Stressed Assets Resolution

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- ❖ Resolution through Change in ownership
- ❖ One time settlement

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Previous Framework

Evolution of debt resolution mechanisms

1985
Sick Industrial Companies (Special provisions) Act (BIFR)

1993
Recovery of Debt dues to Bank and Financial Institutes Act (DRTs)

2001
Corporate Debt Restructuring Cell (CDR)

2002
SARFAESI Act – ARCs

2014
Announced asset classification forbearance on Restructuring ended from MAR-15

Jan – 2014
Revitalising Distressed Assets in the Economy (SMA and JLF)

Dec – 2014
Flexible Structuring of long Terms Loan (5:25)

Jun -2015
Strategic Debt Restructuring (SDR)

Jun – 2016
Scheme of Sustainable Structuring of Stressed Assets (S4A)

Sep – 2016
Asset Reconstruction Companies (ARC)

Dec – 2016
Insolvency and Bankruptcy Code (IBC)

June – 2019
Resolution Plan under RBI guidelines which subsumes previous schemes

Past efforts in resolving stress have been largely ineffective

Scheme	Trigger	Key Features / Resolution Mechanism
CDR	• Aggregate outstanding exposure should be INR 10 Cr. • More than one lender (s)	• *Based on the viability criteria , reduction in interest rate , extension of length of payment tenure.* • *Rephasement and rescheduling of debt* • *Funding of interest,* • *Conversion of uncovered portion of debt into WCTL.* • *Reassessment of limits.* • *Additional funding etc*

Past efforts in resolving stress have been largely ineffective

Scheme	Trigger	Key Features / Resolution Mechanism
Corrective Acton Plan JLF')	• SMA – 2 accounts • Aggregate exposure > INR 1 billion	• Early stage resolution through JLF • Resolution through Rectification, Restructuring or Recovery
5 : 25	• Term Loans • Aggregate exposure > INR 5 billion • Projects in the infrastructure sector and in the eight core industries • Non NPA Accounts	• Fresh amortization schedule for the existing projects loans, once during the life time of the project, after the Commercial Operations Date • In case of NPA accounts, extension of flexible structuring scheme. Post which account still remains NPA
SDR	• Inability by borrower to achieve set viability milestones and/or adhere to 'critical conditions'	• Conversion of debt to equity to result in 51% shareholding held collectively by banks
S4A	• Aggregate exposure > INR 5 billion • Project has commenced commercial operations • Debt meets the test of sustainability	• JLF to identify sustainable debt after an independent TEV • Sustainable debt should not be less than 50% of current funded liabilities • Preparation of Resolution Plan • Resolution plan may involve change in ownership of borrower

Key factors that affected successful resolutions

Borrowers: Ambitious business projections

Debt levels: Unsustainably high, "Extend and Pretend"

Resolution schemes: "No Competitive Tension and Timelines"

Fragmented debt : "Lender Tension"

Legal structure: "Multiple Forums"

CONTENT

COVID Impact on Assets
(Sector wise)

Stress in various sectors Pre and Post COVID 2019

Steel Sector

- Cancellation of allotment of mines leading to unsustainable debt and market competitiveness
- Lower Capacity Utilization due to subdued demand / slowing of economy

Exports are unviable and cheap imports from China

- Covid Impact : Accumulation of large inventory, pLant Shutdown, Logistics breakdown leading to disruption in movement , Migrant Labour issue

Roads and Infrastructure.

- Delays in Land acquisition and environment clearances
- Long gestation period affecting financing and capital investments
- Due to pro-longed stress in this sector caused by arbitration claims & NPA tag, now very few qualified players in the market.
- Due to Covid, complete lockdown of projects and avaibility of labor will effect the restart of projects.

Stress in various sectors Pre and Post COVID 2019

Power Sector

- Lack of fuel supply arrangements and unviable tariffs resulting in increase in cost of coal.
- Stress in DISCOMS leading to piling up of receivables and timely availability of cash flows.
- Over capacity resulting into lower PPAs and long term viability. Also, renegotiation of PPAs by Discoms impacting financial viability.
- Due to Covid, being essential supply power producers are supplying power even though DISCOMS are not paying current receivables, resulting in mismatch of cash flows
- Recent government announcement of INR 90K crores relief package will improve cash flow situation.

Hospitality Sector

- Long gestation period and inadequate long term funding
- Due to political and social unrest in various parts of the country, impact on foreign tours.
- Due to Covid, restrictions on travel, visas etc. leading to complete shut down of the hotels resulting into low occupancy. Start of tourism will take longer time.
- Post lockdown, hygiene and health restrictions and procedures, occupancy will be affected long term. Lot many restaurants and hotels will become unviable.

Stress in various sectors Pre and Post COVID 2019

Auto Sector

- Due to change in emission norms and sluggish demand, old model inventory piled up.
- Technology transition and launch of new products.
- Liquidity and working capital issues resulting in supply chain disruption.
- Demand sluggish during COVID time. Due to stress in NBFC, limited availability of finance for consumers.

Telecom Sector

- Massive Capex to built the capacity leads to high leverage.(Debt is almost 4x of the revenue)
- Very high spectrum bidding fee and usage charges resulting into financial burden.
- Price wars led to sharp tariff drop in the past resulting into unsustainable debt.
- Low interconnection usage charges and entry of low priced operator.(JIO)

Stress in various sectors Pre and Post COVID 2019

NBFCs Sector

- Inability to monetise assets in real estate sector and construction projects.
- Rating downgrade resulting into non availability of refinance
- Instruction from regulator to reduce the exposure resulting into financial crunch.
- Due to covid, there might be shift in consumer behaviour, lower collections, deferments and loan-risk taking ability . Detoriation in asset quality.

Real Estate Sector .

- Delays in Land acquisition and government clearances
- Inadequate financing arrangements. High level of inventory and under construction projects coupled with declining price trend. This is resulting in poor investment sentiments,
- Due to Covid, complete lockdown of projects and availability of labor will effect the restart of projects.

CONTENT

Measures during COVID-19

Measures announced during Covid-19 on Resolution of Stressed Assets

COVID-19 Impact on Resolution of Stressed Assets

- Moratorium of 6 months granted by RBI for all TLs, WC facilities, etc.
- Rescheduling of payments will not qualify as a default for the purposes of supervisory reporting and reporting to CICs
- Loans not to downgrade and hence will not be classified as SMA
- Implementation period increased from 210 days from 390 days from day of default under CIRP
- Additional 10% provisioning to lenders due to the implication on the regulatory package
- No fresh filing of fresh insolvency proceeding for 1 year

- Provide ease to lenders with respect to provisioning and delay in implementation of Resolution Plan.
- Suspension period in IBC has led to make Prudential frame work the preferred method for Resolution of Stressed Assets.

Covid-19 Key Relaxations/ Reliefs announced on Resolution of Stressed Assets

1. Rescheduling of Payments – Term Loans and Working Capital Facilities:

- All lending institutions i.e. commercial banks, co-operative banks, All-India Financial Institutions and NBFCs have been permitted to allow a moratorium of six months on debt servicing in respect of all term loans outstanding falling due between 1 March 2020 to 31 August 2020 (Moratorium Period). While the payment of interest will be deferred, it will continue to accrue on the outstanding portion of the term loans during the Moratorium Period.
- RBI has clarified that the permission to extend moratorium not only extends to loans availed by corporates but also to facilities extended across the board, including agricultural term loans, crop loans and retail loans and to all form of instalments, including equated monthly instalments, bullet repayments and even credit card dues. There is not abundant clarity as to whether even the instalments which are falling due immediately after the moratorium period (and who have no instalments payable during the moratorium period).
- Further, in respect of working capital facilities sanctioned, the lending institutions have been permitted to defer payment of interest during the Moratorium Period. Even in case of working capital facilities, interest will continue to accrue during this period. RBI has also permitted Lending Institutions to convert the accrued interest accumulated on these working capital facilities during the Moratorium Period into funded interest term loans.

Covid-19 Key Relaxations/ Reliefs announced on Resolution of Stressed Assets

2. Easing of Working Capital Financing:

- For those borrowers facing stress on account of the economic fallout of the pandemic, the lending institutions have been permitted to recalculate the drawing power of the borrowers by reducing margins till 31 August 2020 and/or by reassessing the working capital cycle for the borrowers for limits sanctioned up-to 31 March 2021.
- However, Lending Institutions are required to restore the margins to the original levels by the end of this financial year. The lending institutions have the obligation to assess the necessity of such a readjustment/ recalculation and the borrower accounts to which such relaxation may be offered will need to be subjected to subsequent supervisory review as regards the justifiability of the relaxation on account of economic fallout on the business.

3. Board Approved Policy:

While the RBI has permitted lending institutions to extend these relaxations, lending institutions are required to frame board approved policies detailing the contours of the reliefs to be offered by them, which shall include, inter alia, the objective criteria for extending any reduction of margin/ reassessing working capital cycle for readjusting drawing power. The board approved policy is required to be disseminated in the public domain and be implemented by the lending institutions immediately

Covid-19 Key Relaxations/ Reliefs announced on Resolution of Stressed Assets

4. Classification of Special Mention Account and Non-Performing Assets:

- RBI has clarified that the dispensation offered under the COVID Regulatory Package will not be considered as a concession or change in terms and conditions of the loan agreements on account of a 'financial difficulty' as defined in RBI's - Prudential Framework for Resolution of Stressed Assets Directions, 2019 dated June 7, 2019 (June 7 Circular).
- Therefore, the moratorium/ deferment/ recalculation/ conversion of accrued interest into funded interest term loan **will not be deemed to a restructuring that requires asset classification under the June 7 Circular**.
- Going forward, any asset classification of the accounts will be determined basis the revised due dates and the repayment schedule after the deferment/ Moratorium Period. As regards the cash credit/ overdraft facilities, where aforesaid relief is provided, the special mention account status and the out of order status shall be evaluated basis the application of accumulated interest immediately at the end of the deferment period as well as basis the recalculation of drawing power, if any.
- Further, any non-payment of instalments during the Moratorium Period are not to be construed as defaults for the purposes of supervisory reporting by the lending institutions and the Credit Information Companies have also been mandated to ensure that the deferral/non-payment should not affect credit history of the borrowers.

Covid-19 Key Relaxations/ Reliefs announced on Resolution of Stressed Assets

5. **Extension of Timelines under June 7 Circular**

RBI has provided the following relaxations under June 7 Circular:

- Relaxation: **Accounts in the Review Period**: For accounts which are within the 30 days review period (Review Period) under June 7 Circular as on 1 March 2020, the period between 1 March 2020 to 31 August 2020 (Exclusion Period) shall be excluded for the calculation of the review period of 30 days.
- For such accounts, the balance Review Period shall commence from 1 September 2020, post which the lenders shall have 180 days for resolution of the stressed account.

Relaxation: **Accounts within the Resolution Period**: For those accounts which were in the 180 days implementation period (Implementation Period) under June 7 Circular as on 1 March 2020, RBI has provided an extension of 180 days from the date when the Implementation Period of 180 days was to expire.

Additionally, the lending institutions shall make relevant disclosures in the 'Notes to Account' for financial statements for the half-year ending 30 September 2020, as well as the financial years 2019-20 and 2020-21 in respect of accounts where the resolution period was extended.

Covid-19 Key Relaxations/ Reliefs announced on Resolution of Stressed Assets

6. **Asset Classification**

- RBI has permitted the lending institutions to exclude the Moratorium Period and the Deferment Period for calculating the number of days past due/ ageing for assets classification under Asset Classification under the Prudential Norms. Note that this relief is for those accounts that are classified as standard as on 29 February 2020 (including accounts classified as SMA-1 and SMA-2.
- RBI, however, made a specific reference to NBFCs and they may continue to comply with Indian Accounting Standards, their board policies and advisories issued by Institute of Chartered Accountants of India for recognition of impairments.

7. **Freeze on Asset Downgrade Reporting**

- RBI has clarified that the Moratorium Period and the Deferment Period shall be excluded in the supervisory reporting as well as while reporting to credit information companies. The number of days past due and the SMA status of the account as on 1 March 2020 shall remain unchanged till 31 August 2020.
- Additionally, while preparing their financial statements for the half-year ending 30 September 2020, as well as the financial years 2019-20 and 2020-21, the lending institutions are suitably required to disclose in their ‘Notes to Accounts’, among other things, the amounts in SMA/overdue categories, where the moratorium/deferment was extended and amounts where asset classification benefits are extended.

Covid-19 Key Relaxations/ Reliefs announced on Resolution of Stressed Assets

8. **Concessional Provisioning**

While RBI has reduced the provisioning pressure by placing a moratorium on asset classification, from a risk-containment perspective, it has advised banks to make concessional provisioning of not less than 10%in two phases over two quarters (up to 5% each for quarters ending 31 March 2020 and 30 June 2020) for those accounts that are in default but were standard as on 29 February 2020. As a relief, the concessional provisioning may be adjusted against actual provisioning requirements at the end of the financial year. For NPA accounts as on 29 February 2020, the lending institutions are required to comply with the extant provisioning requirements set out by RBI.

9. **TLTRO Facility**

RBI launched the Targeted Long-Term Repo Operation (1.0) and (2.0) facilities and infused 1,50,000 crores worth of liquidity into the economy through banks. Primary beneficiaries of TLTRO 1.0 were public sector entities and large corporates, hence the RBI has also launched TLTRO 2.0 for a further amount of ₹ 50,000 crores to cater to the non-banking finance and micro finance sector.

Covid-19 Key Relaxations/ Reliefs announced on Resolution of Stressed Assets

10. **Reduction in Repo and Reverse Repo Rates and other changes**

RBI has reduced the following:

(i) repo rate under Liquidity Adjustment Facility (LAF) reduced to 4%.

(ii) bank rate and Marginal Standing Facility (MSF) rate reduced to 4.25%.

(iii) Standing Liquidity Facility provided to Primary Dealers (PDs) (collateralised liquidity support) from RBI available at the revised repo rate of 4.40%.

(iv) interest rate on fixed rate reverse repo under the LAF reduced to 3.35%.

(v) borrowing limit of Scheduled Banks (excluding Regional Rural Bank) under the MSF scheme increased by 100bps to 3% of their Net Demand and Time Liabilities (NDTL) outstanding at the end of the second preceding fortnight till 30 June 2020.

(vi) minimum Cash Reserve Ratio reduced to 80% from 28 March 2020 till 26 June 2020.

(vii) implementation of the last tranche of 0.625% of Capital Conservation Buffer (CCB) deferred from 31 March 2020 to 30 September 2020.

(viii) Banks are permitted to maintain Liquidity Coverage Ratio at 80% from 17 April 2020 to 30 September 2020; at 90% from 1 October 2020 to 31 March 2021; at 100% from 21 April 2021 onwards, in order to accommodate the burden on banks' cash flows on account of the Covid19 pandemic.

Covid-19 Key Relaxations/ Reliefs announced on Resolution of Stressed Assets

11. **Increase in FPI Investment Limit**

The investment limit for foreign portfolio investors in corporate bonds has been increased to 15% of outstanding stock for the financial year 2020-21 with the revised limits for April- September 2020 at INR 4,29,244 Crores and for October-March 2021 at INR 5,41,488 Crores.

12. **Relaxations under VRR route**

RBI has permitted an additional time period of three months to FPIs to invest 75% of the Committed Portfolio Size that have been allotted, between 24 January 2020 (the date of reopening of allotment of investment limits) and 30 April 2020 under the Voluntary Retention Route' (VRR). For FPIs availing the additional time as per the VRR Circular, the retention period for the investments (committed by them at the time of allotment of investment limit) would be reset to commence from the date that the FPI invests 75% of CPS.

13**. Increase in bank's exposure limit to group of connected counterparties**

RBI limits a bank's exposure to a group of connected counterparties to 25% of the eligible capital base of the bank (i.e. the effective amount of Tier 1 capital fulfilling the criteria defined in RBI Master Direction on Basel III Capital Regulations as per the last audited balance sheet of the bank). Considering banks are the main source of funding for corporates due to difficulty in raising funds from the debt and capital market, RBI has now increased this exposure limit to 30% of the eligible capital base of the bank, till 30 June 2020.

Covid-19 Key Relaxations/ Reliefs announced on Resolution of Stressed Assets

14**. Circular on Import of goods and services**

As per the Master Direction on Import of Goods and Services' dated 1 January 2016 (as amended from time to time) issued by RBI, remittances against normal imports (i.e. excluding import of gold/diamonds and precious stones/ jewellery) are required to be completed within 6 (six) months from the date of shipment, except in cases where amounts are withheld towards guarantee of performance etc. RBI has granted relaxations in relation to import payment obligations and has increased the timeline for such remittances from six months to twelve months from the date of shipment for imports made on or before 31 July 2020.

15. **Export Credit**

RBI has permitted the period of realisation and repatriation of the export proceeds to India to be increased from 9 months to 15 months from the date of export in respect of exports made upto 31 July 2020. RBI has also increased the maximum permissible period of pre-shipment and post-shipment export credit sanctioned by banks from one year to fifteen months, for disbursements made upto 31 July 2020.

16. **Ease to Mutual Funds**

RBI has introduced a special liquidity facility of INR 50,000 crores to ease liquidity pressure on mutual funds. Furthermore, Securities and Exchange Board of India has vide its circular dated 1 October 2019 restricted investments by mutual funds in unlisted non-convertible securities (NCDs) to 10% of the debt portfolio of the scheme. The revised investment norms were to be achieved in phases by 30 June 2020. This timeline has been extended by SEBI vide its circular dated 28 April 2020. The timeline for compliance with the maximum limits for investment in unlisted NCDs as 15% and 10% of the debt portfolio of the scheme is extended to September 30, 2020 and December 31, 2020, respectively

II. Reliefs in Real Estate Sector

Extension of DCCO: In line with the benefits already granted to the banks in February 2020, the RBI has permitted Non-Banking Financial Companies to extend the date of commencement of commercial operation (DCCO) for commercial real estate (CRE) projects along with consequential shift in repayment schedule for equal or shorter duration (including the start date and end date of revised repayment schedule) without treating it as restructuring provided that (i) the revised DCCO falls within the period of one year from the original DCCO stipulated at the time of financial closure for CRE projects; and (ii) all other terms and conditions of the loan remain unchanged. Time extensions under Real Estate (Regulation and Development) Act, 2016 (RERA Act) by State RERA Authorities

III RELAXATIONS BY MINISTRY OF CORPORATE AFFAIRS

- Relaxation for holding Board Meeting
- Relaxations for holding AGMs and EGMs
- Relaxation in time period for holding AGM

IV **Clarification on CSR Expenditure**

MCA clarified that the contribution made to 'PM Cares Fund' shall qualify as CSR expenditure, however, any contribution made to ‘Chief Minister’s Relief Funds’ or the ‘State Relief Fund for COVID-19’ shall not qualify as CSR expense;

funds contributed to State Disaster Management Authority shall be treated as CSR expenditure;

spending of CSR funds for COVID19 related activities like promotion of health care, including preventive health care and sanitation, disaster management will also qualify as CSR expenditure; payment of - (i) salary/wages to employees and workers during lockdown period, (ii) wages to temporary, casual or daily wage workers, during the lockdown period is part of the moral/ humanitarian/ contractual obligations of all companies, and hence won't count towards CSR expense; lastly states that if any ex-gratia payment is made to temporary/casual/daily wage workers over and above the disbursement of wages, specifically for the purpose of fighting COVID-19, the same shall be admissible towards CSR expenditure as a one-time exception, provided there's an explicit declaration to that effect by the Board, duly certified by the Company's statutory auditor.

CONTENT

Way Forward:

- ❖ Debt Restructuring Guidelines- June 7th Circular
- ❖ Resolution through Change in ownership
- ❖ One time settlement

Avenues for Resolution of Stressed Assets

Restructuring of loan as per RBI Guideline June 7, 2019 Circular

Resolution through Change in Ownership

Resolution through One Time Settlement / Sale of exposure to Investor or ARCs

Early identification, time-bound resolutions- for new pre-insolvency resolution framework

01

Salient Features

- **Defined Timelines** - Stress on early identification and time-bound resolution and implementation
- **Flexibility** - To individual banks to restructure loans basis commercial reality, without limitations of frameworks
- **Asset Upgrade** - Of NPAs available post substantial repayment (specified period changed to 20% of the principal debt & capitalized interest)
- **Management Control** - Quicker reclassification of restructured assets in case of a change in management control as a part of resolution plan
- **Defined Criteria** - Strict criteria for confirmation of change in control.
- **Credit Rating** - Requirement of credit rating for "residual debt" in a restructuring plan.
- **Resolution** - Resolution plan allowed for wilful defaulters if change of ownership is part of the resolution plan.

02

Implications

- **Quick Resolution** - Pressure on banks and the debtors to push for resolution in a defined period (maximum 180 days for assets > INR 20 bn, failing which reference to NCLT for insolvency resolution is mandatory). Time-bound transaction closures are effected
- **Incentive for Management Change** - Banks are incentivized to push for management change of corporate debtors.
- **Upfront Payments** - As a part of resolutions bank will need to push for upfront payments to accelerate reclassification, post restructuring

03

Opportunities

- **Asset Monetization** - Increase in asset monetization opportunities.
- Mezzanine **Finance** - Opportunities in resolution plans to accelerate reclassification of restructured assets in bank books

RBI defines stress in terms of Special Mention Account (SMA) classifications, wherein amounts are overdue beyond 30 days

Applicability:

This framework would apply to the following lenders:

- Scheduled commercial banks;
- All India term FIs
- Small finance banks;
- NBFC-ND-SI and NBFC-D

Identification of Accounts:

Lenders are required to identify incipient stress in loan accounts on the occurrence of a default and further classify stressed assets as special mention accounts (SMA), categorized, basis their principal / interest payment / other amount wholly or partly overdue, into the following categories:

- **SMA-0:** Between 1-30 days
- **SMA-1:** Between 30-60 days
- **SMA-2:** Between 60-90 days

Reporting:

The RBI framework provides provisions for regular reporting to the Central Repository of Information on Large Credits (CRILC), which are as under:

- **Reporting of SMAs:** Where an account having an aggregate exposure of INR 50 million and above, is classified as SMA
- **The CRILIC-Main Report:** This report comprises four sections, Section 1: Exposure to Large Borrowers (Global Operations), Section 2: Reporting of Technically / Prudentially Written-off Accounts (Global Operations), Section 3: Reporting of Balance in Current Account (Global Operations) and Section 4: Reporting of Non cooperative Borrowers (Global Operations). This has to be submitted on a monthly basis
- **Weekly Report:** A weekly report regarding all borrower entities in default with aggregate exposure (fund based and non fund based) of INR 50 million and above has to be submitted at the close of business on every Friday (or the preceding working day)

Implementation of Resolution Plan

Review Period:

- Lenders must put in place a board approved resolution policy for resolution of stressed assets.
- Once the borrower is in default, the lenders shall undertake a prima facie review of the borrower within 30 days of the default and may decide on resolution strategy, approach, etc.
- With the introduction of the concept of review period, the lenders get an additional period of 30 days over and above the timeline as mentioned in the framework.

Rights to dissenting lenders:

- Resolution plan should provide that dissenting lenders will not get less than the liquidation value due to them.
- The framework also states that the ICA may provide for duties of lenders and protect the rights of dissenting lenders and treatment of lenders with priority in cash flows/ differential security interest.

Inter-Creditor Agreement (ICA):

- Lenders to enter into an ICA during the review period, in case they agree to implement the resolution plan.
- Decision making to be binding on all the lenders:
  a. Lenders representing 75% of the value of total outstanding credit facilities;
  b. 60% of lenders in numbers

Timelines for Implementation of Resolution Plan

Aggregate Exposure of any borrower is of Rs. 20 billion and above.	***Aggregate Exposure of any borrower is of Rs. 15 billion and above but less than Rs. 20 billion***	***Aggregate Exposure of any borrower is of less than Rs. 15 billion***
• Review Period should have commenced no later than June 7, 2019, if the account was in default on such date.	• Review Period should have commenced no later than January 1, 2020, if default has been declared in respect of the account on such date. • These accounts are already being given an extended period from June 7, 2019 till December 31, 2019 to get their default rectified. In case the default still stands on January 1, 2020, then the Review Period would have commenced.	• To be announced by RBI

Resolution plan should be implemented within 180 days from the end of the review period

COVID-19 IMPACT

- Accounts which were within the Review Period as on March 1, 2020, the period from March 1, 2020 to August 31, 2020 shall be excluded from the calculation of the 30-day timeline for the Review Period. In respect of all such accounts, the residual Review Period shall resume from September 1, 2020, upon expiry of which the lenders shall have the usual 180 days for resolution.
- Accounts where the Review Period was over, but the 180-day resolution period had not expired as on March 1, 2020, the timeline for resolution shall get extended by 180 days from the date on which the 180-day period was originally set to expire.

Sequence of Resolution Plan

Day 1 of the default – Start of Review Period → Day 30- End of Review period & start of 180 day period → Daye 210- End of Implementation period → Day 365 → Payment of 10% of o/s debt – End of monitoring period → Payment of 10% of o/s debt – End of specified period

During the Review Period:

- Prima facie review
- To decide whether to initiate legal proceedings for insolvency or recovery
- Where RP to be implemented outside IBC, all lenders to enter into an ICA

During the Implementation Period:

- Lenders shall conduct ICEs
- To implement the RP
- Failure to implement RP, penal provisions shall be made

Penal provisions in case failure to implement RP persists

Monitoring period

- Date of implementation of RP till payment of 10% of o/s debt (refer definition on next page)
- If borrower demonstrates satisfactory performance during this period or one year from The commencement of the first payment of interest or principal (whichever is later) on the credit facility with longest period of moratorium under the terms of RP

Specified period means the period from the date of implementation of RP up to the date by which at least 20% of debt (refer definition on next page) is repaid

RP Implementation conditions –fulfilled within 180 days

a) No default persists
b) If restructured –
   i. All documentation to be completed by all lenders
   ii. New capital structure reflected in books of lenders and borrowers

Penal Provision	Rate
Post 210 days from date of default	20%
Post 365 days from date of default	15%
Total Additional Provision	35%

Conditions for Implementation of Resolution Plan

Resolution Plan may be in the form of:

Sale of exposures to other entities or to Investors

Regularization of the account by payment of all over dues by the borrower entity.

Resolution in the form of change in ownership and restructuring

- Resolution plan that involves lenders exiting the exposure by assigning them to third party or a RP involving recovery action shall be deemed to be implemented only if the exposure to the borrower is fully extinguished.
- This would be relevant for varied structures being adopted through asset reconstruction companies etc.

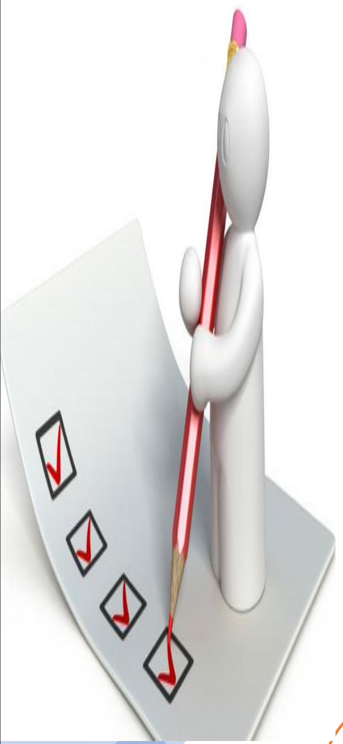
- Independent Credit Evaluation (ICE) by credit rating agencies appointed by the lenders to be carried out
- This would be relevant for PE/ strategic players who are trying to acquire companies in the pre IBC mechanism and acquire ownership of the company.
- Resolution is deemed to be implemented when all documentation is completed, new capital structure is reflected in the books and no default subsists with any lenders

Lenders to obtain ICE from CRAs	
> INR 500 Crores	2 ICEs of RPs and better
< INR 500 Crores	1 ICE of RP4 and better

Prudential norms applicable to restructuring

Asset Classification	• Immediate downgrade to NPA • Post restructuring extant IRAC norms to follow
Conditions for Upgrade	• No default in specified period (account will not upgrade till 10% of outstanding debt along with interest capitalised are repaid or completion of 1year, whichever is later • If borrower fails to demonstrate satisfactory performance during monitoring period, lender shall make additional 15% provision at the end of review period. • For large accounts, ratings of credit facilities of the borrower should be at an investment grade of BBB-or better at the end of the specified period
Provisioning	• Extant guidelines to apply • Provisions under earlier schemes to continue till account becomes standard
Income Recognition	• Standard assets : on accrual basis • NPA assets: on cash basis
Additional Finance	• Account performing satisfactorily (no default in payment during specified period) : Standard • Account not performing satisfactorily : NPA
Change in Ownership	• Upgrade available–for change in ownership (under framework / IBC) • New promoter to hold atleast 26% (29A applicable) and should be the single largest shareholder • New promoter shall be in 'control' of the borrower entity as per Companies Act, 2013

Pre-Requisites for Restructuring through Change in Ownership



1. Lenders to carry out due diligence of the acquirer and ensure compliance with section 29A of the IBC.
2. New promoter to acquire at least 26% of the paid up equity capital of the borrower and must be its single largest shareholder.
3. Implementation must be carried out within the specified timelines.
4. New promoter must be in control of the borrower.
5. Account must continue to perform satisfactorily during the monitoring period, failing which fresh review period shall get triggered.

Note: Restructured accounts can be retained as standard asset after the change in ownership under FRESA or under IBC

One Time Settlement (OTS) – Faster recovery of NPAs in Banks

Meaning:

- One-time settlement or OTS is a type of compromise settlement executed by the banks in order to recover non-performing assets.
- OTS is a scheme where the borrower (the one who has defaulted) proposes to settle all the dues at once, and banks agree to accept an amount lesser than what was originally due.
- OTS is based on valuation of underlying assets.
- Lenders would like to discover price through swiss-channel method.
- The banks settle the loan and waiver/write it off against a one-time instalment, thereby compromising on a portion of their profits.

Benefits:

- Prompt and speedy recovery of loans and advances
- Increase in liquidity
- Easy flow of funds that promotes a continuous lending process
- The health of the economy is maintained.
- OTS schemes are in pursuance of Board-approved policies of banks, and are typically oriented towards sectors such as agriculture, Micro Small and Medium Enterprises (MSMEs), weaker sections and education loans, and typically have an upper limit on the amount of NPA.

CONTENT

Suggestions for effective resolution of stressed assets

Suggestions for effective resolution of Stressed Assets

- *RBI needs to soften its restructuring and provisioning norms to deal with stressed assets such as viability criteria(s), rating criteria, sustainability of the debt, conversion of unsustainable debt into equity or equity related instruments. Relaxation in right to recompense, legally binding scheme, tenure of restructuring period and assessment of working capital & release of additional funds to the corporate borrower.*

- *ICA should be made effective with 66% lenders agreement instead of 100%. The Voluntary ICA mechanism has miserably failed. There should be legislative or regulatory mandate to follow the principle of majority rule;*

- *Strong requirement for Govt. to notify an alternate debt resolution mechanism in the absence of IBC – Pre-packs (especially for MSMEs) i.e. lender and the debtor agree on restructuring or new investment by a third-party prior to commencement of the insolvency process against the debtor.*

Suggestions for effective resolution of Stressed Assets

- *There should be independent platform where all creditors can join and take decision with voting rights proportionate to their debt;*
- *There should be a moratorium on all actions pending resolution/restructuring;*
- *The RBI restructuring norms should be made applicable to all financial institutions. Presently multiple financial institutions are excluded from RBI purview (such as Insurance FIs and MFs)*
- *The interim funding should be given a priority status irrespective of the account status*
- *The rating norms need dilution to allow for restructuring of accounts;*
- *The requirement of forensic audit and other audit delay the restructuring and should be avoided*

CONTENT

Suspension- Saving the sustainable?

SUSPENSION – SAVING THE SUSTAINABLE /VIABLE UNITS

Issue 1: Defaults before COVID 19

Not covered under suspension and application under IBC can be filed u/s 7,9 and 10

Issue 2: Forced forbearance on banks and its adverse impact on banking. In particular the cases where the time period for resolution under the RBI June 7 circular has already expired and these cases were ripe for reference to resolution under IBC.

If the resolution plan is not possible, a restructuring would be required in such cases, which may lead to change in asset classification as per IRAC norms after the extension period or relaxation period, and consequent change in provisioning requirement of banks. That would be a major hit to financial institutions.

Banks will be compelled to try and initiate DRT / SARFAESI proceedings in such cases – IBC was introduced to mitigate issues faced in these debt recovery mechanisms – we would be going back to square one and losing the progress made.

Issue 3 : Best resolution tools available to Banks in the absence of IBC. Expected outcome (e.g. RBI June 7 mechanism, Schemes, etc.)

In the absence of IBC, tools available to banks for resolution are limited – schemes are under Companies Act, RBI June 7 mechanism (w/o eventual recourse to IBC), DRT / SARFAESI action, etc.

Outcome may be a shift from *creditor in control* regime under IBC to *debtor in control* under the aforesaid mechanisms and especially if government introduced pre-packs. Expected outcome of going back to old debt recovery mechanism would be tremendous. IBC served as a deterrent and induced responsible behavior by promoters due to the fear of losing their companies.

Issue 4: New Default Cases – Restructuring attempts- Potential Implications

Strong requirement for Govt. to notify an alternate debt resolution mechanism in the absence of IBC – Pre-packs (esp for MSMEs) could be one option.

June 7 circular to be amended to provide for alternate option to lenders in place to referring cases to IBC, in view of suspension.

With the introduction of any new law / provision under existing law for debt resolution, there could be potential challenge in courts by various stakeholders, which may cause delay and hinder timely resolution.

Issue 5: Future Defaults – What to expect?

Exclusion of COVID 19 defaults – Justification of exclusion after Lockdown is lifted.

Post the lockdown, which was imposed from March 24, 2020, and up till one year thereafter, defaults which may have occurred or will occur; the presumption w.r.t. them is that they would have occurred due to the economic slowdown induced due to the pandemic and thus it can be argued that the Govt. is justified in excluding those defaults.

Optimum Regulatory Structure

1. **What kind of alternate platform should be proposed for resolution? Should the platform be an IBC-lite or a completely new framework?**

Pre-packs may be a viable option however regulatory mechanism around that needs to be built.

Proposing a completely new framework would also pose challenges in the form of delays due to judicial challenges and creation of precedents. By that time, Covid-19 situation may have blown over however we would have diluted the strong foot hold of the IBC in its current form on one hand, while not being able to fully develop new framework on the other hand.

2. **Should it be a creditor-in- control or debtor-in-possession platform?**

It should continue to be a Creditor in Control mechanism, (esp. in the case of large corporates) however pre-packs generally lean towards a debtor in control mechanism.

3. **Should it include a moratorium?**

Moratorium equivalent should be introduced to combat risk of asset deterioration and ensure that there is no enforcement action by individual creditors

4. Should it place restrictions on promoters like those placed by section 29A?

While on one hand, gains made on account of evolution of jurisprudence around Section 29A jurisprudence **should not be diluted** and **creditors should not be made to take haircut** while promoters are afforded an opportunity to buy their companies at a discount.

However on the other hand, restricting the applicability of Section 29A, potentially only to willful defaulters, would go a long way towards ensuring that the distress of firms will get resolved in an orderly and efficient manner, and not impose burdens on promoters who are victims of the economic downturn due to COVID-19.

It can be argued that this section will unfairly prevent existing promoters who may have defaulted due to the conditions caused by Covid-19, from retaining control of the debtor while taking benefit of the formal resolution mechanism offered by the IBC. Further, given the pressure on the economy due to the pandemic, it would mean that in many cases, other persons in the market may not be willing to propose a resolution plan for companies in the near term.

THANK YOU!