Association of Power Producers

RECOMMENDATIONS ON REVISED FRAMEWORK FOR RESOLUTION OF STRESSED ASSETS

Meeting with RBI Governor

25th April 2019

Nine key points that need to be addressed

1. Early identification and reporting of incipient stress
2. Timeline for Implementation of Resolution Plan from reference date
3. Consent threshold for Resolution Plan in value terms
4. Applicability of RBI Circular
5. Compromise settlements
6. Conversion of debt into equity
7. Credit Rating requirements
8. Up-gradation of account
9. Flexi restructuring of loans to infrastructure which permit refinancing

Issue 1 : Early identification and reporting of incipient stress (1 day default as per RBI)

IBA	APP
■ Incipient Stress recognition only after **continuous 30 days** from default date	■ Incipient Stress recognition only after **continuous 90 days** from default date

- Long-term Power Purchase Agreements (PPAs) govern revenues of power generators
- **Alignment with Provisions of PPA** – Procurer is at default when it fails to pay minimum 85% of the undisputed bill within 90 days after the Due Date.
- **Protracted delays in payment of dues** by Discoms have gravely impaired private power producers' liquidity
- **Pan India outstanding dues from Discoms** is at ~Rs. 41,000 Cr as of 31st Jan 2019

Issue 2 : Timeline for Implementation of Resolution Plan from reference date (180 days as per RBI)

IBA	APP
■ 180 days for approval of resolution plan and another 60 days for implementation – 180+60 = 240 days	■ 270 days for approval and implementation of resolution plan, **minimum 60 days for implementation post approval** – 270+60 = 330 days

- Research and Analysis[1] by Indira Gandhi Institute of Development Research (IGIDR): **Probability of resolution, miniscule @ only 5% (mostly liquidations) in 180 days.**
- **Multiple Conditions Precedent** for Resolution Plan approval – Multilayered decision making process in each bank; TEV Study, Various Audits, Credit Rating, Final Approvals from Board of each Bank & Borrower; Creation of Security.
- Standing Committee on Energy – 37th Report : Regulatory resolutions are inordinately delayed for years and end up in APTEL / SC - **Matters take about 2-3 years at APTEL/CERC and about a year at SERCs for Order to be issued**

Source: 1- Finance Research Group at IGIDR - blog.theleapjournal.org

Issue 3 : Consent threshold for Resolution Plan (RP) in value terms (As per RBI, 100% of ALL Lenders)

IBA

- Consent from **90%** of Lenders by Value
- Probably based on new regulation *12A*. (6 June 2018) of IBC, 2016. - Which is for withdrawal of a case from NCLT & not for approval of RP, which still remains at 66% in IBC.

APP

- Consent from **60%** of Lenders by Value, in line with the earlier 6 schemes of RBI viz., CDR, CAP, SDR, Outside SDR, 5/25, S4A
- Approval Requirements for:
  - *Passing bills in Parliament- Members present and voting*
    - Constitutional Amendment – 66%
    - All others – Simple Majority
  - *Companies Act Resolution - Present and Voting*
    - Ordinary – 50.01%
    - Special – 75.00%
  - *IBC – 66% (All Lenders)*

➢ Infrastructure is the primary accelerator for Investment & Employment and has large interface with Government. IBA's suggestion of **'One size fits all' / 'One pill for all ills' unlikely to resolve stress in this Sector**

➢ Data published by Insolvency and Bankruptcy Board of India (IBBI)[1] : 52% (302 cases) resulted in liquidation, **only 13% (79 cases) resolved under IBC, mostly at Liquidation Value - high value erosion.**

Source: 1- The Quarterly Newsletter of the Insolvency and Bankruptcy Board of India October - December, 2018 | Vol. 9

Issue 4 : Applicability of Circular: As per RBI, Only Banks, Exim, NABARD & SIDBI

IBA	APP
▪ To all bodies governed by RBI including NBFCs and ARCs	▪ All Lenders regulated by RBI ▪ All Institutions regulated by NHB, IRDA, PFRDA, SEBI. ▪ RBI may have coordinated approach with other Regulators through the forum of Financial Stability and Development Council (FSDC) or as may be appropriate to ensure all entities are covered

- For all Infra projects long-term financing is **only provided by entities regulated by NHB, IRDA, PFRDA, SEBI** apart from Banks.

Issue 5 : Compromise settlements (As per RBI 90 days)

IBA	APP
■ Time period of 180 days ■ Stipulation of RP4 to be done away with	■ **Time period of 270 days**, in line with requirement for Resolution Plans and as per IBC ■ **Non Fund Based (NFB) limits to continue till its validity period** ■ Stipulation of credit opinion-RP4 to be done away with

- **Infrastructure projects** being long-term projects, would **require more time for finalising settlements.**
- Further **project continuity requires continuation of existing NFB limits**, since LCs & BGs are established with long maturity, are irrevocable and cannot be cancelled

Issue 6 : Conversion of debt into equity (As per RBI, Price as per SEBI guidelines OR Book Value which ever is lower)

APP

- Conversion as per SEBI guidelines OR Book Value OR At Par value, which ever is higher
- If there is change in ownership, **Mandatory Tender Offers (MTO) should be exempted** as restructuring requires Capital Infusion into the Company and not flow to the Markets

- **SEBI's guidelines to be aligned** to achieve faster resolution and certainty of execution.

Issue 7 : Credit Rating requirements (As per RBI, 2 Agencies above Rs. 500 Cr.)

APP

In case of long term debt, Credit Rating from:

- Two Rating agencies when debt is in excess of Rs.5,000 Cr.
- One Rating agency for debts between Rs. 2,000 Cr to Rs. 5,000 Cr.
- No requirement of Credit Rating for debts below Rs. 2,000 Cr.

- **Efforts and diligence to be proportionate to debt value** and also considering the fact that there are only few credible rating agencies.

Issue 8 : Up-gradation of account (As per RBI, 20% of sustainable debt and 1 year whichever is later)

IBA	APP
■ On payment of 10% of sustainable debt	■ On payment of 5% of sustainable debt and 1 year, whichever is earlier

- Considering tenor of loans and amounts involved in Infrastructure projects, this will help companies to raise various resources for Business Continuity – thereby helping all stakeholders

Issue 9 : Flexi restructuring of loans to infrastructure which permit refinancing

IBA	APP
■ Refinance to good quality infrastructure projects would be impacted. The withdrawal of these circulars may be re-examined for refinance of high quality investment grade project not in default as on the date of refinance. ■ Such refinance should not be treated as restructuring.	■ Agree with IBA Recommendations

- Since the PPAs / Concessions in Power / Infrastructure sectors range from 25 years to 35 years and as long-term debts covering the entire concession period are not available; **refinancing is a must, and must not be construed as restructuring**

SUMMARY: Objective of all the previous guidelines of RBI, was Resolution NOT Liquidation.

The objectives are Reorganisation and Resolution outside NCLT:

- in a time bound manner
- for maximisation of value of assets,
- certainty of execution
- to promote entrepreneurship,
- balance the interests of all the stakeholders

This will ensure that the viable companies :

- continue to operate,
- address their timing mismatch of cash flows,
- contribute to the economy in the form of providing employment, contribution to exchequer and economic growth.
- ensure investments already made continue to be productive and not be disposed at scrap value.

THANK YOU

RBI circulars and Threshold requirements

Sl	Particulars	RBI Circular No.	Threshold requirements
1	Corporate Debt Restructuring	DBOD.NO.BP.BC.45/21.0421.04.048/2005-06	60% by value and 50% by numbers
2	Framework for Revitalising Distressed Assets in the Economy – Guidelines on Joint Lenders Forum (JLF) and Corrective Action Plan	DBOD.No.BP.BC.97/21.04.132/2013-14	60% by value and 50% by numbers
3	Flexible Structuring of Long Term Project Loans to Infrastructure and Core Industries (5/25)	DBOD.No.BP.BC.24/21.04.132/2014-15	60% by value and 50% by numbers
4	Strategic Debt Restructuring Scheme (SDR)	DBR.No.BP.BC.101/21.04.132/2014-15	60% by value and 50% by numbers
5	Prudential Norms on Change in Ownership of Borrowing Entities (Outside Strategic Debt Restructuring Scheme) - Outside SDR	DBR.BP.BC.No.41/21.04.048/2015-16	60% by value and 50% by numbers
6	Scheme for Sustainable Structuring of Stressed Assets (S4A)	DBR.No.BP.BC.103/21.04.132/2015-16	60% by value and 50% by numbers

Rationale of 12A

- 'President Approves Promulgation of the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018' PIB Note of 06-June-2018 15:16 IST (http://pib.nic.in/newsite/PrintRelease.aspx?relid=179805)
- It was stated that,
  - *In order to protect the sanctity of the CIRP, the Ordinance lays down a strict procedure if an applicant wants to withdraw a case after its admission under IBC 2016. Henceforth, such withdrawal would be permissible only with the approval of the Committee of Creditors with 90 percent of the voting share.*
- Similarly, Government's arguments on section 12A in Supreme Court on Section 12A was that, 'once an application by a creditor is admitted by the Adjudicating Authority, the proceeding becomes a proceeding in rem and is no longer an individual proceeding but a collective proceeding'.

Rationale of Voting Threshold of 66% under IBC

- ‘President Approves Promulgation of the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018’ PIB Note of 06-June-2018 15:16 IST (http://pib.nic.in/newsite/PrintRelease.aspx?relid=179805)
- It was stated that,
  - *With a view to **encouraging resolution as opposed to liquidation**, the voting threshold has been brought down to 66 percent from 75 percent for all major decisions such as approval of resolution plan, extension of CIRP period, etc.*
  - *Further, in order to facilitate the corporate debtor to continue as a going concern during the CIRP, the voting threshold for routine decisions has been reduced to 51%.*

RBI Paper - Wholesale and Long-Term Finance (WLTF) banks

- They will focus primarily on lending to infrastructure sector and small, medium and corporate businesses.
- They will also mobilise liquidity for banks and financial institutions directly originating priority sector assets, through securitisation of such assets and actively dealing in them as market makers.
- They may also act as market-makers in securities, such as, corporate bonds, credit derivatives, warehouse receipts, and take-out financing, etc.
- These banks will provide refinance to lending institutions and shall be present in capital markets in the form of aggregators.
- They may have negligible retail sector exposure on asset side.
- The primary sources of funds for these banks could be a combination of wholesale and long term deposits (above a large threshold), debt/equity capital raised from primary market issues or private placement, and term borrowings from banks and other financial institutions.

Infrastructure lending issues

- India could do with sizeable investments in power, roads, railways, public transport and a hundred other basic infrastructure projects. Finance Minister Arun Jaitley had pegged the required investment over the next 10 years at $1.5 trillion; about 75 percent of India's 2016 GDP.
- RBI discussion paper on WLTF states that there is a declining trend in bank credit towards services, industrial and small and medium enterprises. This decline is attributed to the asset quality on banks' balance sheets. The RBI has twisted itself into a knot here by acknowledging that the problem is the NPAs on bank balance sheets and not an unwillingness to lend.
- To fund infrastructure projects with long gestation periods, companies need access to long term funds. Globally long-term capital is raised via capital markets where the major investors are pension and insurance managers. In India, these managers are severely constrained by regulations.

What is Infrastructure

- Six characteristics of infrastructure
  - *natural monopoly,*
  - *high sunk costs and asset specificity,*
  - *non-tradability of output,*
  - *non-rivalness in consumption,*
  - *possibility of price exclusion, and*
  - *presence of externalities)*
  - *and one or more of the three parameters*
    - its importance to the scheme of economic development,
    - its ability to contribute to human capital and
    - the specific circumstances under which it has developed in India has been assessed; and
    - a clear and identifiable link with the support objective, which Government seeks to serve, has been established.
- The Master List will be decided by a Committee chaired by Secretary, Department of Economic Affairs with Member-Secretary, Planning Commission, Secretary, Department of Revenue, Chief Economic Adviser, and one representative each of RBI, SEBI, IRDA, PFRDA and the Secretary of the concerned Administrative Ministry/Department, as members. The Committee will be serviced by DEA and will make recommendations to the Finance Minister for decision.