Bharatiya Mahila Bank

Corporate Debt Restructuring (CDR) Policy 2016-17

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1. INTRODUCTION

There are occasions when corporates find themselves in financial difficulties because of factors beyond their control and also due to certain internal reasons. For the revival of such corporates as well as for the safety of the money lent by the banks timely support through restructuring of genuine cases is called for. However, delay in agreement amongst different lending institutions often comes in the way of such endeavours.

2. OBJECTIVE

Thus, the Corporate Debt Restructuring Policy is an embodiment of the bank's approach to understand, measure, approach towards the Corporate sector while dispensing the credit. This policy takes the cognizance of the basic needs of the corporate borrower. This CDR mechanism is a voluntary non statutory system based on debtor-creditor Agreement and Inter Creditor Agreement.

Thus, this policy is based on the following:

a. Prudential guidelines issued by Government, & RBI
b. Processes & Systems
c. Business Strategy

3. DEFINITION

A restructured account is one where the bank, for economic or legal reasons relating to the borrower's financial difficulty, grants to the borrower concessions that the bank would not otherwise consider. Restructuring would normally involve modification of terms of the advances / securities, which would generally include, among others, alteration of repayment period / repayable amount/ the amount of instalments / rate of interest (due to reasons other than competitive reasons). However, extension in repayment tenor of a floating rate loan on reset of interest rate, so as to keep the EMI unchanged provided it is applied to a class of accounts uniformly will not render the account to be classified as 'Restructured account'.

4. SCOPE & ELIGIBILITY CRITERIA

This Mechanism has been designed to facilitate restructuring of advances of borrowers enjoying credit facilities from more than one bank / Financial Institution (FI) in a coordinated manner. This mechanism will be available to all borrowers engaged in any type of activity subject to the following conditions:

a. The borrowers enjoy credit facilities from more than one bank / FI under multiple banking / syndication / consortium system of lending.
b. The total outstanding (fund-based and non-fund based) exposure is Rs.10 crore or above.
c. The CDR system will be applicable only to accounts classified as 'standard' and 'sub-standard'. There may be a situation where a small portion of debt by a bank might be classified as doubtful. In that situation, if the account has been classified as 'standard'/ 'substandard' in the books of at least 90% of creditors

(by value), the same would be treated as standard / substandard, only for the purpose of judging the account as eligible for CDR, in the books of the remaining 10% of creditors. However, potentially viable cases of NPAs will get priority.

d. The principle of approvals by super-majority of 75% creditors (by value) which makes it binding on the remaining 25% to fall in line with the majority decision.
e. It will cover all categories of assets in the books of member-creditors classified in terms of RBI's prudential asset classification standards. Even cases filed in Debt Recovery Tribunals/Bureau of Industrial and Financial Reconstruction/and other suit-filed cases are eligible for restructuring under CDR. The cases of restructuring of standard and sub-standard class of assets are covered in Category-I, while cases of doubtful assets are covered under Category-II
f. Any or more of the creditors having minimum 20% share in either working capital or term finance, or
g. The accounts where recovery suits have been filed by the creditors against the company, may be eligible for consideration under the CDR system provided, the initiative to resolve the case under the CDR system is taken by at least 75% of the creditors (by value) and 60% of creditors (by number)
h. By the concerned corporate, if supported by a bank/FI having minimum 20% share as above.
i. It may be emphasized here that, in no case, the requests of any corporate indulging in fraud or misfeasance, even in a single bank, can be considered for restructuring under CDR System.
j. No account shall be taken up for restructuring unless the financial viability is established and there is a reasonable certainty of repayment from the borrower as per the terms of restructuring package.
k. Borrowers indulging in frauds and malfeasance shall not be eligible for restructuring. Wilful defaulters shall also not generally be considered for restructuring. Where strong justifiable reasons exist for considering restructuring the accounts of a wilful defaulter, it should be ensured that the borrower has taken satisfactory steps to rectify the wilful default.
l. BIFR cases will not be eligible for restructuring without their express approval.
m. Restructuring cannot be done with retrospective effect.
n. If restructuring is taken up, the same should be implemented within 90 days from date of receipt of application.
o. The repayment period of restructured advance including the moratorium, if any, does not exceed 10 years.
p. Promoters margin of minimum 15% of Bank’s sacrifice should be brought in before implementation of the restructuring package.
q. Personal guarantee of the promoters should be available
r. The restructuring should not be a repeated restructuring.
s. The restructuring package should have right of recompense clause
t. The Bank should have the right to prepone repayment instalments if projections are over achieved.

5. **CDR Empowered Group**

There will be a committee comprising of the following members who will represent the bank in the CDR empowered group.

1. Executive Director
2. General Manager (credit)
3. Dy. General Manager (Credit)

This aforesaid committee will decide on the acceptable viability benchmark levels on the following illustrative parameters, which may be applied on a case-by-case basis, based on the merits of each case on these broad parameters.

1. Return on Capital Employed (ROCE),
2. Debt Service Coverage Ratio (DSCR),
3. Gap between the Internal Rate of Return (IRR) and the Cost of Fund (CoF),
4. Extent of sacrifice

6. **Eligibility criteria**

CDR is a non-statutory mechanism which is a voluntary system based on Debtor-Creditor Agreement (DCA) and Inter-Creditor Agreement (ICA). The Debtor-Creditor Agreement (DCA) and the Inter-Creditor Agreement (ICA) shall provide the legal basis to the CDR mechanism. The debtors shall have to accede to the DCA, either at the time of original loan documentation (for future cases) or at the time of reference to Corporate Debt Restructuring Cell.

Similarly, the bank through their membership of the Standing Forum shall have to enter into a legally binding agreement, with necessary enforcement and penal clauses, to operate the System through laid-down policies and guidelines.

The ICA signed by the creditors will be initially valid for a period of 3 years and subject to renewal for further periods of 3 years thereafter. The lenders in foreign currency outside the country are not a part of CDR system.

The Inter-Creditor Agreement would be a legally binding agreement to the bank, wherein the bank would commit themselves to abide by the various elements of CDR system. Further, it should be ensured that the creditors shall agree that if 75 per cent of creditors by value and 60 per cent of the creditors by number, agree to a restructuring package of an existing debt (i.e., debt outstanding), the same would be binding on the remaining creditors.

Since Category 1 CDR Scheme covers only standard and sub-standard accounts, which in the opinion of 75 per cent of the creditors by value and 60 per cent of creditors by number, are likely to become performing after introduction of the CDR package, it is expected that all other creditors (i.e., those outside the minimum 75 per cent by value and 60 per cent by number) would be willing to participate in the entire CDR package, including the agreed additional financing.

In order to improve effectiveness of the CDR mechanism a clause may be incorporated in the loan agreements involving consortium / syndicate accounts whereby all creditors, including those which are not members of the CDR mechanism, agree to be bound by the terms of the restructuring package that may be approved under the CDR mechanism, as and when restructuring may become necessary

One of the most important elements of Debtor-Creditor Agreement would be 'stand still' agreement binding for 90 days, or 180 days by both sides. Under this clause, both the debtor and creditor(s) shall agree to a legally binding 'stand-still' whereby both the parties commit themselves not to take recourse to any other legal action during the 'stand-still' period, this would be necessary for enabling the CDR System to undertake the necessary debt restructuring exercise without any outside intervention, judicial or otherwise. However, the stand-still clause will be applicable only to any civil action either by the borrower or any lender against the other party and will not cover any criminal action. Further, during the stand-still period, outstanding foreign exchange forward contracts, derivative products, etc., can be crystallised, provided the borrower is agreeable to such crystallisation. The borrower will additionally undertake that during the stand-still period the documents will stand extended for the purpose of limitation and also that it will not approach any other authority for any relief and the directors of the borrowing company will not resign from the Board of Directors during the stand-still period

The additional finance, shall have a preferential claim, to be worked out under the restructuring package, over the providers of existing finance with respect to the cash flows out of recoveries, in respect of the additional exposure.

7. **Exit Option**

Bank at its discretion may opt for not providing the additional finance.
The bank may opt for exit from the package. Then the bank would have to sell their existing share to either the existing lenders or fresh lenders, at an appropriate price, which would be decided mutually between the exiting lender and the taking over lender. The new lenders shall rank on par with the existing lenders for repayment and servicing of the dues since they have taken over the existing dues to the exiting lender. In order to bring more flexibility in the exit option, One Time Settlement can also be considered, wherever necessary, as a part of the restructuring package. If an account, is subjected to One Time Settlement (OTS) by a borrower before its reference to the CDR mechanism, will be considered. However, the fulfilled commitments under such OTS may not be reversed under the restructured package. Further payment commitments of the borrower arising out of such OTS may be factored into the restructuring package.

Category 2 CDR System

The accounts with doubtful category but viable may be considered for CDR system only when if a minimum of 75% of creditors (by value) and 60% creditors (by number) satisfy themselves of the viability of the account and consent for such restructuring, subject to the following conditions.

In these case, only the existing loans will only be restructured and it would be up to the promoter to firm up additional financing arrangement with new or existing creditors individually.

All other norms under the CDR mechanism such as the standstill clause, asset classification status during the pendency of restructuring under CDR, etc., will continue to be applicable to this category also

8. Asset Classification:

The Restructuring of advances could take place in the following stages

a. Before commencement of commercial production / operation;
b. After commencement of commercial production / operation but before the asset has been classified as 'sub-standard
c. After commencement of commercial production / operation and the asset has been classified as 'sub-standard' or 'doubtful'.

i. The accounts classified as 'standard assets' will be immediately re-classified as 'sub-standard assets' upon restructuring
ii. The non-performing assets, upon restructuring, will continue to have the same asset classification as prior to restructuring and slip into further lower asset classification categories as per extant asset classification norms with reference to the pre-restructuring repayment schedule
iii. Standard accounts classified as NPA and NPA accounts retained in the same category on restructuring by the bank will be upgraded only when all the outstanding loan/facilities in the account perform satisfactorily during the 'specified period'(a period of 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 restructuring package), i.e. principal and interest on all facilities in the account are serviced as per terms of payment during that period.
iv. In case, however, satisfactory performance after the specified period is not evidenced, the asset classification of the restructured account will be governed as per the applicable prudential norms with reference to the pre-restructuring payment schedule
v. Any additional finance will be treated as 'standard asset' during the specified period under the approved restructuring package. However, in the case of accounts where the pre-restructuring facilities were classified as 'sub-standard' and 'doubtful', interest income on the additional finance will be recognised only on cash basis. If the restructured asset does not qualify for upgradation at the end of the above specified period, the additional finance shall be placed in the same asset classification category as the restructured debt.
vi. If a restructured asset, which is a standard asset on restructuring and is subjected to restructuring on a subsequent occasion, it will be classified as substandard. If the restructured asset is a sub-standard or a doubtful asset and is subjected to restructuring, on a subsequent occasion, its asset classification will be reckoned from the date when it became NPA on the first occasion. However, such advances restructured on second or more occasion will be allowed to be upgraded to standard category after the specified period in terms of the current restructuring package, subject to satisfactory performance.

9. **Income Recognitions**

Interest income in respect of restructured accounts classified as 'standard assets' will be recognized on accrual basis and that in respect of the accounts classified as 'non-performing assets' will be recognized on cash basis.

10. **Provisioning norms**

Banks will hold provision against the restructured advances as per the extant provisioning norms

Restructured accounts classified as standard advances will attract provision as prescribed from time to time in the first two years from the date of restructuring. In cases of moratorium on payment of interest/principal after restructuring, such advances will attract the prescribed higher provision for the period covering moratorium and two years thereafter

Restructured accounts classified as non-performing advances, when upgraded to standard category will attract a higher provision (as prescribed from time to time) in the first year from the date of upgradation.

5.00% - with effect from March 31, 2016 (spread over the four quarters of 2015-16)

11. **Provision for diminution in the fair value of restructured advances**

Reduction in the rate of interest and / or reschedulement of the repayment of principal amount, as part of the restructuring, will result in diminution in the fair value of the advance. Such provision should be held in addition to the provisions as per existing provisioning norms and in an account distinct from that for normal provisions.

For this purpose, the erosion in the fair value of the advance will be computed as the difference between the fair value of the loan before and after restructuring. Fair value of the loan before restructuring will be computed as the present value of cash flows representing the interest at the existing rate charged on the advance before restructuring and the principal, discounted at a rate equal to the bank's base rate/MPLR as on the date of restructuring plus the appropriate term premium and credit risk premium for the borrower category on the date of restructuring. Fair value of the loan after restructuring will be computed as the present value of cash flows representing the interest at the rate charged on the advance on restructuring and the principal, discounted at a rate equal to the bank's base rate/MPLR as on the date of restructuring plus the appropriate term premium and credit risk premium for the borrower category on the date of restructuring.

Further, for the purpose of arriving at the erosion in the fair value, the NPV calculation of the portion of principal not converted into debt/equity will be carried out separately. However, the total sacrifice involved for the bank would be NPV of the above portion plus valuation loss on account of conversion into debt/equity instruments.

The total provisions required against an account (normal provisions plus provisions in lieu of diminution in the fair value of the advance) will be capped at 100% of the outstanding debt amount.

12. Risk-Weights

Restructured housing loans should be risk weighted with an additional risk weight of 25 percentage points.

With a view to reflecting a higher element of inherent risk which may be latent in entities whose obligations have been subjected to restructuring / rescheduling either by banks on their own or along with other bankers / creditors, the unrated standard / performing claims on corporates should be assigned a higher risk weight of 125% until satisfactory performance under the revised payment schedule has been established for one year from the date when the first payment of interest / principal falls due under the revised schedule.

13. Prudential Norms for Conversion of Principal into Debt / Equity and Conversion of Unpaid Interest into 'Funded Interest Term Loan' (FITL), Debt or Equity Instruments

The extant guidelines such as asset classification, income recognition, valuation and provisioning norms, will be followed relating conversion of principal into debt/ equity as well as conversion of unpaid interest into funded interest term loan, debt or equity instruments applicable at that point of time.

14. MIS

The requisite MIS as per regulatory and internal requirement will be developed along with the account being considered under CDR mechanism.