



# SASHAKT: RESOLUTION OF STRESSED ASSETS OUTSIDE IBC

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## Introduction

In February 2018, the Reserve Bank of India (“**RBI**”) introduced a revised framework for resolution of stressed assets by scheduled commercial banks and all-India financial institutions (“**Revised Framework**”).

With the introduction of the Revised Framework, all extant instructions on resolution of stressed assets such as Strategic Debt Restructuring Scheme (SDR) and Scheme for Sustainable Structuring of Stressed Assets (S4A) were withdrawn and the Joint Lenders’ Forum was also discontinued.

The Revised Framework was formulated to provide for a harmonised and simplified generic framework for resolution of stressed assets in view of the enactment of the Insolvency and Bankruptcy Code, 2016 (“**IBC**”).

## Revised Framework

Pursuant to the Revised Framework, all lenders are required to have board-approved policies for the resolution of stressed assets, including timelines for such resolution. Further, as soon as a default is committed by a borrower vis-à-vis any lender, all lenders (singly or jointly) are required to formulate a resolution plan.

A resolution plan would be considered to be ‘implemented’ only if the borrower ceases to be in default and, if the plan involves restructuring, when all the documentation as well as security creation and perfection is completed and the new capital structure/ changes in the terms of the existing loans are reflected in the books of the lenders and the borrower.

In case of large accounts (i.e. accounts where the aggregate exposure is INR 20 billion or above), on or after March 1, 2018 (“**Reference Date**”) the resolution plan is required to be implemented, if the default existed as on the Reference Date, within 180 days of the Reference Date, and if the default was committed after the Reference Date, 180 days from the date of the first default.

The Revised Framework also provides that if a resolution plan in respect of such large accounts is not implemented within the specified timelines, the lenders shall have to mandatorily file an insolvency application (singly or jointly) under the IBC within 15 days from the expiry of such timeline. For other accounts with exposure ranging from INR 1 billion to INR 20 billion, RBI will be announcing the reference dates for implementation of a resolution plan over a two-year period.

Further, the Revised Framework prescribes stringent supervisory review and enforcement actions as may be deemed appropriate by the RBI, including higher provisioning and monetary penalties, if there is any failure on the part of the lenders to meet the prescribed timelines or any action is taken by the lenders with an intent to conceal the actual status of accounts or evergreen stressed accounts.

## Project Sashakt

In furtherance of the various efforts for faster resolution of stressed assets, in June 2018, the formation of a committee under the chairmanship of Mr. Sunil Mehta was announced (“**Committee**”). The key responsibility of the Committee was to examine the setting up of an asset reconstruction company and/ or asset management company for faster resolution of stressed assets involving multiple public sector banks.

On July 2, 2018, the Committee submitted its report which recommended a bank-led resolution process and a five-pronged strategy to resolve stressed assets called 'Project Sashakt'.

For loans below INR 50 crore, the Committee recommended the creation of a focussed vertical for management of stressed assets and setting up of a steering committee for resolution of such stressed assets within 90 days.

Further, for loans ranging from INR 50 crore to INR 500 crore, the Committee recommended a bank led resolution approach which would involve constitution of an independent screening committee to examine resolution of such loans within 180 days and if there is no resolution in 180 days, then proceedings under the IBC will have to be initiated against such borrower.

The Committee further recommended an asset management company and alternative investment fund structure for resolution of loans above INR 500 crore. An independent asset management company would be set up which would ensure healthy competition, fair prices and cash recovery. Further, the alternative investment fund would raise funds from institutional investors for buy-out of the stressed assets.

## Inter-creditor Agreement

In view of the Revised Framework and the recommendations of the Committee, an inter-creditor agreement was formulated which would serve as a platform for banks and financial institutions ("FIs") to take joint and concerted steps for resolution of stressed assets.

Around 85 banks and FIs, comprising of public sector banks, private sector banks, foreign banks etc. ("**Participating Lenders**"), signed the inter-creditor agreement for resolution of stressed assets on July 23, 2018 ("**ICA**").

Under the ICA, most key decisions in respect of the resolution process are required to be taken by Participating Lenders holding 66% or more (by value) of the total outstanding in respect of the loans given by all Participating Lenders to the concerned borrower ("**Majority Lenders**").

The ICA is applicable in respect of borrowers in respect of whom the aggregate outstanding of the Participating Lenders is more than INR 50 crore or who may be referred to debt resolution under the ICA by the Majority Lenders or under the Revised Framework. It may be noted that the outstanding for the purposes of the ICA is limited only to the principal amount outstanding and does not include interest and other charges in respect of the loans.

It is pertinent to note that the ICA covers only those 'lenders' who have provided loans/ financial assistance to the relevant borrower. This is in contrast with IBC where 'financial creditors' of a corporate debtor also include beneficiaries of guarantees which the corporate debtor has issued for loans availed by third parties.

## Lead Lender

The Participating Lenders have agreed to appoint the lender who has the highest outstanding vis-à-vis the concerned borrower as the 'Lead Lender' who will act as their agent.

The Lead Lender will be responsible, *inter alia*, for assessment of the sustainable and unsustainable levels of the debt of the borrower, determining the terms of the proposed resolution plan, formulating and running the bid process and appointment of consultants and advisors for assisting in the resolution process.

## Resolution Process

In case of a payment default, the relevant Participating Lender is required to call upon the borrower to cure the default in accordance with the Revised Framework. If the default is not cured within 30 days from its occurrence, the relevant Participating Lender may make a reference to the Lead Lender for resolution in accordance with the ICA.

Any resolution plan which is prepared by the Lead Lender would need to be agreed upon by the relevant borrower, and the borrower and its promoters would need to provide necessary cooperation to the lenders for the formulation and implementation of the resolution plan.

Once the resolution plan is prepared, it will be submitted to an overseeing committee (“OC”) for its review. The resolution plan along with the OC’s recommendations will be submitted by the Lead Lender to all relevant Participating Lenders.

The resolution plan which is approved by the Majority Lenders will be final and binding on all the relevant Participating Lenders.

The resolution process can be terminated if the Majority Lenders so decide or the resolution plan is not approved and implemented within 180 days from the date of default or within the timeline prescribed under the Revised Framework or other applicable laws.

If a resolution plan is not approved and implemented within the aforesaid period or there is any default during the period from the date of implementation of the plan till the date by which atleast 20% of the outstanding principal debt and any interest capitalisation sanctioned as part of the restructuring is paid, the lenders are required to initiate insolvency proceedings against the borrower under IBC.

## Buy-out of Dissenting Lenders

Once a resolution plan is approved by the Majority Lenders, the Lead Lender will have the right to arrange for a buy-out of the facilities of the dissenting lenders at a value that is equal to 85% of the liquidation value (as defined in the IBC) or the resolution value (i.e. the net present value of the resolution plan), whichever is lower. If the Lead Lender exercises such right, the relevant dissenting lender shall be obligated to sell its loan at the value mentioned above.

If the Lead Lender does not arrange for such buy-out, the dissenting lenders can arrange for the buy-out of all the other relevant Participating Lenders at a value that is equal to 125% of the liquidation value or the resolution value, whichever is higher. Where such right is exercised by the dissenting lenders, the relevant Participating Lenders shall be obligated to sell their loans at the value mentioned above.

The dissenting lenders also have the option to downsell their loans only to any bank or non-banking financial company, and no other person, at a mutually decided price. Further, the ICA does not permit the dissenting lenders to unilaterally downsell their loans even to asset reconstruction companies or distressed asset funds. This may restrict the ability of the dissenting creditors to efficiently exit the account.

## Stand Still

From the date on which the borrower is referred for resolution till the expiry of 180 days from the date of default or the timeline prescribed under the Revised Framework or other applicable laws, there will be a stand still on initiation of any civil action against the borrower and the other obligors.

Further, during this period the lenders cannot downsell their loans to any person other than a bank or non-banking financial company which accedes to the ICA and agrees to be bound by the resolution plan.

However, during the stand still period there will be no restriction on commencement of any criminal action against the borrower, its promoters/ directors/ officials or the other obligors.

The stand still period will lapse immediately on approval of the resolution plan or termination of the resolution process by the Majority Lenders.

Given that beneficiaries of guarantees issued by the concerned borrower entity for loans availed by third parties are not covered under the ICA, the stand still provisions will not apply to them, even though they may be a bank/ FI which is a party to the ICA.

*This note has been written by Aastha (Partner) and  
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