is no possibility of applying the circular without those safeguards. The consolidated circular is of 19th April 2022. The correspondence may have referred to an earlier circular of 6th August 2020 but all before us have proceeded on the basis of the consolidated circular. This brings together the previous circular of 6th August 2020 and subsequent circulars of 4th August 2021 and 29th October 2021.

15. HDFC Bank in its Affidavit in Reply says that the Writ Petition is not maintainable, a submission in which Mr Kadam is joined by Mr Kamat. In any case, even if it is assumed that a writ petition will lie because the relief is fashioned as a direction to RBI to issue appropriate orders to HDFC Bank, the impugned actions are consistent with the consolidated circular and are reasonable. It is also submitted that these are matters of contract and specifically arise under the sanction letter issued by HDFC Bank on 8th August 2017 and a later document of 10th August 2020. These are the contractual banking and commercial relations between Jindal Cocoa and HDFC Bank. These sanction letters have express reference to

all RBI circulars and make these applicable. No exception is carved out for the consolidated circular in question.

16. On facts, Mr Kadam submits that it was found that contrary to the sanction letter and contrary to the RBI consolidated circular Jindal Cocoa had begun routing export proceedings through one or more of the other Banks, i.e., PNB Bank, J&K Bank and CanBank. This it could not have done; those export earnings had to be routed through the HDFC Bank alone. It is of little use, Mr Kadam and Mr Kamat contend, to say that one or other of these other bank accounts is or are meant only for statutory payments. The question is not about the nature of the use of facilities in an account but whether such use for any purpose at all is permitted.

17. Before we turn to the Affidavit, we must consider the consolidated circular in question. Rather than reproduce the whole of this lengthy circular in the body of this judgment, we take the liberty of annexing it. This is for ease of reference. This is taken from the RBI Affidavit from pages 386 to 393. At page 394 there is a flow chart. A scan of this flow chart is part of the consolidated circular annexed to this order.

18. Introductory paragraph B of the consolidated circular references the previous circulars from 6th August 2020 and states that the present circular is indeed a consolidation. The caption is this: “*opening of current accounts and CC/OD accounts by banks*”. This gives us overall context: current accounts and Cash Credit /Overdraft (“**CC/OD**”). Paragraph C at page 388 says clearly that

these instructions apply to current accounts and CC/OD accounts “opened or maintained” with all scheduled commercial banks and all payment banks. The banking system for the purpose of circular is defined to include scheduled commercial banks and payment banks. The expression ‘exposure’ is defined to mean the sum of sanctioned fund-based and non-fund-based credit facilities availed by a borrower. All such facilities carried in their Indian books are included for the purposes of exposure calculations.

19. The circular has five major sections or paragraphs. The first relates to opening of current accounts for borrowers availing CC/OD facilities from the banking system. Paragraph 2, which is the contentious one, speaks of opening of current accounts for borrowers *not* availing CC/OD facilities from the banking system. Paragraph 3 is simply captioned “opening of CC/OD facilities.” As we shall see it operates in a different context. Paragraph 4 sets out exemptions regarding specific accounts. Paragraph 5 has “other instructions”.

20. In paragraph 1, the threshold criterion for application is a split between cases where a borrower’s aggregate exposure in the banking system is less than Rs 5 crores and where it is more than Rs 5 crores. Paragraph 1.1 deals with the situation where the aggregate exposure is under Rs 5 crores. We are not concerned with this. Paragraph 1.2 deals with the situation where the aggregate exposure is Rs. 5 crores or more. But paragraph 1 has two other criteria. First, there must be an opening of a current account and it must apply to borrower “availing” CC/OD facilities. What paragraph 1.2 says is that in this

situation, i.e., where a current account is obtained by a borrower who *does* have a CC/OD facility, a borrower can open a current account provided the bank has at least 10% of the aggregate exposure of the banking system to that borrower. Other banks can open only collection accounts. Non-lending banks cannot open current/collection accounts.

21. We then come to paragraph 2. The threshold criteria here are: (i) opening of current accounts by borrowers and (ii) the borrowers do *not* avail of CC/OD facilities from the banking system. Paragraph 2.1 again limits its application to cases where borrowers with a defined aggregate exposure in the banking system. Paragraph 2 has three components: (i) where the exposure is more than Rs. 50 crores, (ii) where the exposure is between Rs. 5 crores and Rs. 50 crores and (iii) where the exposure is less than Rs. 5 crores. We are concerned with only the first of these since Jindal Cocoa's exposure is admittedly over Rs. 50 crores.

22. Where there is an aggregate exposure of Rs. 50 crores or more, i.e., where there is such an exposure the borrower has not availed of a CC/OD facility, paragraph 2.1 says that a bank must put in place an escrow mechanism. A borrower may choose any lending bank as an escrow managing bank. All lending banks must be a party to that escrow arrangement. The terms and conditions of this agreement are to be mutually decided. Then paragraph 2.1.2 says current accounts of "such borrowers" can only be "opened/maintained" by the escrow managing bank. Other lending banks can open collection accounts, but this is subject to the

condition that funds will be remitted from these accounts to the escrow accounts at an agreed frequency. The amounts in these collection accounts are not to be used to repay credit facilities or as collateral or margin for credit facilities. There is no prohibition on the amount of number of credits in the collection accounts. Debits are to be limited for remitting the proceeds to the escrow account. Non-lending banks are not to open any current account for such borrowers. Then there are the provisions where the aggregate exposure is more than Rs. 5 crores or less than Rs. 5 crores and where, similarly, where the exposure is less than Rs. 5 crores. Paragraph 2.4 says that banks are free to open current accounts of prospective customers who have not availed of any credit facilities from the banking system subject to necessary due diligence.

23. Paragraph 3 speaks simply of opening of CC/OD facilities. Paragraph 3.1 says that where a borrower approaches a bank for a CC/OD facility this can be done without restrictions, i.e., without restrictions in the circular, if the aggregate exposure to the banking system of that borrower is under Rs. 5 crores. However, the borrower must give an undertaking to inform the bank if the credit facilities go above Rs. 5 crores. For borrowers whose aggregate exposure exceeds Rs. 5 crores, banks who have 10% or more in the aggregate exposure can provide a CC/OD facility without restrictions. If no bank has at least a 10% exposure, the bank with the highest exposure can provide the CC/OD facility. Then there are similar provisions for credits and so on.

24. Paragraph 4 deals with exemptions and Ms Mistry has drawn our attention specifically to items (b) and (c) of paragraph 4.1 saying that accounts opened under the Foreign Exchange Management Act 1999 (“**FEMA**”) Act are exempted because they are meant to comply with the FEMA framework. There is a similar exemption to accounts for payment of taxes, duties, statutory dues which bank is authorised to collect these. The argument presented by Ms Mistry runs like this. The accounts in question with the other three banks were not “opened”. These were indeed current accounts, but they pre-dated, at least in two of the three cases, the opening of the HDFC Bank account. She submits that this fact alone would immediately exclude the operation of the consolidated circulars. She accepts that what is being invoked by HDFC Bank is paragraph 2, i.e., a situation where there is a current account by a borrower with an aggregate exposure of more than Rs. 50 crores and which borrower has not availed of a CC/OD facility from the banking system. The Jindal Cocoa account with HDFC Bank is an EPC credit facility. The submission is that the existing current accounts with the other banks, or, more accurately the pre-existing current accounts, are not affected or hit by the consolidated circular. The circular, in her submission, only restricts the opening of new current accounts and has no application to previously opened current accounts. The fact that paragraph 2.1.2 uses the word “maintains” cannot apply to old current accounts. These can continue, she submits, in an unrestricted fashion.

25. We believe that this approach unfortunately strips the consolidated circular of the necessary context. That context is provided by the Affidavit in Reply of RBI. Paragraph 10 of that

Affidavit at page 354 says that RBI issued this series of circulars after several rounds of deliberations and consultations to protect the entities it regulates under the Banking Regulation Act and in the public interest. There was a very real danger or risk perceived that current accounts were being used to divert funds and to commit fraud. The consolidated circular provided a framework for monitoring and oversight. Paragraph 11 says that in 2004 the RBI advised banks to ensure that they and their branches did not open current accounts of entities without specifically obtaining a NOC from a lending bank. Banks were allowed to open current accounts of prospective customers if there was no response from existing bankers after a minimum wait period of a fortnight. But RBI received complaints regarding noncompliance and these are said to have affected recovery efforts by lending institutions. We find this mentioned in paragraph 12 of the RBI Affidavit at page 356. The RBI found that non-lending banks were opening current accounts of borrowers from other banks without following the guidelines. Business proceeds were not being routed through accounts maintained with the lender banks. There was a mushrooming of current accounts by unscrupulous borrowers, especially with non-lender banks, and funds were being diverted for unauthorised purposes. Lending banks were unable to monitor cash flows or to efficiently recover their dues. There was a systematic increase, consequently in NPAs. This is the assertion in paragraph 13 of the Affidavit.

26. Paragraphs 14 to 17 of the RBI Affidavit at pages 357 to 358 are relevant:

“14. Banks, specifically non-lending banks had no incentive to prevent a borrower of other bank from opening accounts with it, as a current account meant cheap inflow of funds for the account-opening bank. Often, the lending banks did not invoke the terms and conditions under the loan agreement to discipline the erring borrowers owing to highly competitive banking system which further encouraged unscrupulous borrowers and non-lending banks.

15. The aforesaid situation resulted in (i) increase in frauds and NPAs; (ii) divergence in the assessment of NPAs; and (iii) diversion of funds. Respondent No. 2 introduced the circulars to: (i) prevent unscrupulous fund diversions; (ii) monitor cash flows of borrowers; (iii) prevent frauds and NPAs; and (iv) ultimately, increase credit discipline among the borrowers.

16. The circulars were introduced as a pre-emptive step to avoid loss of public money. The importance of the circulars is strengthened from the fact that if such activities are permitted to continue, it will cause immense loss to the monitor's banking system and will eventually take significant time for resolution.

17. It was in this context and with an aim to increase credit discipline amongst the borrowers, that the guidelines on opening of current accounts were reviewed, and the revised guidelines in form of the circular dated August 06, 2020, was issued. A copy of the circular dated August 06, 2020 (DOR.No.BP.BC/7/21.04.048/ 2020-21) is annexed hereto and marked as **Exhibit "C"** . Considering the feedback received from various stakeholders, subsequent circulars dated November 2, 2020 [DOR. No. BP.BC/27/21.04.048/ 2020-21 - **Exhibit "D"**], December 14, 2020 [DOR.No.BP.BC.21.04.048/2020-21 - **Exhibit "E"**],

August 04, 2021 [DOR.CRE.REC.35/21.04.048/2021-22 – **Exhibit “F”**], and October 29, 2021 [DOR.CRE.REC.63/21.04.048/2021-22 – **Exhibit “G”**] were issued on the subject. A consolidated circular incorporating all extant instructions on the subject was issued on April 19, 2022 [DOR.CRE.REC.23/21.08.008/2022-23 – **Exhibit “H”**]. The circulars have been issued in larger public interest in accordance with statutory powers vested with RBI and are obligatory for the banks, to abide by.”

(Emphasis added)

27. In paragraph 18, there is an explanation of the consolidated circular that we have already seen. In paragraphs 19 and 20, the RBI Affidavit says this:

“19. It is submitted that the circulars are applicable both on borrowers who have availed CC/OD facilities, as well as on borrowers who have not availed CC/OD facilities. However, the regulations that is applicable on a particular borrower may differ depending on whether or not the customer has availed CC/OD facilities. It is also submitted that banks are required ensure compliance with the above instructions with regards current and CC/OD accounts opened prior to the instance of the instructions as well. Under the circular dated August 06, 2020, banks were provided 3 (three) months’ time to ensure compliance with the instructions. The timeline for ensuring compliance of the circular was extended vide subsequent circulars and time till November 29, 2021 was provided to banks for ensuring compliance.

20. Respondent No. 2 had *inter alia* provided an alternate mechanism to the stakeholders to seek redressal of their grievances, if any, in a streamlined manner during the

implementation of instructions with regards to existing accounts. Banks were advised to utilize the additional time provided for ensuring compliance to engage with their customers and arrive at mutually satisfactory resolutions within the ambit of the circulars. In case, the constituent banks are not able to resolve the issues banks may escalate those issues with Indian Banks' Association (“**IBA**”). IBA was required to raise such residual issues requiring regulatory consideration with Respondent No. 2 for examination by September 30, 2021. Respondent No. 2 issued the circular dated October 29, 2021 after taking into consideration all the feedbacks received.”

(Emphasis added)

28. Mr Kadam for HDFC Bank supports Mr Kamat’s interpretation and says that as the prime lender of a credit facility, and this is a case, he points out, where there is no other competing credit facility but only a question of a single credit facility and multiple current accounts, HDFC Bank is bound to observe and follow the RBI consolidated circular both in letter and spirit. He contests the formulation advanced by Ms Mistry and says that if her interpretation is to be accepted, then it presents the simplest device to get around the application of the RBI circular and to continue to perpetrate the mischief that the consolidated circular seeks to address. All that a borrower needs to do, he submits, is to show that there was some historical current account and to push all incoming funds or inflows into that account instead of the lending/borrowing account. That is *precisely* the mischief the RBI detected and attempted to address: the illicit diversion of inflows from the lending/borrowing credit account, where they had to be brought in, to other current accounts outside the lending relationship.

29. Further, he submits, no such exemption can be implied. It must be explicit. If previously obtained current accounts were to be exempted from the purview or the ambit of the circular, the RBI would have said so. He points out that where unrestricted operations are contemplated, the consolidated circular specifically says so.

30. We believe this to be entirely correct. As Mr Kamat and Mr Kadam point out, the entire purpose of the circular is to protect lending banks and to ensure smooth recovery. The RBI's Affidavit notes the prevalence and upsurge of frauds by *diversion* of funds: those that ought to have come into the lending bank's account were being moved into current accounts elsewhere. The circular attempts to curb and stop this. The circular's purpose is not achieved by permitting an unregulated dispersal of inflows into diverse accounts at the option of the borrower. Correctly read, the circular demands what is best thought of as a funnelling or channelling mechanism: once there is a lending account with an exposure of over Rs 50 crores, all inflows must be routed into that lending account. Inflow and outflow transactions in other current accounts are not permitted. If there are other current accounts, then these are carefully calibrated to be only collection accounts. What Ms Mistry suggests is that, somehow, for her clients alone (or a class such as they, ones who have previously opened current accounts), there is no perception of risk at all. Therefore, the restrictions of the circular cannot apply. But absolutely nothing is shown to us in this direction. Ms Mistry cannot show how the mischief perceived by the RBI (of current accounts being used to keep money from entering the lending account) is inapplicable or without any possibility of



occurrence on her construct, i.e., of being allowed unrestricted use of pre-existing current accounts. Indeed, according to Mr Kadam, that is precisely what is happening and what is being done by Jindal Cocoa: funds that should have the HDFC Bank lending EPC account as a destination are re-routed into current accounts with other banks, and this is being done on the basis that those other current accounts are not 'being opened' but are 'already opened'.

31. As to Ms Mistry's submission that there must therefore be an escrow mechanism, we agree with Mr Kadam that this is an argument that rejects itself. The provision for an escrow mechanism is predicated on there being *multiple* lending banks. One of these may be chosen as the escrow bank. But where there is only one lending bank and there are also several other *non-lending banks* where a borrower has a current account then there is no question of an 'escrow'. The entire concept of an 'escrow' mechanism is to create a common pool from which disbursement is triggered only on the occurrence of defined events. Multiple lenders would be rival claimants to the funds in the escrow account. Which one should have priority, or how the funds should be shared (equally, pro rata to the size of the debt, according to priority of security, etc.) are all matters to be decided and which relate to distribution from this common escrow pool. That entire scenario simply does not arise. PNB, J&K Bank and CanBank are not lenders. There cannot be an 'escrow' with them. They have no claim over funds because they are not lenders. The submission leads to an absurdity in interpretation where the only two in the so-called 'escrow' are the present disputants, Jindal Cocoa and HDFC Bank. That is not the purpose



of an escrow and indeed there can be no such escrow — it would only be another method to keep the funds away from HDFC Bank.

32. Mr Kadam’s submission is that the word “maintained” is used in paragraph 2 in relation to current account. Necessarily, this includes pre-existing current accounts. Mr Kamat concurs. So do we.

33. What both Mr Kadam and Mr Kamat also say is that here is the situation where a single circular is being consistently interpreted in a particular manner not only by the author of that circular, namely the RBI, but also by the banks that it regulates, namely HDFC Bank, PNB Bank, J&K Bank and CanBank. All the entities in the banking system, therefore, agree on the purpose and applicability of the RBI circular. If this is seen as an invocation of a doctrine similar to that of executive interpretation, then while this might not necessarily be binding or even determinative, it is nonetheless accepted to be one of significant persuasive value. There is no reason, Mr Kadam and Mr Kamat submit, for a consistent and uncontroverted interpretation to be upset at the instance of a disputatious borrower. Harking back to their long years in intellectual property law, both Mr Kadam and Mr Kamat ask why a court should be so astute as to deny that Jindal Cocoa is doing what it is evidently straining every nerve to do.¹

34. Both Mr Kadam and Mr Kamat also submit that the doctrines of purposive interpretation and the mischief rule, both well-settled

¹ *Slazenger & Sons v Feltham & Co*, (2) RPC 1889 6 531.

in statutory interpretation, support their approach. The purpose of the consolidation circular, and its evolution from 2004, is noted in the RBI Affidavit. As to the question of mischief, the RBI Affidavit clearly points out what the effect of opening unregulated current accounts and more particularly of ‘maintaining’ — that is to say, operating — these outside the control of the primary lending bank was to the banking system: the unacceptable increase in the number of NPAs. The RBI Affidavit clearly says that the result was difficulty in recovery of those assets and of the loans and this thus weakens the entire banking system.

35. At this point Mr Kadam points out that whatever be the differences about debits, credits, subventions and so forth, the test is not about the validity of those transactions because those lie outside the remit of the writ court but whether the borrower’s action fall within the parameters of the guidelines or can be reasonably said to so fall.

36. We believe we must accept the interpretation of both Mr Kadam and Mr Kamat. Our view is fortified by a quick consideration of the flow chart that is appended. This is obviously meant for greater understanding, but it provides a nearly algorithmic or binary interpretation of as an aid to navigating the consolidated circulars. The flow chart is in two parts. Appendix 1 clearly applies to paragraph 2 of the circular. The first threshold test when a borrower approaches a bank to open a current account is to see whether the borrower has a CC/OD facility from the banking system. This admits of *yes/no* answer. In the present case, it would

be no. Then the test would be what would be the aggregate exposure of the banking system to the borrower? Would it be more than Rs 50 crores or less? If the exposure is Rs. 50 crores then this would take us to the last item in the right-side bottom chart in Appendix 1 which requires inter alia in paragraph 2 that only the lending bank could act as the escrow managing bank or agent to open current accounts and other lending banks could only open collection accounts. Mr Kadam says that if this scheme is to be restricted to only the “opening of” “new” current accounts then the entire purpose of monitoring that the RBI has said on Affidavit would be jeopardized and rendered nugatory. What the RBI has in fact in his submission the circular in question is not restricted merely to the opening of a current account but extends as a natural corollary to pre-existing current accounts and to their active use or, in the words of the circular to these being “maintained”. If those current accounts were dormant and were not active or were not being used, there would be no call for action because those accounts were redundant. But if those other current accounts outside of the principal bank are being used to receive funds which are meant to be routed into the EPC account, then that is clearly prohibited.

37. Notably, as both Mr Kamat and Mr Kadam point out, the consolidated circular itself is not challenged. There is no explanation anywhere in the Petition as to how the remittances or inflows into the current accounts maintained by Jindal Cocoa with PNB Bank, J&K Bank and CanBank can legitimately be excluded from the consolidated circular’s ambit.

38. Mr Kadam for HDFC Bank says that the question of any disputes between HDFC Bank and Jindal Cocoa cannot possibly be the subject matter of a writ proceeding. In that, he is completely correct. Those are contractual disputes and the remedies of one party against the other clearly lie elsewhere.

39. On the question of the maintainability of the Writ Petition, Mr Kadam relies on the decision of the Supreme Court in *Federal Bank Ltd v Sagar Thomas and Ors.*² In paragraph 32, the Supreme Court said that just because the RBI prescribes the banking policy and controls various banks under the Banking Regulation Act, this does not mean that private entities that carry on the business commercial activity of banking discharge any public function or duty. In *Chanda Deepak Kochhar v ICICI Bank Ltd, Mumbai & Anr.*,³ a Division Bench of this Court held that no writ would lie against ICICI Bank being a private body and not an instrumentality of the State. A Special Leave Petition from that decision was dismissed on 1st December 2020.⁴ Mr Kadam also submits that if a writ against a private bank is not maintainable, it cannot seek to get the same relief in a circuitous manner by referencing RBI: *MK Rappai & Ors v John & Ors.*⁵

40. The submission by Ms Mistry on maintainability runs like this. *First*, that because that HDFC Bank provides broad banking facilities, therefore it must be held to perform to the extent

2 (2003) 10 SCC 733.

3 2020 (5) MhLJ 219.

4 2020 SCC OnLine SC 969.

5 (1969) 2 SCC 590, paragraphs 12.

necessary to invoke this Court's jurisdiction, a public function. Funding from the State or State control is not, she submits, the only test. It has not been the only test for a very long time. She refers to the 2005 decision of the Supreme Court in *Board of Control for Cricket in India v Cricket Association of Bihar & Ors*⁶ and to the decision of the Supreme Court in *St Mary's Education Society & Anr v Rajendra Prasad Bhargava & Ors*.⁷ In *St Mary's Education Society*, in paragraph 68, the Supreme Court summed up its conclusions in regard to an educational institution. It said that an application under Article 226 lies and is maintainable against a person or a body who or which discharges a public duty or a public function. That public duty may be either statutory or otherwise but if it is "otherwise" that entity must be shown to owe that duty or obligation to the public involving an element of public law. For the discharge of a public function, it must be shown that the body or the person was seeking to achieve this for the collective benefit of the public or a section of it and its authority to do so must be accepted by the public. In the context of the educational institution, considering this aspect and further considering the principle that the action complained of must have a direct nexus with the discharge of a public duty, the Supreme Court ultimately held that in the case before it there was no element of public law made out. We believe this is equally applicable with full vigour to the facts of this case. There is no public duty or public function shown to be discharged by HDFC Bank. It is in no sense doing it for the collective benefit of the public nor is it appointed whether by RBI or itself as the

6 2015 3 SCC 251.

7 2022 SCC OnLine SC 1091.

custodian or guardian of RBI governing circulars. This is purely an invocation in the context of a private contractual dispute.

41. The reference by Ms Mistry to the decision of the Supreme Court in *Desh Bandhu Gupta & Co & Ors v Delhi Stock Exchange Association Ltd*,⁸ in regard to the principles of interpretation and particularly *contemporanea expositio* (interpreting a statute by reference to the exposition it receives from contemporaneous authority), is a well-settled branch of the law. This is precisely what we have done. We have given some weight but not taken as determinative what the RBI and the banks say. We have not suggested that their interpretation is binding or has a controlling effect on Courts. But if that interpretation is to be dislodged, as *Desh Bandhu Gupta* itself says, this must be for cogent and persuasive reasons. It must be demonstrated that there is a facial error in the interpretation canvassed by the contemporary authority. Only then will a Court without hesitation refuse to follow the construction recommended by that.

42. In *Ultratech Cement Ltd & Anr v State of Rajasthan & Ors*,⁹ in paragraphs 25, 25.3 and 25.5, the Supreme Court referred to the decision in *Desh Bandhu Gupta* but did not depart from the principle. In fact, in paragraphs 25 and 25.1, we find that the attempt was to persuade the Supreme Court that the authority's understanding deserved to be accepted. The doctrine was said to be embodied in a maxim which meant that the best way to construe a

8 (1979) 4 SCC 565.

9 (2020) 7 SCR 392.

document would be to read it as it would have read when made. In paragraph 25.3, the *Ultratech Cement* court said that the principle is applied as a guide to interpretation by referring to the exposition that the document received from the competent authority at the relevant point in time. The *Ultratech Cement* Court said that when there is a contemporaneous construction placed by an executive or administrative authority charged with executing the statute — in this case the RBI — the Courts would lean in favour of attaching considerable weight to it, but it cannot be said that the understanding of a particular administrative or executive authority must be applied even if it is shown to be clearly erroneous.

43. We are unable to see how in the facts and circumstances of the case this can be said the application of the circular can be said to be erroneous. On the contrary, it is our view that granting the Petitioner relief would in effect not only run directly contrary to the circular but would possibly permit the continuance or growth of the very mischief that is sought to be addressed.

44. Seeing no merit in the Petition, we reject it. There will be no order as to costs.

45. Ms Mistry seeks an extension to the status quo order. In view of the above observations, we are unable to accept this request. The request is refused.

(Neela Gokhale, J)

(G. S. Patel, J)



भारतीय रिज़र्व बैंक
RESERVE BANK OF INDIA



RBI/2022-23/27

DOR.CRE.REC.23/21.08.008/2022-23

April 19, 2022

All Scheduled Commercial Banks
All Payments Banks

Madam / Dear Sir,

**Consolidated Circular on Opening of Current Accounts and CC/OD Accounts
by Banks**

Please refer to [circular DOR.No.BP.BC/7/21.04.048/2020-21 dated August 6, 2020](#) on *Opening of Current Accounts by Banks - Need for Discipline* and associated circulars thereon¹. The [Annex](#) consolidates all instructions/ guidelines issued on the subject till date.

Yours Faithfully,

(Manoranjan Mishra)
Chief General Manager

Encl: Flowcharts

¹[DOR.No.BP.BC.27/21.04.048/2020-21 dated November 2, 2020](#); [DOR.No.BP.BC.30/21.04.048/2020-21 dated December 14, 2020](#); [DOR.CRE.REC.35/21.04.048/2021-22 dated August 04, 2021](#); and [DOR.CRE.REC.63/21.04.048/2021-22 dated October 29, 2021](#).

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Opening of Current Accounts and CC/OD Accounts by Banks

A. Purpose

This Circular consolidates earlier instructions issued by the Reserve Bank of India, on opening and operation of current accounts and CC/OD accounts with a view to enforce credit discipline amongst the borrowers as well as to facilitate better monitoring by the lenders.

B. Previous Instructions

This circular consolidates instructions contained in the following circulars issued on the above subject:

- (i) [DOR.No.BP.BC/7/21.04.048/2020-21 dated August 6, 2020](#)
- (ii) [DOR.No.BP.BC.27/21.04.048/2020-21 dated November 02, 2020](#)
- (iii) [DOR.No.BP.BC.30/21.04.048/2020-21 dated December 14, 2020](#)
- (iv) [DOR.CRE.REC.35/21.04.048/2021-22 dated August 4, 2021](#)
- (v) [DOR.CRE.REC.63/21.04.048/2021-22 dated October 29, 2021](#)

C. Applicability

The provisions of these instructions shall apply to current accounts and CC/OD accounts opened or maintained with the following Regulated Entities (REs):

- (i) All Scheduled Commercial Banks
- (ii) All Payments Banks

D. Definitions

- (i) "Exposure" for the purpose of these instructions shall mean sum of sanctioned fund based and non-fund-based credit facilities availed by the borrower². All such credit facilities carried in their Indian books shall be included for the purpose of exposure calculation.
- (ii) "Banking System" for the purpose of these instructions, shall include Scheduled Commercial Banks and Payments Banks only.

² In case of proprietary firms, the aggregate exposure shall include all the credit facilities availed by the borrower, for business purpose or in personal capacity.

1. Opening of Current Accounts for borrowers availing Cash Credit/ Overdraft Facilities from the Banking System

1.1 For borrowers, where the aggregate exposure³ of the banking system is less than ₹5 crore, banks can open current accounts without any restrictions placed vide this circular subject to obtaining an undertaking from such customers that they (the borrowers) shall inform the bank(s), if and when the credit facilities availed by them from the banking system becomes ₹5 crore or more.

1.2 Where the aggregate exposure of the banking system is ₹5 crore or more:

1.2.1 Borrowers can open current accounts with any one of the banks with which it has CC/OD facility, provided that the bank has at least 10 per cent of the aggregate exposure of the banking system to that borrower. In case none of the lenders has at least 10 per cent of the aggregate exposure, the bank having the highest exposure among CC/OD providing banks may open current accounts.

1.2.2 Other lending banks may open only collection accounts subject to the condition that funds deposited in such collection accounts will be remitted within two working days of receiving such funds, to the CC/OD account maintained with the above-mentioned bank (para 1.2.1) maintaining current accounts for the borrower. The balances in such collection accounts shall not be used for repayment of any credit facilities provided by the bank, or as collateral/ margin for availing any fund or non-fund based credit facilities. However, banks maintaining collection accounts are permitted to debit fees/ charges from such accounts before transferring funds to CC/OD account.

1.2.3 Non-lending banks are not permitted to open current/ collection accounts.

2. Opening of Current Accounts for borrowers not availing Cash Credit/ Overdraft Facilities from the banking system

2.1 In case of borrowers where aggregate exposure of the banking system is ₹50 crore or more:

2.1.1 Banks shall be required to put in place an escrow mechanism. Borrowers shall be free to choose any lending bank as their escrow managing bank. All lending banks should be part of the escrow agreement. The terms and conditions of the agreement may be decided mutually by lending banks and the borrower.

³ Banks may compute the aggregate exposure based on the information available from Central Repository of Information on Large Credits (CRILC), Credit Information Companies (CICs), National E-Governance Services Ltd. (NeSL), etc. and by obtaining customers' declaration, if required.

2.1.2 Current accounts of such borrowers can only be opened/ maintained by the escrow managing bank.

2.1.3 Other lending banks can open 'collection accounts' subject to the condition that funds will be remitted from these accounts to the said escrow account at the frequency agreed between the bank and the borrower. Further, balances in such collection accounts shall not be used for repayment of any credit facilities provided by the bank, or as collateral/ margin for availing any fund or non-fund based credit facilities. While there is no prohibition on amount or number of credits in 'collection accounts', debits in these accounts shall be limited to the purpose of remitting the proceeds to the said escrow account. However, banks maintaining collection accounts are permitted to debit fees/ charges from such accounts before transferring funds to the escrow account.

2.1.4 Non-lending banks shall not open any current account for such borrowers.

2.2 In case of borrowers where aggregate exposure of the banking system is ₹5 crore or more but less than ₹50 crore, there is no restriction on opening of current accounts by the lending banks. However, non-lending banks may open only collection accounts as detailed at para 2.1.3 above.

2.3 In case of borrowers where aggregate exposure of the banking system is less than ₹5 crore, banks may open current accounts subject to obtaining an undertaking from them that they (the customers) shall inform the bank(s), if and when the credit facilities availed by them from the banking system becomes ₹5 crore or more. The current account of such customers, as and when the aggregate exposure of the banking system becomes ₹5 crore or more, and ₹50 crore or more, will be governed by the provisions of para 2.2 and para 2.1 respectively.

2.4 Banks are free to open current accounts of prospective customers who have not availed any credit facilities from the banking system, subject to necessary due diligence as per their Board approved policies.

2.5 Banks are free to open current accounts, without any of the restrictions placed in this Circular, for borrowers having credit facilities only from NBFCs/ FIs/ co-operative banks/ non-bank institutions, etc. However, if such borrowers avail aggregate credit facilities of ₹5 crore or above from the banks covered under these guidelines, the provisions of the Circular shall be applicable.

3. Opening of Cash Credit/ Overdraft Facilities

3.1 When a borrower approaches a bank for availing CC/OD facility, the bank can provide such facilities without any restrictions placed vide this circular if the aggregate exposure of the banking system to that borrower is less than ₹5 crore. However, the bank must obtain an undertaking from such borrowers that they (the borrowers) shall inform the bank(s), if and when the credit facilities availed by them from the banking system becomes ₹5 crore or more.

3.2 For borrowers, where the aggregate exposure of the banking system is ₹5 crore or more:

3.2.1 Banks having a share of 10 per cent or more in the aggregate exposure of the banking system to such borrower can provide CC/OD facility without any restrictions placed vide this circular.

3.2.2 In case none of the banks has at least 10 per cent exposure, bank having the highest exposure among CC/OD providing banks can provide such facility without any restrictions.

3.2.3 Where a bank's exposure to a borrower is less than 10 per cent of the aggregate exposure of the banking system to that borrower, while credits are freely permitted, debits to the CC/OD account can only be for credit to the CC/OD account of that borrower with a bank that has 10 per cent or more of aggregate exposure of the banking system to that borrower. Funds will be remitted from these accounts to the said transferee CC/OD account at the frequency agreed between the bank and the borrower. Further, the credit balances in such collection accounts shall not be used for repayment of any credit facilities provided by the bank, or as collateral/ margin for availing any fund or non-fund based credit facilities. However, banks are permitted to debit interest/ charges pertaining to the said CC/OD account and other fees/ charges before transferring the funds to the CC/OD account of the borrower with bank(s) having 10 per cent or more of the aggregate exposure. It may be noted that banks with exposure to the borrower of less than 10 per cent of the aggregate exposure of the banking system can offer working capital demand loan (WCDL)/ working capital term loan (WCTL) facility to the borrower.

3.2.4 In case there is more than one bank having 10 per cent or more of the aggregate exposure, the bank to which the funds are to be remitted may be decided mutually between the borrower and the banks.

4. Exemptions Regarding Specific Accounts

4.1 Banks are permitted to open and operate the following accounts without any of the restrictions placed in terms of paras 1, 2 and 3 of this Circular:

(a) Specific accounts which are stipulated under various statutes and specific instructions of other regulators/ regulatory departments/ Central and State Governments. An indicative list of such accounts is given below:

(i) Accounts for real estate projects mandated under Section 4 (2) I (D) of the Real Estate (Regulation and Development) Act, 2016 for the purpose of maintaining 70 per cent of advance payments collected from the home buyers

(ii) Nodal or escrow accounts of payment aggregators/ prepaid payment instrument issuers for specific activities as permitted by Department of Payments and Settlement Systems (DPSS), Reserve Bank of India under Payment and Settlement Systems Act, 2007

(iii) Accounts for the purpose of IPO/ NFO/ FPO/ share buyback/ dividend payment/ issuance of commercial papers/ allotment of debentures/ gratuity etc. which are mandated by respective statutes or by regulators and are meant for specific/ limited transactions only

(b) Accounts opened as per the provisions of Foreign Exchange Management Act, 1999 (FEMA) and notifications issued thereunder including any other current account if it is mandated for ensuring compliance under the FEMA framework

(c) Accounts for payment of taxes, duties, statutory dues, etc. opened with banks authorized to collect the same, for borrowers of such banks which are not authorized to collect such taxes, duties, statutory dues, etc.

(d) Accounts for settlement of dues related to debit card/ ATM card/ credit card issuers/ acquirers

(e) Accounts of White Label ATM Operators and their agents for sourcing of currency

(f) Accounts of Cash-in-Transit (CIT) Companies/ Cash Replenishment Agencies (CRAs) for providing cash management services

(g) Accounts opened by a bank funding a specific project for receiving/monitoring cash flows of that specific project, provided the borrower has not availed any CC/OD facility for that project

(h) Inter-bank accounts

(i) Accounts of All India Financial Institutions (AIFIs), viz., EXIM Bank, NABARD, NHB, and SIDBI

(j) Accounts attached by orders of Central or State governments/ regulatory body/ Courts/ investigating agencies etc. wherein the customer cannot undertake any discretionary debits

4.2 Banks maintaining accounts listed in para 4.1 shall ensure that these accounts are used for permitted/ specified transactions only. Further, banks shall flag these accounts in the CBS for easy monitoring. Lenders to such borrowers may also enter into agreements/ arrangements with the borrowers for monitoring of cash flows/ periodic transfer of funds (if permissible) in these accounts.

5. Other Instructions

5.1 In case of borrowers covered under guidelines on loan system for delivery of bank credit issued vide [circular DBR.BP.BC.No.12/21.04.048/2018-19 dated December 5, 2018](#), bifurcation of working capital facility into loan component and cash credit component shall continue to be maintained at individual bank level in all cases, including consortium lending

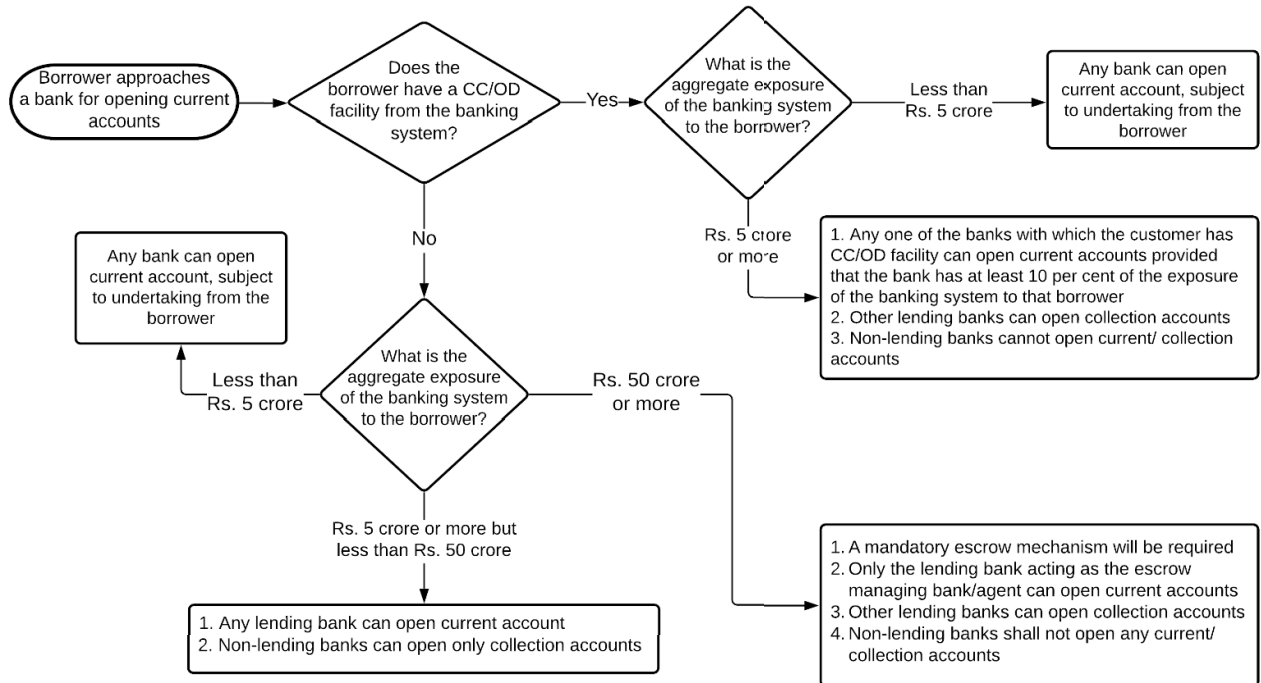
5.2 All banks, whether lending banks or otherwise, shall monitor all accounts regularly, at least on a half-yearly basis, specifically with respect to the aggregate exposure of the banking system to the borrower, and the bank's share in that exposure, to ensure compliance with these instructions. If there is a change in exposure of a particular bank or aggregate exposure of the banking system to the borrower which warrants implementation of new banking arrangements, such changes shall be implemented within a period of three months from the date of such monitoring.

5.3 Banks shall put in place a monitoring mechanism, both at head office and regional/ zonal office levels to monitor non-disruptive implementation of the circular and to ensure that customers are not put to undue inconvenience during the implementation process.

5.4 Banks should not route drawal from term loans through CC/ OD/ Current accounts of the borrower. Since term loans are meant for specific purposes, the funds should be remitted directly to the supplier of goods and services. In cases where term loans are meant for purposes other than for supply of goods and services and where the payment destination is identifiable, banks shall ensure that payment is made directly, without routing it through an account of the borrower. However, where the payment destination is unidentifiable, banks may route such term loans through an account of the borrower opened as per the provisions of the circular. Expenses incurred by the borrower for day-to-day operations may be routed through an account of the borrower.

Appendix 1

Flow Chart – Opening of Current Accounts



Appendix 2

Flow Chart – Opening of Cash Credit/ Overdraft Accounts

