

## **RBI New Framework, 2018 for Dealing with Stressed Assets in India and Its Impact**

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### **Introduction**

Corporate Debt Restructuring; Strategic Debt Restructuring are few best tools to deal with overwhelming stressed assets. This problem is one of the emerging issues for the Reserve Bank of India. Conversion of Non-Performing Assets (hereinafter referred as “NPAs”) to either Performing Assets or eradicating them got increased with the enactment of Insolvency and Bankruptcy Code of 2016. A resolution that is ‘Resolution of Stressed Assets – Revised Framework’ had been issued by RBI already on 12/02/2018 to deal with the problem of stressed assets. This step has enhanced the jurisprudence of the IB Code as one of the main regulatory body dealing with stressed asset has made the IB Code as the Sudarshan Chakra to wipe out the evils of NPA.<sup>2</sup> It was a big move, in a single sweep RBI had decided to move back a step and remove the framework that was the backbone of its resolution policy. But looking at the move in isolation seems unfair to the broad picture the reform seems to angle itself towards. It is angled towards faster, quicker and diligent resolution without any legroom for thriftiness.<sup>3</sup>

### **Salient Features and Drawbacks of the Old Framework**

A Corporate Debt Restructuring Scheme (hereinafter referred to as “CDR”) is a non-statutory mechanism that is a voluntary system based totally upon their Debtor-Creditor agreement and Inter-Creditor agreement. Therefore, the goal of CDR is to make certain a timely and obvious mechanism for the restructuring of the company money owed for the advantage of all concerned persons. Such a scheme will best be relevant to traditional and substandard bills and there is no requirement for the account to be sick, NPAs or being in default. In different words, any secured creditor can take this recourse if it holds at the least 20% proportion in either operating capital or time period finance, irrespective of the repute of the account. Further, this scheme additionally has incorporated the idea of moratorium whereby

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<sup>2</sup> REFORMS BY RBI FOR RESOLUTION OF STRESSED ASSETS: AN OVERNIGHT CHRONICLE?

<sup>3</sup> Decidutta Tripathy & Euan Roch, *RBI announces new bad-loan resolution framework*.

both the parties could be constraining itself for taking any other legal action during the period where CDR is being implemented.<sup>4</sup>

Scheme for Sustainable Structuring of Stressed Assets was notified to reinforce the lenders' ability to deal with stressed assets which are a large business running accounts. RBI felt the need to encourage the creditors to have an energetic role in determining the future of such stressed accounts. But for this scheme to apply, the sustainable debt must no longer be less than 50 percentage of present day funded liabilities. The Notification asks the bank to bifurcate the sustainable debt into the one's debts which can be serviced in the respective residual maturities of current debt known as Part A, whilst the distinctive between the aggregate present day tremendous debt and the Part A may be known as Part Such bifurcation will help in apprehend a way to recover the stressed assets by means of providing sure financial help or presenting them with a moratorium length.

### **Salient Features of the New Framework**

The Notification has completely remodelled the battling sword and embraced the armour created by IB Code in their war against NPAs.

### **The Processing of the Default**

The Notification defines the default to be any non-payment of debt which has emerged as due and payable but has now not been repaid through the debtor or the company debtor. It can't be helped but observe that the IB Code additionally defines the default just the equal. Further, the Notification is looking the creditors to classify all those accounts who created a default having mixture publicity of 50 million rupees as Special Mention Accounts and file them to Central Repository of Information on Large Credits (hereinafter referred as "CRILC") on weekly basis. With this step, the regulatory frame has ensured the early identification of any accounts that turn might become a non-appearing asset.<sup>5</sup>

### **The Quick Resolution**

The Notification applies a therapy to the defaulted account before directing it for an insolvency procedure. It asks the lenders to initiate the Resolution Plan as soon as the borrower entity makes a default. Such a Resolution Plan may include any action or plan or

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<sup>4</sup> *Corporate Debt Restructuring*, RBI Notification (23-08-2001), ¶ 4.3.

<sup>5</sup> The Insolvency and Bankruptcy Code 2016, No. 31, Acts of Parliament 2016 (India); s. 3(12).

reorganization to regularise the account by payment of all the overdue by the borrower, sale of the exposures, and change in ownership or restructuring.<sup>6</sup>

### **New Definition of Restructuring under the New Framework**

“Restructuring is an act in which a lender, for economic or legal reasons relating to the borrower’s financial difficulty grants concessions to the borrower. The restructuring would normally involve modification of terms of the advances/securities, which may include, among others, alteration of repayment period / repayable amount; rollover of credit facilities; sanction of additional credit facility; enhancement of existing credit limits and compromise settlements where time for payment of settlement amount exceeds three months.”<sup>7</sup> Therefore, the definition of restructuring consists of nearly any trade that might be made to the primarily established agreement of loan by way of the lenders in terms of easing the burden on the borrower.

### **Classification of Assets**

Prior to the Notification, every account which has defaulted would get a grace time not exceeding 12 months before being degraded to the elegance of ‘Substandard Assets’ from ‘Standard Assets’. But, if a borrower entity makes a default under the regime of the new Notification, the account would immediately be downgraded from ‘Standard Assets’ to ‘Substandard Assets’ and might comply with the growing ageing criteria as earlier than. The Notification defines ‘specified period’ to be the period from the date of implementation of Resolution Plan to the date by which 20% of the outstanding principal debt is repaid.<sup>8</sup>

### **Impact of New Regulation**

This Notification will shift the focus of resolving the Stressed Assets closer to IB Code because the notification at many places asks the bank to file mandatory insolvency intending below the IB Code. This notification has made certain that the scheduled commercial banks are left with almost no other choice than to take drastic steps to ease the pressure on the account or abolish the NPAs through searching for a proceeding under IB Code. Like a measure in the direction of market control, as quickly as default will arise the borrower will now face steps to initiate cure to default. In a structure wherein even its master like SBI was recognised to skip around and play with divergence regarding amounts of default. This step to tighten its grip was only natural. It seemed that there was scope for better quality

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<sup>6</sup> Ibid.

<sup>7</sup> *RBI’s revised framework for resolving stressed assets, 2018*, RBI.

<sup>8</sup> Banking Regulation (Amendment) Act, No. 30 of 2017 (India).

disclosures of bad loans where no hidden bad loan skeletons can rest.<sup>9</sup> With the focal point transferring from creditor safety to lender safety, perhaps the lenders will take this workout extra seriously lending it the understanding it lacked inside the previous regime. Bankers are possibly to suffer hits on its balance sheet but this over by using RBI is a past due heartfelt apology for what it has finished via throwing the Indian public to the crisis of horrific debt or perhaps, now that RBI has powers through the shape of amendments, it has moved toward a safer and healthier banking gadget with the best solution for terrible debt.<sup>10</sup>

## **Essar Steel Limited v. Reserve Bank of India<sup>11</sup>**

### **Facts**

Essar Steel India Limited had filed a petition before Hon'ble Gujarat High Court challenging the directions issued by Reserve Bank of India in a press release came out in June 2017. In this petition, Essar had challenged the criteria chosen by RBI in selecting 12 companies and referring them to NCLT for insolvency proceeding under newly enacted Insolvency and Bankruptcy Code, 2016 ("I&B Code").

### **Issues**

1. Whether the RBI was within its constitutional limits while making this case a 'priority' over certain cases and in asking the banks to take actions against the Identified Accounts
2. Whether RBI should have considered Essar like the other companies who are NPAs haven't met the criteria laid down on the press note and let them have 6 months to settle their ongoing consideration of a resolution plan.
3. Whether the press note dated 13 June 2017 violated the fundamental right to equality of Essar enshrined under Article 14 of the Constitution.

### **Judgement**

The Hon'ble Gujarat High Court recusing the RBI rejected the contentions of Essar Steel and held that the press note is valid as the consortium of lenders can approach the NCLT for insolvency procedure on their own.<sup>12</sup>

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<sup>9</sup>Nupur Anand, *India's central bank will now seek weekly reports on toxic loans from lenders*, (Quartz, February 13, 2018).

<sup>10</sup>Aparna Iyer, *RBI yanks the fig leaf off with new bad loan rules for banks*, (Mint, February 14, 2018)

<sup>11</sup> Essar Steel Limited v RBI, (2017) SCC OnLine Guj 995.

## Conclusion

The RBI has created a powerful ally with IB Code and this Notification is a fortification of their armour and weapon against the defaults and bad debts. The latest notification, on the other hand, is like the tool it wished as a regulatory body and central bank to address the issue of stressed assets. The changes inside the in a single day chronicle seem to be an extended idea out technique, from the modification in Banking Regulation to the advent of IB Code. The notification becomes simply every other radical addition to cope with an epitome of disease deceased our banking system. It certainly comes out as a systematic strike at the fundamentals of the financial system, perhaps for a short term loss however a long time benefits. There are pains and costs to be borne, but as long as the end-game is a desirable goal, these should be worth it for placing the private economy structurally on a path of sustained growth.

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<sup>12</sup> *Economic Survey Vol II of India*, Government of India, Ministry of Finance (August 2017); Box II of Ch 3.