

Resolution of Stressed Assets - New Regime

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tressed Asset in simple words, can be understood as the loan that has not been repaid to the lenders by the borrower in a stipulated period of time. It is a bad debt that is a sum of NPA (Non-Performing Asset), Restructured Loans and Written-off assets. Reserve Bank of

India had issued various directions for restructuring or resolution of stressed Assets in the economy. In the view of the enactment of Insolvency and Bankruptcy Code, 2016 and to resolve the ever-growing problem of stressed asset, RBI has come up with the new and revised scheme for stressed asset. RBI has kicked off an entirely new phase in its efforts

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to reform a banking system floated with non-performing assets (NPAs).

Until now, RBI's strategy for restructuring had been heavily focussed through the voluntary mechanism of Corporate Debt Restructuring (CDR), mandatory mechanism of the Joint Lenders' Forum (JLF) mechanism and multiple schemes like the Strategic Debt Restructuring (SDR), Outside Strategic Debt Restructuring (OSDR), Strategic Structuring of Stressed Assets (S4A) and Flexible Structuring of Existing Long-Term Project Loans.

However, in spite of all the options, these schemes did not solve the purpose well and was fruitless in pulling down the number of NPAs. There was a need of a rigorous mechanism to curb this issue of Stressed Assets. With the introduction of the New Restructuring Framework, the RBI has now withdrawn all existing modes of restructuring.

APPLICABILITY OF NEW RESTRUCTURING FRAMEWORK

The New Restructuring Framework introduced by the RBI applies to all accounts including any account in respect of which restructuring under any previous scheme (including CDR, SDR, outside SDR and S4A) was invoked but not implemented.

As per the new Restructuring Framework the Lenders shall first identify the stressed assets, immediately upon the default*, by classifying stressed assets as special mention accounts (SMA) and shall report the credit information of all SMAs with an aggregate exposure of at least INR 5 crores to the Central Repository of Information on Large Credits (CRILC). The (CRILC) - Main Report shall be submitted on a monthly basis effective from 1 April 2018. In addition, defaults by borrowers having an aggregate exposure of at least INR 5 crores must be reported by the lenders to

CRILC on a weekly basis, beginning from 23 February 2018.

*'Default' means non-payment of debt when whole or any part or instalment of the amount of debt has become due and payable and is not repaid by the debtor or the corporate debtor, as the case may be.

Later on, once the stressed assets are identified; the lenders shall have a board-approved policy for the resolution of stressed assets. This Restructuring Framework provides that immediately upon default by a borrower, the lenders must, either on their own or jointly with other lenders, formulate a resolution plan (RP) to cure the default. It is notified that Accounts with an aggregate exposure of INR 2000 crores and above on or after 1st March, 2018 ('reference date'), the RP shall be implemented as follows:

- i) If default exists as on reference date,

then RP shall be implemented within 180 days from reference date.

ii) If default exists after the reference date, then RP shall be implemented within 180 days from the date of first such default.

FURTHER, A RESOLUTION PLAN WOULD BE CONSIDERED

'IMPLEMENTED' ONLY WHEN-

i) the borrower is no longer in default with any lender;

ii) If the resolution involves restructuring then,

a) all documents relating to the RP have been executed and security (if any) created pursuant to the same; and

b) the new capital structure or changes in the terms and conditions of the loans must reflect in the books of the lenders and the borrowers.

Additionally, it also mandates to obtain independent credit evaluation (ICE) of residual debt* by credit rating agencies for accounts where resolution/restructuring is proposed and the aggregate exposure of lenders is INR 100 crores (Large Accounts). Further, the accounts with aggregate exposure of lenders are INR 500 crores and above shall require two ICEs. Accounts must receive a credit opinion of RP4 as per the new rating system introduced by the New Restructuring Framework for the implementation of the resolution plan.

* Residual debt means the aggregate debt (fund based as well as non-fund based) envisaged to be held by all the lenders as per the proposed RP.

At the end, if the RP in respect of accounts mentioned above is not implemented within the period mentioned above, then the lenders shall singly or jointly file an insolvency application under Insolvency and Bankruptcy Code, 2016 to initiate the CIRP within a further period of 15 days from the expiry of the period.

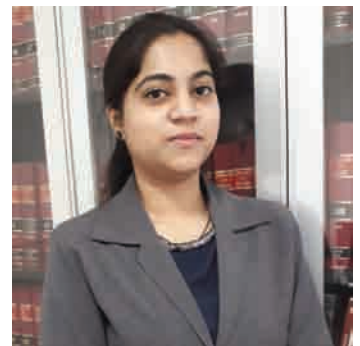
Earlier before the introduction this Restructuring Framework, Reserve Bank of India has instructed the banks to refer the highest value NPAs to the National Company Tribunal (NCLT) for the corporate insolvency resolution process (CIRP) under the IBC. Out of the 12 non-performing asset (NPA) accounts referred by the Reserve Bank of India to NCLT, Bhushan Steel Limited was the largest defaulter.

Corporate Insolvency Resolution Process was initiated by State Bank of India u/s section 7 of IBC against the Corporate Debtor Bhushan Steel Limited. Wherein, Bhushan Steel owes Rs 56,080 crore to its financial creditors and Rs 1,332 crore to operational creditors. After a long bid process National Company Law Tribunal (NCLT), New Delhi Bench has approved the Resolution Plan submitted by the Tata Steel's. Tata Steel has offered to pay Rs 35,200 crore along with 12.27% equity to the financial creditors and Rs 1,200 crore to the operational creditors of Bhushan Steel. However, Promoter of Bhushan Steel had challenged resolution plan submitted by the Tata Steel before the NCLAT contending that Tata Steel was not eligible to bid under the Insolvency and Bankruptcy Code.

Now, RBI has come up with this new restructuring policy in true letter and spirit, which might change the negative perception of NPAs and Stressed Assets. A key feature of the new Regulatory Framework is that it's a chance given to lenders to restructure their stressed assets by implementing a unified Resolution Plan. At the end if the lenders fail to restructure, they have an option to file an insolvency application under IBC and initiate the CIRP. Although RBI has come up with this notification on 12th February, 2018 but the practical aspect has to be seen in coming time in the sense that how the Banks implement this notification and what are the difficulties the Banks would be facing in implementing a unified resolution plan. [W](#)



Ashish Mittal is a lawyer having an experience of 13 years. He has been appearing before Hon'ble Supreme Court, various High Courts, District Courts and other forums. He provides advice in areas such as constitutional law, banking laws especially National Company Law tribunal matters, Debt Recovery matters, Cheque dishonour cases. He is currently working as a Partner at the firm.



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