

इंडियन बैंक



Indian Bank

इलाहाबाद

ALLAHABAD

e-Book

RECOVERY



Indian Bank Management Academy for Growth & Excellence
इंडियन बैंक मैनेजमेंट एकेडमी फॉर ग्रोथ एंड एक्सीलेंस

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1. INTRODUCTION

NPAs have direct impact on Bank's profitability, liquidity and equity. Non- Performing Assets affect the bank in the following ways

- Bank is not able to recognize interest income in respect of these assets
- Bank is required to make prescribed provisioning ranging from 15% to 100% from out of interest income earned from other performing Assets
- Besides impacting the profitability, huge NPA position of the bank affects its balance sheet and present uncomfortable indices.

Hence concerted efforts need to be taken expeditiously for resolving the NPAs through all the channels of recovery

What is Overdue?

Any amount due to the bank under any credit facility is „overdue“ if it is not paid on the due date fixed by the bank.

What is Out of Order?

An account should be treated as 'out of order'

- If the outstanding balance remains continuously in excess of the sanctioned limit/drawing power.
- where the outstanding balance in the principal operating account is less than the sanctioned limit/drawing power but there are no credits continuously for 90 days
- where the credits are not enough to cover the interest debited during the same period,

An account shall be classified as Non-performing Assets (NPA) for various types of credit facilities or advances as under;

- a. In case of term loan (other than agricultural Loan), either interest and/or installment of principal dues remains “overdue” for a period more than 90 days.
- b. In case of running account such as cash credit or overdraft (other than agricultural Loan), the account remains “Out of Order” as indicated above.
- c. If the regular/ adhoc limits are not reviewed/ renewed within 180 days from the due date of review/ renewal or date of adhoc sanction.
- d. If the Stock Statements are not submitted continuously for a period of 90 days and limits / drawings are allowed on such irregular drawing power continuously for 90 days.
- e. In case of bills purchased and discounted, if the bills remain “overdue and unpaid” for a period more than 90 days.
- f. In case of other loan facilities, any amount to be received remains “Overdue” for a period more than 90 days.
- g. Since advances to Tea Industry is considered/governed by the norms as applicable for agricultural advances (Madhukar Committee Report), such accounts will be considered as NPA if interest and/or instalment of principal remain overdue for two crop seasons (as Tea is considered as short duration crop by IBA and also by the SLBC, West Bengal).
- h. State Government guaranteed advances are classified as NPA if interest and/ or instalment remain unpaid beyond 90 days irrespective of whether the guarantee is invoked or not.
- i. Central Government Guaranteed advances are to be classified as NPA only after 90 days of repudiation of the guarantee by the Government, when the same is invoked. This exemption from classification of Central Government guaranteed advances as NPA is not for the purpose of recognition of income. The interest/income in such accounts will not be booked unless the same is recovered.
- j. In case of Agricultural Loan,
 - a loan granted for short duration Crop (up to 12 months) will be treated as NPA if the installment of the principal or interest remains unpaid for two crop seasons beyond the due date.
 - a Loan granted for long duration crop (beyond 12 months) will be treated as NPA if the installment of the principal or interest payable thereon remains unpaid for one crop season beyond the due date.

Asset classification Policy

Bank has already adopted system based classification of assets. Parameters for classification of assets and provisioning as per IRAC norms and approved by Bank Board are set in the CBS system. **Asset classification to be done borrower-wise and not facility-wise.** All the facilities granted by Bank to a Borrower and investment in all securities issued by the borrower will have to be treated as NPA / NPI and not the particular facility / investment or part thereof which has become irregular.

Criteria for Asset classification

Following criteria will be followed for classification of assets

Standard Accounts

Standard assets/ Performing Assets are those assets which do not disclose any problem and which do not carry more than normal risk attached to the business.

For better monitoring of credit portfolio, CBS system is parameterized to classify the periodicity of irregularity in each Standard assets/ Performing Assets in under noted slabs:

Sl.No.	Nomenclature	Period of Irregularity	IRAC code No.
01)	SMA 0	Upto 30 days	00
02)	SMA 1	Above 31 days upto 60 days	01
03)	SMA 2	Above 61 days upto 90 days	02

Non-Performing Assets (NPA)

Non-Performing Assets (NPA) are further divided in undernoted three broad categories based on the period for which the asset has remained non-performing and the realizable value of the securities charged to the Bank.

I. Sub-Standard Assets, II. Doubtful Assets,
III. Loss Assets.

I. Sub-Standard Assets

A substandard asset is one, which has remained NPA for a period less than or equal to 12 months. In CBS System Sub-Standard Assets will be shown with IRAC Code 04.

II. Doubtful Assets

An asset would be classified as doubtful if it has remained in the substandard category for a period of 12 months. Erosion in the value of security can be reckoned as significant when the realizable value of the security is less than 50 per cent of the value assessed by the bank or accepted by RBI at the time of last inspection, as the case may be. Such NPAs may be straightaway classified under doubtful category and provisioning should be made as applicable to doubtful assets.

Doubtful Assets depending upon their periodicity are further classified under three categories:

Doubtful Assets (D01)

A Non-Performing Asset which has remained in sub-standard category for a period ranging from 12 months to 24 months. In CBS System it will be shown with IRAC Code 05.

Doubtful Assets (D02)

A Non-Performing Asset which has remained in Doubtful Asset category for a period more than one year & up to three Year. In CBS System it will be shown with IRAC Code 06.

Doubtful Assets (D03)

A Non-Performing Asset which has remained in Doubtful Asset category for more than three years. In CBS System it will be shown with IRAC Code 07.

III. Loss Assets

Loss Asset is one where loss has been identified by Bank's Internal Inspector, External Auditor or the RBI Inspectors but the loan account has not been written off wholly or partly.

In other words, such an Asset is considered uncollectible/non-recoverable/unrealizable & of such little value that its continuance as a bankable asset is not warranted although there may be some salvage or recovery value. In CBS System Loss Assets will be shown with IRAC Code 08.

Accounts where there is erosion in the value of security/frauds committed by borrowers

In respect of accounts where there are potential threats for recovery on account of erosion in the value of security or non-availability of security, the asset should be straightaway classified as doubtful or loss asset as appropriate:

- a. If the realisable value of the security is less than 50 per cent of the value assessed by the bank or accepted by RBI at the time of last inspection as the case may be, such NPAs may be straightaway classified under doubtful category.
- b. If the realisable value of the security as assessed by the bank/ approved valuers/ RBI is less than 10 per cent of the outstanding in the borrowal accounts, the asset should be straightaway classified as loss asset.

Who is a Wilful Defaulter?

Diversion and siphoning of funds

i) Diversion of Funds

The term "diversion of funds", should be construed to include any one of the undernoted occurrences:

- (a) Utilization of short-term working capital funds for long-term purposes not in conformity with the terms of sanction;
- (b) Deploying borrowed funds for purposes / activities or creation of assets other than those for which the loan was sanctioned;
- (c) Transferring borrowed funds to the subsidiaries / Group companies or other corporate by whatever modalities;
- (d) Routing of funds through any bank other than the lender bank or members of consortium without prior permission of the lender;
- (e) investment in other companies by way of acquiring equities / debt instruments without approval of lenders;
- (f) Shortfall in deployment of funds vis-à-vis the amounts disbursed / drawn and the difference not being accounted for.

ii) Siphoning of Funds

The term "siphoning of funds", should be construed to occur if any funds borrowed from banks / FIs are utilized for purposes unrelated to the operations of the borrower, to the detriment of the financial health of the entity or of the lender. The decision as to whether a particular instance amounts to siphoning of funds would have to be a judgment of the lenders based on objective facts and circumstances of the case.

Non-Cooperative Borrower

A non-cooperative borrower is one who does not engage constructively with his lender by defaulting in timely repayment of

dues while having ability to pay, thwarting lenders' efforts for recovery of their dues by not providing necessary information sought, denying access to assets financed / collateral securities, obstructing sale of securities, etc.

The cut off limit for classifying borrowers as non-cooperative would be those borrowers having aggregate fund-based and non-fund based facilities of Rs.50 million from the concerned bank/FI.

A non-cooperative borrower in case of a company will include, besides the company, its promoters and directors (excluding independent directors and directors nominated by the Government and the lending institutions).

In case of business enterprises (other than companies), non-cooperative borrowers would include persons who are in-charge and responsible for the management of the affairs of the business enterprise.

2.Recovery / Reduction of NPA

i. Upgradation

Upgradation is attempted in all NPAs, more particularly in Sub-Standard Accounts. The borrower should be persuaded to pay the overdue amount and upgrade the account to Standard Category. In cases where immediate payment is not feasible by the borrower the account may be revived by re-phasing / restructuring the account. If the account runs satisfactorily as per the restructured terms during the specified period of one year, the account is upgraded to standard asset. On recovery of the entire overdue, the account will be upgraded automatically in the CBS. However In certain accounts, manual up-gradation of NPA accounts is required.

i. Cash Recovery in NPA accounts

Recovery in the following manner is considered as cash recovery:

- Any reduction in outstanding balance.
- Recovery in Compromise settled accounts.
- Recovery from sale of charged Assets either through DRT/Court or under SARFAESI Act.
- Recovery through sale of Assets to ARCs / ASCs / Banks etc. on cash basis or only cash component on SR basis.
- Cash recovery in fully written off accounts (AUC) will have positive impact on the Profit and Loss Account of the Bank.

ii. Appropriation of Recovery in NPA Accounts

Any Recovery should be first appropriated to Book Balance (Principal) and then to Unpaid Legal Expenses (MLE), Unpaid Other Expenses (MOX) and thereafter to Unpaid Interest (MOI).

iii. Source of Funds

Sanctioning authorities should satisfy themselves as to the source of payment of the amount under compromise, if granted.

Before entering into compromise settlement, the source from which the borrower/guarantors will raise funds particularly in cases of settlement in instalments area to be identified and obtain it in writing from the borrower/offer or of the OTS.

iv. Suit filed/Decreed Accounts

Compromise /negotiated settlement can be considered under the existing Bank's Policy in respect of all NPA accounts irrespective of asset classification and whether suit filed or non-suit filed or decreed or recovery certificate obtained.

v. Recovery of OTS amount as per sanction terms

Branch should recover the amount agreed as per terms of sanction and in cases where repayments are not forthcoming to communicate the cancellation of OTS promptly and to proceed with legal action intensively. FGMO/Zonal Offices/Branches should ensure that legal action /action under SARFAESI Act is initiated without any loss of time on failure of the borrower to comply with OTS sanction terms.

3.Guidelines on Compromise Settlement

i. Reference Recoverable Amount (RRA):

Reference Recoverable amount is the basic amount which the Bank shall generally insist for accepting a compromise settlement from the borrower/guarantor etc. Net Present Value of the securities will be a guiding factor.

ii. Parties to negotiate with:

Compromise may be negotiated with:

- Principal Borrower/s,
- Guarantor/s either for partial payment or for full settlement,
- Parent Company,
- Other interested parties like drawees of bills, legal heirs, purchaser of charged assets of the bank (subsequent buyers), tenants, etc.

iii. Upfront Payment:

In respect of all OTS proposals, particularly the high value proposals of Rs.10.00 lakhs and above, the offer should be accompanied by a minimum upfront amount of 10% of the OTS offered so as to commit the borrower to the proposal. The upfront amount may be kept in "NOLIEN" account with the Bank.

Sanctioning authorities from the level of ZLCC are empowered to waive the requirement of upfront amount.

For the proposal falling upto the powers of ZLCC, ZLCC will be the Competent Authority either to waiver the upfront amount.

In case of proposals falling under Corporate Office (CO) Powers, ZLCC can relax the upfront amount by 5% instead of complete waiver.

Any deviation in the proposal falling under CO Powers can be considered by respective sanctioning authority.

iv. Repayment terms of Compromise Amount

- Branch should ensure to recover the Compromise amount within 90 days of communication of sanction.
- In exceptional cases, where the cash flows are not adequate, the compromise amount may be allowed to be paid in installments upto 12 months, which can be further extended by a further period of time (replacing another 12 months on case to case basis). However the total extended period should not exceed 36 months from the date of original sanction. In such cases, interest for the delayed payment to be collected at a specified rate of One Year MCLR as on the last date of previous financial year (31st March 2021) + 2% (Simple) from date of communication of Original Sanction by the Branch. An enabling provision is also available for waiver of the delayed period interest.

v. Rejection of Compromise Proposals

No compromise proposal should be rejected at the Branch Manager"s level. It should be referred to the next higher authority

for decision.

vi. Net Present Value (NPV)

NPV of the securities represents present value of amount that may be recovered at a future date. It factors the time taken for realizing a specified amount.

vii. NPV is calculated as under

- Realizable Value of the available security less cost of realization as prescribed in the Policy divided by the Discount Rate.
- Discount Rate depends on two factors viz. the period reckoned for realizing the security and rate of interest to be applied, which is 10.25%.
- NPV table giving the discounting factor for various rates of interest and for different realization periods is given in the Policy.
- Branches have to divide the Realizable Value of the security less cost of realization by the discounting factor mentioned in the table to arrive at the NPV.
- Branches should take up with the borrowers for submission of latest A&L when borrower is offering for OTS.

viii. Definitions of the terms used in the policy

NPV	Net Present Value of securities is computed by discounting realizable value of securities net of cost of realization as applicable at a discount rate of 10.25% for realization periods stipulated for various securities.
Total Dues	Total due is Book Balance plus MOI, MLE and MOX. MOI is to be calculated till end of the quarter In respect of suit filed accounts, which are yet to be decreed, total dues to be calculated with Book Balance plus interest at the rate as claimed in the suit plus MLE/MOX In respect of decreed suit filed accounts, total dues to be calculated as per decretal terms awarded by the Court/DRT plus MLE/MOX.
Notional Dues (ND)	Book Balance + MLE + MOX + Future Law Charges + Simple Interest at 10.25% or Contracted Rate or Decreed rate whichever is lower from the date an account ceases to earn interest till end of the quarter
Interest (INT)	Simple Interest at 10.25% or Contracted Rate or Decreed rate whichever is lower from the date an account ceases to earn interest
Real Balance	RB = Book Balance + MLE + MOX
Net Worth (NW)	Net worth of the borrowers and guarantors <u>irrespective of their constitution</u> should be reckoned NW to be calculated based on latest available A&L statement. Value of assets in the A&L statement to be calculated by reckoning applicable margins as per extant guidelines NW to be certified by the Branch Manager only based on A&L and no need for any auditor's certificate.

Applicable interest rate to be applied for computing Notional Dues and as discounting rate for NPV purpose will be 10.25% simple as detailed above.

4.Applicability of Compromise Settlement

OTS Policy is applicable to

- i. All NPA Accounts (including suit filed, decreed, fraud / wilful defaulter / non co-operative) as on 31.03.2021.
- ii. All fresh NPAs identified from 01/04/2021.
- iii. All staff/retired staff loans /related NPA accounts.
- iv. BOT/NRR accounts

A.Coverage:

I. OTS to be considered at Branches and Zonal Offices and FGMO

- i) Compromise Settlement under this Policy can be considered by sanctioning authorities at branches and Zonal Offices as per Discretionary Powers detailed elsewhere in this Policy in respect of all NPAs.
- ii) Fresh NPAs of 2021-22 which can be considered by Branch Managers of Scale IV branches and above and at Zonal Office level. It is clarified that Branch Managers of Scale IV branches and above, ZLSCC ZLCC FGMCAC are empowered to consider OTS in these cases from the next quarter only since we are making provision as per IRAC once in a quarter only.
- iii) In respect of staff related / retired staff related accounts availed, with the permission of Competent Authority wherever applicable, general Policy guidelines will apply and OTS proposal may be considered by appropriate authority (The appropriate authority is OTS sanctioning authority as applicable to general public).

II. OTS to be considered only at Corporate Office:

OTS under this Policy in respect of the following accounts can be considered only at Corporate Office level:

- i. One Time Settlement in Staff/Retired staff loans either direct or indirect can be considered by;
 - a) COLCC (ED) subject to the discretionary powers specified in the Policy subject to the condition that no fraud is involved and where Real Balance is upto Rs.25 lakhs
 - b) CAC subject to the discretionary powers specified in the Policy subject to the condition that no fraud is involved and where Real Balance is above Rs.25 lakhs and upto Rs.50 lakhs
 - c) Accounts not covered under (a & b) above to be considered by MCB only
- ii. Cases involving Frauds / Malfeasance / Wilful default / Non co-operative/ CBI / PIL: can be considered from the level of COLCC(ED) at Corporate Office for fraud/Malfeasance accounts and for other accounts Management Committee of Board (MCB).
- iii. Government Guaranteed Accounts: By Management committee of Board (MCB).

An account will be treated as fraud only after CO FRMC classifies the same as such and report to RBI. Similarly a borrower will be treated as willful defaulter/non co-operative borrower, only after the Competent Authority approves such classification.

III. OTS in respect of Self-Liquidating Securities:

No OTS can be considered in the cases which are backed by self-liquidating securities like FDRs, Jewels, NSC/KVP/IVPs, LIC Policies etc. Surplus, if any left after adjusting the concerned loan accounts, should be appropriated towards other NPA accounts, if any, of the same party.

If there are shortfall after adjustment of the proceeds as above, in such of those cases, OTS can be considered in the accounts treating the account as unsecured for the balance amount.

If securities charged in these accounts turn out to be fake or fraud is involved OTS in such cases should be taken up for consideration from the level of COLCC(ED) at Corporate Office as per their delegated powers.

IV. OTS in respect of Lok Adalat settled cases:

OTS can also be considered in respect of Lok Adalat settled accounts / OTS already sanctioned accounts, where the settled amount has not been fully paid.

5.Valuation of Securities

A.For NPA accounts (other than for OTS purpose):

- Sanctioning authorities while considering Compromise Settlements should ensure that the valuation of securities is not more than one year old.
- It should be ensured that the approved Engineers are providing Market Value, Realisable Value and Distress Sale Value in the valuation report
- Immovable properties are to be valued by two independent valuers for advances of Rs.5.00 Crs and above in the case of Non SLPs and SME SLPs. For other SLPs, two independent valuations are required for advances exceeding Rs.1.00 Cr
- The immovable properties mortgaged for NPA accounts either under 1st Charge or 2nd Charge to our bank shall be revalued once in three years.
- In case of consortium accounts led by our bank, the periodicity of valuation should be three years
- In case of consortium accounts led by other bank, we may follow the leader bank
- **Hypothecated Plant and Machinery** shall be taken at Written Down Value (WDV) excluding revaluation, if any, as per the latest Audited Balance Sheet (ABS) which is not two years old

Valuation of Stocks and Book Debts:

For Value upto Rs.100 lakhs

Branch Manager to certify the realizable value after physical verification of stocks.

For Value above Rs.100 lakhs

The value of stocks and book debts to be based on any one of the following:

1. Latest Stock and Book Debts statement which is not more than 6 months old duly verified by Branch Manager.
2. Stock Audit Report which should not be more than 1 year old.
3. Audited Balance sheet which should not be more than 2 years old.

If more than any one of the above document is available, document with higher aggregate value to be reckoned.

B.For Compromise proposals (OTS):

i. Land & Building valued upto Rs.5 lakhs

Realisable Value (RV) of security is based on BMs verification and certification based on market enquiry

ii. Land & Building valued above Rs.5 lakhs upto Rs.100 lakhs

Realisable Value as per the valuation by approved valuer. The valuation should not be older than one year as on the date of OTS proposal. In respect of agrl. Properties, if valuation could not be obtained from the approved valuer, certificate from VAO/Tahsildar or Guideline value/Circle rate may be accepted.

iii. Land & Building valued above Rs.100 lakhs

Higher of the Realisable Value as per the valuation by two approved valuers. The valuation should not be older than one year as on the date of OTS proposal. In respect of agrl. Properties, if valuation could not be obtained from the approved valuer, certificate from VAO/Tahsildar or Guideline value/Circle rate may be accepted

In respect of all loans where agricultural land has been taken as security, 85% of assessed value as per certificate from VAO/Tahsildar or Guideline value/Circle rate, whichever is higher may be taken as RV for the purpose of computing NPV.

Applicable cost of realization and realization period as per existing policy

iv. Hypothecated Plant and Machinery shall be taken at Written Down Value (WDV) as per the latest Audited Balance Sheet (ABS) which should not be older than two years from the date of OTS proposal

v. Current Assets (Stocks and Book Debts)

➤ Upto Rs.100 lakhs

Branch Manager to certify the realizable value after physical verification of stocks

➤ Above Rs.100 lakhs

As per latest Stock and Book Debts statement which is not more than 6 months old or Stock Audit report which should not be more than 1 year old or Audited Balance Sheet (ABS) which should not be more than two years old.

If more than any one of the above document is available, document with higher aggregate value to be reckoned.

vi. Stocks and Book Debts valuation – NPV of the determined value

For stocks excluding non moving and obsolete - 50% value to be reckoned For Book

Debts upto 180 days - 50% value to be reckoned

For Book Debts more than 180 days - NIL

6. Realisable Value of Securities for the purpose of OTS

Following aspects to be taken into account while calculating NPV of securities:

1. NPV of securities is to be computed only on **Realisable Value** of the securities and not on Market Value. It is the responsibility of the branches to ensure that Market value (MV), Realisable Value (RV), and Distress Sale Value (DSV) are furnished in the Engineers Valuation Reports. **Realisable value only to be taken for computation of NPV.**
2. If two valuation reports have been obtained from two different valuers, higher of the two Realizable values given by the different valuers should be reckoned.
3. NPV to be arrived at after deducting cost of realization from the Realisable Value. Cost of realization to be determined as **10% of RV of the security irrespective of amount.**
4. Guidance to arrive Realisable Sale value and distress Sale Value:
 - If Realisable Sale Value of securities is not given, branches may reduce the market value by maximum of 10% to arrive Realisable Value.
 - If Distress Sale Value of securities is not given, Branches may reduce the Realisable Sale Value by maximum of 10% to arrive at Distress Sale value
5. NPV net of cost of realization will be reckoned as the NPV of the security.

Calculation of Net Present Value of Securities

Net Present value is arrived at based on future cash flows. It factors the time taken for realizing a particular amount. It is the present value of amount/s that may be recovered at a future date/s. Assuming that the likely time that may be required to realize the value of security is two years, the NPV of that asset/s today will be less than the realisable value. It is arrived at a discount on the Realizable Value of the available securities and is calculated by applying a discounting rate of with quarterly compounding.

1. For arriving at NPV of the realizable value of the available securities, branches have to calculate the NPV by applying the discount rate. The rate to be applied is 10.25%
2. The discounting factor for finding out NPV of future amount at different discounting rates is shown in a separate table given below. The Realisable Value of Securities (net of cost of realization) should be divided by the factor for the specific discount rate for the specific number of years.
3. The number of years to be applied is the time taken for realisation of securities which depends upon case history, legal status, nature of litigation, etc.

The number of year/time limit for this purpose should not exceed for

Particulars	No. of years	
House / Residential Properties / Plots in Metro cities (Metro Cities: New Delhi, Mumbai, Kolkatta, Chennai, Hyderabad, Bangalore and Ahmedabad)	3	
House / Residential Properties / Plots in other cities & towns	4	
House / Residential Properties / Plots in villages	5	
Other assets/properties eligible under SARFAESI auction Metro cities Other Cities/Towns Village (It may be specified that properties like Industrial land, factory land & building, commercial land and building etc. fall under this category)	Metro	4
	Other cities	5
	Towns and Villages	6
Tenanted Properties	5	
Plant & Machinery	5	
Agricultural Lands	6	
Securities in respect of which ownership is disputed by way of pending cases in Court and/or having legal problems or where auction under SARFAESI failed for want of bidders for two or more occasion	6	

Where there are different types of securities available in the same borrowal account, NPV net of cost of realization for each type should be calculated by applying the relevant discounting factor for the relevant year and sum of the different NPVs (net of cost of realization) to be compared with the OTS amount.

In respect of NPA accounts (put together for all the facilities) with Real Balance upto Rs.10 lakhs and for Educational Loans with limit up to Rs.7.50 lakhs, Agri Loans (except agri. jewel loans) and Micro and Small Enterprises loans with limit upto Rs.10.00 lakhs, **NPV of the security need not be reckoned.**

Factor for arriving NPV

Period	Discount rate to be applied
1 Year	1.1065
2 Year	1.2243
3 Year	1.3547
4 Year	1.4990
5 Year	1.6587
6 year	1.8354

To arrive at the Net Present Value, divide the Realisable Value less cost of realization by the above factor.

While recommending compromise proposals, adequacy or otherwise of NPV of realizable value of available primary / collateral securities, net worth of borrower / guarantor, age of the borrowal account, amount of provision held, amount of claims (net amount) settled by the ECGC/DICGC/CGTMSE, marketability of securities, documentation defects such as non-creation of charge, time involved in the ongoing legal proceedings, the interest rates charged etc. should also be taken into consideration, analysed and specified in the proposal to enable the Bank to consider any sacrifice in the account.

7. Reference Recoverable Amount

Reference Recoverable Amount (RRA):

- Reference Recoverable Amount (RRA) is the basic amount which the Bank shall generally insist for accepting a compromise settlement from the borrower/guarantor etc.
- The Asset Classification as at the end of the previous quarter should be reckoned for computing Reference Recoverable Amount/arriving at the sacrifice and to ascertain the sanctioning authority.
- Wherever backend subsidy is available and is eligible for appropriation to loan account, the same may be reduced from Real Balance before computing RRA
- Where NPV of securities is less than the Notional dues, Net worth of the borrower/Guarantor to be reckoned
- Net worth of the borrower/Guarantor need not be reckoned for accounts with Real Balance upto Rs.100 lakhs
- Net worth applicable in respect of the borrower/guarantors irrespective of their constitution for all accounts with Real Balance above Rs.100lakhs

The following settlement formula will be applicable for:

- a. Educational Loans with limit upto Rs.7.50 lakhs
- b. Agricultural Loans (Except Agri Jewel Loans) and Micro and Small Enterprises (including accounts earlier classified as SSI) Loans with Limit upto Rs.10 lakhs

Category	Settlement formula (modified)
Sub standard	70% of RB
Doubtful-D1	60% of RB
Doubtful-D2	45% of RB
Doubtful-D3	40% of RB
Loss	30% of RB

It is clarified that if a borrower is having Educational loan with limit of Rs.7.50 lakhs, Agricultural loan (except agricultural jewel loans) and Micro & Small Enterprises loans with a limit of Rs.10.00 lakhs, OTS for the same can be considered independent of each other under the above settlement formulae **to be approved by next higher authority on case to case basis.**

If the borrower/co borrower is having any other loan (other than Educational, Agri and Micro & Small Enterprises Loans), the same can be considered under the applicable RRA framework separately.

Settlement formula for NPAs (other than those considered in the above special category) with Real Balance upto Rs.10 lakhs as detailed below:

Sub-Standard	D-01	D-02	D-03	Loss
80% of RB	70% of RB	55% of RB	40% of RB	30% of RB

In case of Restructured Agriculture Loans and other loan accounts with limit upto Rs.10.00 lakhs, settlement formula is as under-

Category	Settlement formula
Sub standard	60% of BB
Doubtful-D1	50% of BB
Doubtful-D2	40% of BB
Doubtful-D3	35% of BB
Loss	30% of BB

Additional concession

In respect of NPA accounts, with Real Balance upto 10 lakhs, which are unsecured in nature, additional concession of 10% in RRA may be given, if the repayments made by the borrower (excluding subsidy etc.) is more than 50% of the amount availed.

It will be applicable for all categories of loans including agriculture and educational loans

In respect of NPA accounts (put together for all the facilities) with Real Balance upto Rs. 10 lakhs and for Educational Loans with limit up to Rs. 7.50 lakhs, Agriculture Loans (except Agricultural jewel loans) and Micro and Small Enterprises loans with limit upto Rs. 10.00 lakhs and for all NPA accounts with book balance upto Rs. 10.00 lakhs, **Net-worth of borrower/guarantors need not be reckoned and hence the relevant value for the same in the settlement formula as detailed below, may be taken as zero.**

Settlement formula for NPA accounts with Real Balance above Rs. 10.00 lakhs.

The RRA settlement formula for NPA accounts with RB above Rs.10 lakhs and upto Rs.1.00 crore - Net Worth need not be considered.						
	Particulars	Sub- Standard	D-01	D-02	D-03	Loss
1	NPV More Than or equal to ND	ND	RB+ 80% of INT	RB+ 70% of INT	RB+ 60% of INT	RB+ 50% of INT
HIGHER OF NPV OR RRA AS COMPUTED BELOW						
2	NPV less Than ND but More Than or equal to RB	RB+40% of INT	RB+ 30% of INT	RB+20% INT	90% of RB	80% of RB
3	NPV Less Than RB	70% of RB	50% of RB	40% of RB	40% of RB	40% of RB

The RRA settlement formula for NPA accounts with RB above Rs.1 Crore						
	Particulars	Sub- Standard	D-01	D-02	D-03	Loss
1	NPV More Than or equal to ND	ND	RB+ 80% of INT	RB+ 70% of INT	RB+ 60% of INT	RB+ 50% of INT
HIGHER OF NPV OR RRA AS COMPUTED BELOW						
2	NPV + Net Worth (NW) More Than or equal to ND	RB+ 70% of INT	RB+ 60% of INT	RB+ 50% of INT	RB+40% of INT	RB+ 30% of INT
3	NPV + NW Less Than ND but More Than or equal to RB	RB+40% of INT	RB+ 30% of INT	RB+ 20% of INT	90% of RB	80% of RB
4	NPV + NW Less Than RB	70% of RB	50% of RB	40% of RB	40% of RB	40% of RB

Final RRA in respect of accounts falling under categories (2) to (4) above will be NPV or RRA as computed as per formula above,

whichever is higher.

Amount recoverable will, however, be restricted to Total Dues.

Settlement formula for NPA accounts having asset classification D3 or loss as on 31.03.2021 and which are minimum 5 years old NPA with Real Balance above Rs.10 lakhs as detailed below:

	Particulars	D-03	Loss
1	NPV More Than or equal to ND	RB+ 30% of INT	RB+ 20% of INT
		HIGHER OF NPV OR RRA AS COMPUTED BELOW	
2	NPV + Net Worth (NW) More Than or equal to ND	RB+10% of INT	RB
3	NPV + NW Less Than ND but More Than or equal to RB	70% of RB	60% of RB
4	NPV + NW Less Than RB	30% of RB	30% of RB

Final RRA in respect of accounts falling under categories (2) to (4) above will be NPV or RRA as computed as per formula above, whichever is higher.

Amount recoverable will, however, be restricted to Total Dues.

8.Non-Discretionary and Non-Discriminatory Policy with check Box approach

The upper limit of Rs.100 lakhs is fixed in the policy. The compromise Formula will be the same as proposed in the normal compromise formula as per NPA Management Policy 2021-22

Salient features of the Policy.

- ❖ The scheme will be applicable to all NPAs upto the previous quarter end.
- ❖ The amount calculated as Reference Recoverable Amount will be the final OTS.
- ❖ The sanctioning authorities will not have powers for any discrimination and discretion while considering the OTS proposal.
- ❖ Valuation of securities, calculation of Notional Dues, Net Present Value of the securities and terms of repayments as prescribed in our NPA Management Policy 2021-22 are all applicable for this Policy.
- ❖ For any other matters/issues not covered in this Policy, the norms and conditions prescribed in the extant NPA Management Policy 2021-22 will hold good.
- ❖ Sanctioning authority as prescribed in our NPA Management Policy 2021-22 in Para B1&2 is applicable.

Cases not covered under the scheme

- ❖ OTS settled cases already under repayment.
- ❖ Units under rehabilitation/restructuring.
- ❖ Cases referred, to NCLT under Insolvency and Bankruptcy Code (IBC).
- ❖ Staff accounts and staff related accounts where staff is first borrower, co-borrower or guarantor.
- ❖ NO OTS can be considered in the cases which are backed by self-liquidating securities like FDR, Jewel Loans, NSC/KVIP/IVPs/LIC policies, etc.
- ❖ Accounts under willful default, fraudulent borrowers, accounts involving criminal cases. Accounts classified as Fraud where criminal action initiated either through Police or CBI or other agencies are not covered under this scheme. Such cases to be dealt as per guidelines of the extant policy (NPA Management Policy 2021-22).

The policy covers the following categories

One time settlement formula for NPA account with Real Balance upto Rs.10.00 lakhs

- Agriculture and MSME loans with limit upto Rs.10.00 lakhs
- Educational Loans with limit upto Rs.7.50 lakhs.
- Other NPAs with Real balance upto Rs.10.00 lakhs
- One time settlement formula for NPA accounts with Real Balance above Rs.10.00 lakhs and upto Rs.100.00 lakhs

9.DISCRETIONARY POWERS:

The discretionary power for various sanctioning authorities will be as under: If OTS is as per Reference Recoverable Amount (RRA).

Sanctioning authority for OTS	Maximum Real Balance for OTS consideration in an account	(Amt. in lakhs)				
		Real Balance Upto Rs.10.00 lakhs			Real Balance Above Rs.10.00 lakhs	
		Waiver	write powers	off	Waiver	write powers
MCB	Full	Full	10.00		Full	Full
CAC	5000.00	5000.00	10.00		5000.00	1250.00
COLCC(ED)	3000.00	3000.00	10.00		3000.00	600.00
COLCC(GM)	1500.00	1500.00	10.00		1500.00	300.00
FGMCAC	900.00	900.00	10.00		900.00	180.00
ZLCC(GM)	900.00	900.00	10.00		900.00	180.00
ZLCC(DGM)	600.00	600.00	10.00		600.00	120.00
ZLCC(AGM)	400.00	400.00	10.00		400.00	80.00
ZLSCC(DGM)	500.00	500.00	8.00		500.00	100.00
ZLSCC(AGM)	250.00	250.00	8.00		250.00	50.00
ZLSCC (CM)	125.00	125.00	8.00		125.00	25.00
BM scale 6	400.00	400.00	6.00		400.00	80.00
BM scale 5	200.00	200.00	6.00		200.00	40.00
BM scale 4	100.00	100.00	6.00		100.00	20.00
BM scale 3	50.00	50.00	6.00		50.00	NIL
BM scale 2	20.00	20.00	4.00		20.00	NIL
BM scale 1	8.00	8.00	2.00		8.00	NIL

Discretionary Authority for sanction of OTS in Fraud accounts:

Considering the increase in the number of Fraud NPA accounts and with a view to reduce accumulation of proposals to Management Committee of Board(MCB) powers for sanction of OTS in Fraud NPA accounts may be vested from the level of COLCC(ED). The following discretionary powers is given to the various sanctioning authorities from the level of COLCC(ED)

and above.

(Rs.in lakhs)

Sanctioning Authority	Real Balance	Amount of Write Off	Amount of Waiver
MC of Board	Full	Full	Full
CAC	250.00	50.00	100.00
COLCC(ED)	100.00	20.00	50.00

10. Other conditions for compromise Settlement

In respect of Branch Managers who are in a lower Scale and heading a Branch of higher Scale he/she can exercise the higher Scale Branch Manager powers subject to Zonal Office permission.

Similarly, in respect of Branch Managers who are in a Higher Scale and managing a Branch of lower Scale he/she can exercise the higher Scale Branch Manager powers.

11. Full Write Off Powers

Authorities from the level of ZLCC and above can exercise such powers in respect of all NPA accounts requiring write off subject to write off powers delegated to them as indicated above.

ZLCC/FGMCAC can consider full write off proposals, only where full provision is held. COLCC(GM) and above can consider full write off in all cases irrespective of whether provision is available or not within their discretionary powers.

Competent authority for approving full write off of accounts classified as Fraud/Malfeasance /Wilful Defaulter/Non cooperative Borrower/under investigation by CBI/PIL will be Management Committee of Board. Cases where no provision is available can also be considered by COLCC (GM) and above.

12.OTS below RRA:

For accounts falling under the powers of Branch Managers	Proposals to be considered by ZLCC and above irrespective of deviation from RRA, as per the sacrifice powers delegated to them.
For accounts falling under the powers of ZLCC	<p>If the offer amount is upto 15% less than RRA, it can be considered by ZLCC upto their discretionary powers.</p> <p>Else, it should be referred to the higher authority under whose power the proposal falls.</p> <p>In respect of NPA accounts with RB upto Rs.10 lakhs and where the borrower has expired, ZLCC permitted to consider proposals with deviation in RRA upto 25% Death certificate of the borrower to be obtained in such cases.</p>
For accounts falling above the powers of ZLCC	<ol style="list-style-type: none"> 1) If the offer amount is upto 25% less than RRA, it can be considered by FGMCAC upto their discretionary powers. 2) In respect of NPA accounts with RB upto Rs.10 lakhs and where the borrower has expired, FGMCAC to consider proposals with deviation in RRA upto 35%. Death Certificate of the borrower to be obtained in such cases. <p>Else it should be referred to the competent authority at Corporate Office under whose power the proposal falls.</p>
For accounts falling under the power of COLCC (GM) and above	Respective sanctioning authority irrespective of deviation from RRA within their powers.

This concession is exclusive of the concession of 10% in RRA in respect of NPAs with real balance upto Rs. 10 lakhs, which are unsecured and where the repayments excluding subsidy are more than 50% of the amount availed.

All proposals falling under the powers of COLCC (GM) and above shall be put up to Settlement Advisory Committee (SAC) at Corporate Office for their recommendations before placing to the respective sanctioning authorities.

13. Coverage of fresh NPAs under OTS Policy

Normally, OTS policy provisions are applicable only in respect of NPAs outstanding as at the end of previous financial year i.e. (31st March 2021). However, considering the number of small loan fresh NPAs pursuant to Bank resorting to system based identification of NPAs, it is decided that once an account is identified as NPA, OTS policy provisions can be applied from the following quarters.

14. Who can consider OTS proposals in fresh NPA accounts?

- a. Officials in the rank of Scale IV and above heading a branch of a lower scale.
- b. Officials in lower scale heading Scale IV branches and above subject to Zonal Office permission.
- c. ZLCC.
- d. FGM(CAC)
- e. Sanctioning Authorities at Corporate Office.

15. What are the terms of Payment OTS amount

- Efforts should be made to recover the amount agreed within a maximum period of 90 days from the date of communication of sanction.
- No interest is to be charged for the above said period of 90 days.
- Where, for reasons satisfactory to the bank, the amount has to be paid in installments over a period of time not exceeding 12 months payable in monthly/quarterly/half yearly installments.
- The sanctioning authority may decide on this depending upon the merits of each case together with interest at One Year MCLR as on the last date of previous financial year (31st March 2021) + 2% (Simple) from the date of communication of OTS sanction by the Branch to the borrower up to the date of final payment on diminishing balance of OTS amount
- The date of acceptance cannot be more than one month from the date of communication of sanction.
- In exceptional cases, based on merits of the case, the sanctioning authorities from ZLCC and above may consider OTS proposals to be paid over a period not exceeding 36 months in monthly /quarterly/half yearly /annual installments with interest at One Year MCLR as on the last date of previous financial year (31st March 2021) + 2% (Simple) from the date of communication of OTS sanction by the Branch to the borrower.

16. Extension of time for payment of OTS:

Extension of OTS many times is mostly found to be a futile exercise as borrowers tend to be lax in repayment by taking the extensions for granted. This results in wastage of precious time of the bank in resolution of recovery in the account.

Hence, branches shall take effective steps to recover the OTS money in time without necessitating repeated extensions. Proposals for extension of time should be taken up judiciously and after ascertaining the genuineness of the borrower's intention/source to pay.

17. Compromise Settlement with willful defaulters / Non-Cooperative Borrowers / Fraudulent borrowers

Willful defaulters

As per RBI guidelines, stringent measures are required to be initiated against the Willful Defaulters. However, the issue of compromise settlement in such cases of willful defaults/fraud was examined by RBI and RBI has advised Banks through India Banks Association that compromise settlement with willful defaulters /fraudulent borrowers can be entered into without prejudice to the criminal case against the borrower.

Non-Cooperative Borrowers

In respect of borrowers classified as non-Cooperative borrowers as per the extant guidelines of RBI, OTS sanctioning authority will be MCB only.

Fraudulent Borrowers

Such of those cases which are reported as frauds to RBI through CO/Inspection Department should only be classified under the appropriate category and full provision made.

OTS can be considered in respect of NPAs classified as fraud. This is with a view to avoid blocking of funds in such accounts, while action under the laws of the land can be continued. The sanctioning authority in such cases will be from the level of COLCC(ED) at Corporate Office.

18. Partial repayment of dues and release of securities / release of non-promoter / third party guarantors where there is no OTS:

Whenever offers for part payment of realizable value of security held and/or release of guarantors are received, such proposals are considered for the following reasons:

Guarantors opting out of the account / firm etc.,

Old age of the owner of the property / guarantor / mortgagor

For settlement of the property among the family members and partners,

Dispute over the title of the property, other legal disputes etc., among the guarantor(s), partner(s), Borrower / Mortgagor intending to sell part of the securities and reduce the liabilities.

Failure of sale of property through SARFAESI for want of bidders.

The following steps may be adopted when the mortgagor requests for release of security:

- 1) Two latest valuation reports should be obtained from two different panel engineers where Realizable Value of the property is Rs.50 lakhs and above. Valuation should not be more than 3 months old. There should not be variation between the two values by more than 15% and higher value of the two should be taken in to account for release of assets / properties. If the variation is more than 15%, a third valuation has to be taken and average of the three should be reckoned for release of assets/properties.
- 2) Any substantial fall in the value of properties / assets sought to be released from its previous valuations at the time of sanction should be examined thoroughly and it should be ensured that the latest values are realistic taking into account the market conditions and other relevant circumstances.
- 3) We may release the security to the mortgagor by accepting not less than the realizable value of the security.

Instances where the mortgagor may go for sale of the property to 3rd party.

We may consider such proposals also and ensure to recover not less than the realizable value of the security (valuation within 1 year) and in any case not less than the Reserve Price fixed in the latest SARFAESI sale auction. Minimum of 2 SARFAESI/DRT auctions should have failed

General Conditions for release of securities:

- Expenses incurred by the Bank in various recovery actions should be recovered.
- Minimum upfront fee amount of 10% of the offer should be deposited
- The Bank shall not be liable for handing over possession of the property and documents which are not in possession of the Bank.
- Under no circumstances Bank will issue sale certificate or execute any document relating to sale/purchase/release of the property.
- The borrower / guarantor / mortgagor shall not be discharged from the liability after adjustment of the sale proceeds and the Bank shall be at liberty to proceed against them and the remaining secured assets for recovery of the balance dues. The same should be made clear to the borrower/guarantor.

While considering release of part of securities, it should be examined whether the remaining securities are having worth to continue with and would cover the balance liabilities. Acceptance of the proposal should not result in the Bank being left with worthless securities / guarantors and being not able to enforce the remaining securities and/or recover further in the account. In such cases, instead of releasing the specific securities / guarantors, effort should be made to negotiate for compromise settlement for recovery of the Total Dues. A decision in the

matter may have to be taken judiciously.

- Similarly, for release of third party guarantors, the latest net worth of the individual / party should be ascertained by obtaining latest credentials / A&L statements etc. Any substantial fall in the net worth of the guarantor sought to be released from its previous net worth at the time of sanction should be examined thoroughly and it should be ensured that the net worth is realistic taking into account current status of assets of the individual and other relevant circumstances.
- As regards releasing of third party guarantor the amount that should be recovered for such release has to be decided taking into account the Net Worth of the concerned individual guarantor and other relevant circumstances / issues justifying the amount so accepted.
- Where part release of security along with personal guarantee of the owner / mortgagor of the property is sought both need to be considered independently.
- It should be made clear that, after receipt of specified amount against release of specified security asset / guarantor, the Bank will continue with recovery action in respect of other securities available with the Bank and against remaining guarantors for recovery of its balance total dues

19. Other Recovery related issues

OTS in respect of stressed assets under Standard Category:

Compromise can be considered in respect of stressed assets in Standard accounts under SMA 2 category. The sanctioning authorities are as under.

Details	Sanctioning Authority
For accounts sanctioned upto COLCC(GM)	COLCC(GM)
For other accounts	Respective sanctioning authority

20. Stressed Assets Management Vertical (SAMV)

Government of India has laid down certain parameters for compliance by Public sector Banks under the framework Enhanced Access and Service excellence (EASE) for Capital Infusion under Reforms Agenda. One of the suggestions is the creation of Stressed Asset Management Vertical (SAMV) with certain broad guidelines. In line with the suggestions, both the Banks have created a separate Stressed Asset Management Vertical (SAMV) under a Board approved policy for focused recovery efforts through a dedicated, specialized and motivated team for enhanced and timely recovery, delineating its scope, roles and responsibilities and number of branches in different location are operational in both the Banks.

- Henceforth all the branches will have the nomenclature SAM branch only. There will be in all 16 branches wherein the DRTs are relocated.
- An account is eligible for transfer to SAM branch if it remains as NPA for more than 3 months from the date of classification of NPA. In other words, an account is eligible for transfer only after 3 months from the date of classification of NPA.
- NPAs both Suit filed and Non suit filed with book balance of Rs.1.00 crore and above. In respect of NCLT, all admitted accounts irrespective of book balance and location to be transferred

Only accounts of the Zones located within the operational jurisdiction (city limit) of the concerned SAM branch will be transferred.

- Accounts where documents are in force alone can be transferred. Wherever documents are getting time barred within 3 months the transferor branch should file suit and then only transfer the account.
- All NPA accounts classified as Fraud under CBI or any other external investigation agency can also be transferred to

SAM located in the same City only. The fact of transfer to the concerned SAM branch should be intimated to the CBI or the respective external investigating agencies.

- Cases where fraud angle is suspected and falling within the SAM location are eligible for transfer upon completion of the investigation process and after filing of FIR with Police/CBI etc. as applicable.
- NPA accounts eligible for transfer, can be transferred only after examination of staff accountability is completed.
- In addition, SAM branches will coordinate in DRT proceedings, in respect of suit filed accounts which fall within its DRT jurisdiction, but not transferred to SAM branch on account of distance/location of the borrower/unit/secured assets. No file transfer of these accounts should be made

Exempted Categories

- NPA accounts which fall within the ambit of SAM but where restructure/OTS sanction is approved and implemented/under implementation
- NPA accounts where operations are permitted by the Competent Authority as per Recovery Policy
- All fresh and not transferred accounts with book balance below Rs.1.00 crore will continue to be handled by the respective parent branches only.

List of SAM branches which will function post amalgamation are: Ahmedabad, Allahabad, Bangalore, Coimbatore, Chandigarh, Chennai, Delhi, Ernakulum, Hyderabad, Kolkata, Lucknow, Ludhiana, Madurai, Mumbai, Patna and Ranchi.

21.Enhanced Access and Service Excellence (EASE) through Transparent and robustOTS: Online

OTS Module:

- This module envisages creation of an online portal for OTS processing.
- It commences from receipt of application/offer letter, online and its transmission/escalation for sanction or rejection, as the case may be, by the competent authorities.
- SMS alerts to authorities who has initiated the transaction upto the authority sanctioning the OTS with timelines and if there is delay at any level and automatic escalation of the issue to next higher level authority has been activated.
- Branches have to feed manually the value of security after ensuring that the valuation report is within 1 year, stock and book debts value(within 180 days) and Balance Sheet details and amount of notional interest from the date the account ceases to earn interest till the end of quarter of compromise proposal.
- SMS alerts are enabled 5 days before the due date of OTS payment when there has been a default on the due date of installment.
- The sanction/rejection will also be communicated online to the borrowers.
- OD allowed in Savings Bank account under PMJDY scheme may also be considered under Online OTS.
- The "Online OTS" module as applicable to NPA accounts with real balance upto Rs.100 lakhs was made live to the branches.

NPA Tracker: Mobile Based Application

This is an in-house (ITD) developed mobile app and all NPA accounts are covered wherein details of the borrower including total dues are available.

- ❖ Branch officials can view the details of NPA accounts pertaining to their branch only.
- ❖ Branches can on day to day basis update all current discussions with the borrower including geo- tagging .of photograph and location. The details will be stored against the SR No. of the Officer who has discussed.
- ❖ It is beneficial for monitoring of NPAs and to give suitable directions by higher authorities.

Monitoring of OTS sanctions by various authorities

- ❖ Branches should submit a monthly consolidated statement on OTS proposals sanctioned under their powers to Zonal Office

along with sanction details and OTS processing sheets to Zonal office.

- ❖ Zonal Office Recovery Department should scrutinize the OTS proposals sanctioned under branch powers with regard to OTS guidelines, deviations permitted and place a consolidated note to ZLCC for taking note. In case of any deviations observed Zonal Office should initiate action for rectification.
- ❖ Likewise, Zonal Office should submit sanctions made by ZLCC/ZLSCC and FGMCAC to CO/Recovery Department, who should scrutinize the OTS proposals sanctioned with regard to OTS guidelines, deviations permitted and place a consolidated note to COLCC(GM) for taking note. In case of any deviations observed, CO/Recovery Department should initiate action for rectification.
- ❖ The reporting format is annexed to our circular Adv.139/2019-20 dated 09.01.2020.

22. Invocation of personal Guarantee in case of Borrower Company defaults:

Ministry of Finance, Department of Financial Services advised all PSBs to initiate the following steps on a war footing to make the recovery process effective and result oriented against the guarantors.

- To initiate SARFAESI action against the securities offered by the guarantors, by issuance of demand notice under SARFAESI Act and thereafter produced to take possession and effect sale, akin to the steps that are being taken against the principal borrower. No lenience/laxity whatsoever is to be shown in this regard and no distinction is to be adopted. In all such eligible cases, wherein security offered by the guarantors are involved, Bank has to initiate SARFAESI action just as they would proceed against the security offered by the Principal Debtor.
- Wherever there are pledge of shares belonging to that of the Guarantors/corporate guarantors ,Bank needs to take recourse under the Pledge Security Agreement placing reliance on Section 176 of contracts Act ,invoke the relevant clauses, issue notices and thereafter transfer the pledged shares in the name of the Bank and proceed to sell off the shares. If shares are not listed too, Bank may explore the possibility of Sale through Private parties on agreement basis.
- As simultaneous proceedings are to be adopted by way of suit filing/Recovery Application, even where there is no security interest created on guarantor property, at the time of filing of suit. Bank necessarily have to make prayer to attach the personal properties of the guarantor/mortgagor and also to get an order of non-alienation against such assets. Based on the A&L statement given by the guarantors, details of personal assets of guarantors should be provided to the advocates even at the time of filing of OA, seeking prayers for attachment before judgement.

23. Guidelines on Wilful Defaulter, Non-Cooperative Borrowers and Forensic Audit

Wilful Defaulters

Detailed guidelines for declaration of a borrower as wilful defaulter are enumerated in RBI Master Circular No.DBR.No.CID.BC.22/20.16.003/ 2015-16 dated 01/07/2015. The purpose for identification and reporting of wilful defaulters is to put in place a system to disseminate credit information pertaining to wilful defaulters for cautioning banks and financial institutions so as to ensure that further bank finance is not made available to them.

Wilful Default

A “wilful default” would be deemed to have occurred if any of the following events is noted:

- (a) The unit has defaulted in meeting its payment / repayment obligations to the lender even when it has the capacity to honour the said obligations.
- (b) The unit has defaulted in meeting its payment / repayment obligations to the lender and has not utilized the finance from the lender for the specific purposes for which finance was availed of but has diverted the funds for other purposes.
- (c) The unit has defaulted in meeting its payment / repayment obligations to the lender and has siphoned off the funds so that the funds have not been utilized for the specific purpose for which finance was availed of, nor are the funds available with the unit in the form of other assets.
- (d) The unit has defaulted in meeting its payment / repayment obligations to the lender and has also disposed off or removed the movable fixed assets or immovable property given for the purpose of securing a term loan without the knowledge of the bank / lender.

In respect of Non-Whole Time Directors the following criteria to be applied for classification them as Wilful Defaulter.

1. Non-Whole time Director is aware of the fact of willful default by the borrower by virtue of any proceedings recorded in the minutes of meeting of the Board.
2. The wilful default had taken place with consent of Non-Whole Time Director.

Classification of Trust Accounts as Wilful Defaulter:

In respect of “Trust” whether Public or Private, irrespective of the purpose for which they have been incorporated would be liable to be classified as Wilful Defaulter subject to the guidelines prescribed in the RBI Master circular dated 01.07.2015 and further medications/additions from time to time.

OTS sanctioning authority in the case of Wilful Defaulters and Non-cooperative Borrowers will be MCB only.

Forensic Audit

Forensic Audit is an examination and evaluation of a firm’s or individual’s financial information for using as an evidence in a court. Forensic audit should compulsorily be conducted in respect of NPA accounts with Book Balance of Rs.50.00 crores and above and further action is to be initiated immediately wherever irregularities are observed.

24. Write off / Technical Write Off/Waiver of Legal Action

Exercise of Write Off in NPA accounts

Full Write Off in Accounts

In order to weed out the un-remunerative NPA accounts and to pave way for the field level functionaries to devote more time for Business development, the exercise of write off is undertaken after critically analyzing the chances of recovery in all the NPA accounts. The accounts can be written off only after exhausting all avenues of recovery through normal course/by legal means/through OTS etc. The exercise of write off has to be undertaken on merits of each case after considering various

factors like low / nil income generation, capacity of the borrower/guarantor to pay the dues, availability/state of the securities etc.

Therefore Full Write-off option shall have to be used only as a last resort when

- The account is classified as doubtful or loss asset.
- There are no securities available or there is nil / nominal salvage value of securities.
- Net worth of the borrower / guarantor is nil or nominal.
- The borrower/guarantor are not traceable after reasonable enquiries.
- The borrower / guarantor have no source of income.
- Full provision has been made.
- Manager / ZM is satisfied that there is absolutely no possibility of recovery and carrying the account in the books of the bank will not serve any meaningful purpose and it would only add to the costs to the Bank.
- In case of suit filed accounts - if there is no use of continuing the suit and the amount cannot be recovered even if the suit is decreed.
- All available avenues for recovery have been exhausted.
- Individuals who originally sanctioned the loan in any capacity in the past, should not exercise the full write-off powers in the same account in any capacity - Either as Branch Manager or as member of the Committee sanctioning the write-off.

Competent Authority for sanctioning full write off

Competent Authority for sanction	Remarks
ZLCC and above	Can exercise full write off powers in respect of all NPA accounts requiring write off subject to write off powers delegated to them as indicated in the delegation of powers. ZLCC can consider full write off proposals only where full provision is held.
Management Committee of the Board	Can approve full write off of accounts classified as fraud/Malfeasance/ Wilful Default/ Non cooperative borrower/under investigation by CBI/PIL
COLCC (GM)	Can consider full write off in all cases irrespective of whether provision is available or not within their discretionary powers. Cases where no provision is available can also be considered by COLCC (GM) and above

Recovery in written off accounts:

Sanctioning authorities at the time of permitting write off shall stipulate a condition in the sanction letters that recovery efforts should be pursued in the written off accounts on an ongoing manner. The Board also has directed endeavor should be to recover as much as possible in the written off accounts. The recovery in written off accounts is being emphasized taking in to consideration the following;

- ✓ Borrower / guarantor would have revived income generating activity so that the branch can strive for recovery ;
- ✓ Borrower / guarantor would have returned to their native place / place of business so that recovery efforts could be pursued;
- ✓ Pursuance of recovery through the legal heirs / close relatives of the borrower / guarantor ;
- ✓ Realization through residual value of assets left if any, which has been charged to the Bank;
- ✓ Identifying other assets of the borrower / guarantor not charged to the Bank at a later date subsequent to write off;
- ✓ Pursuing for recovery from assets acquired / inherited by the borrower / guarantor subsequent to write off ;
- ✓ Improvement in the position of Net Worth of the borrower / guarantor;

- ✓ Identifying / locating the borrower / guarantor and finding their present address with the help of Village Presidents / Govt. Officials / Previous Managers, staff members / Recovery Agent etc.,

However the guidelines as above are not applicable to accounts / amount that are written off as per Government guidelines (Eg. Agricultural Debt Waiver and Debt Relief Scheme 2008)

GOI, MOF has directed Banks that they should undertake recovery of NPA ruthlessly and annual recovery of at least 10% of outstanding amount under written off/Loss assets should be achieved. Branches to appreciate the urgency and importance of this directive and take steps for accelerating recovery in accounts where 100% provision has been made.

Write off claims Account:

In compromise linked write off, Branches after receipt of the compromise amount should close the account

.On closure, the balance amount remaining **(which should be the amount to be written off as per compromise sanction)** will be automatically debited to "Write Off claim Account"-BGL a/c by the system. Subsequently, Branches should submit the claim for the Write Off amount in the prescribed format to their respective Zonal Office, who in turn will send a consolidated claim to Corporate Office (Recovery Department) after ensuring the correctness and certifying the same. CO/Recovery Department after verification will credit the claim amount to the Zonal Offices. Branches on receipt of the claim amount from their Zonal offices will reverse the same in the Write Off Claims Account.

Branches/Zonal Office should ensure that the balance in Write Off Claims Account should be reversed at the earliest (within the same quarter) by submitting the claim and obtaining reimbursement from Corporate Office through Zonal Office and the balance brought to **NIL**.

Prudential / Technical Write Off

In terms of RBI guidelines, Banks may write off advances at Corporate Office level, even though relative advances are still outstanding in the Bank's Books. However it is necessary that 100% provision should have been made in the account. This write off is an internal arrangement and the borrower / guarantor is not absolved from liabilities. All possible recovery measures including OTS, filing suits, liquidation process should continue as usual to recover the Bank's dues. **The term used in our Bank is - Account Under collection – (AUC)**

The following Policy to be adopted for Technical Writing Off of NPA account:

- Accounts with 100% Provision can be written off
- In respect of other accounts, Committee for Technical Write Off can approve additional provision upto 100% and to go for Technical Write Off.
- Accounts with no security or where realisability / enforceability is bleak.
- Loss / Fraud accounts on a case to case basis.

Any account satisfying the above conditions, may be considered for Technical Write Off, only with the approval of Committee for Technical Write Off, regardless of balance.

Number of accounts proposed to be technically written off and the amount involved (Rs.1 crore and above on individual basis and below Rs.1 crore on consolidated basis) to be approved by the Committee for Technical Write Off.

Waiver of legal action

The power of waiver of legal action can be exercised by Zonal Managers and above up to the limit of write off powers delegated to them under the OTS Policy. Write-off power cannot be exercised by BMs for permitting Waiver of Legal Action. Waiver of legal action should be considered borrower-wise and not facility-wise.

25.Sale of Financial Assets to ARCs/Banks/FIs/NBFCs:

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act 2002 (SARFAESI), inter alia, provides for sale of financial assets by the banks to the ARCs towards realisation/recovery of bank dues

A financial asset may be sold to the ARCs/Banks/FIs/NBFCs by bank where the asset is:

- An NPA, including a non-performing bond/debenture, and A Standard Asset

where:

- the asset is under consortium/ multiple banking arrangements,
- at least 75% by value of the asset is classified as non-performing asset in the books of other banks/FIs, and
- at least 75% (by number) of the banks / FIs who are under the consortium / multiple banking arrangements agree to the sale of the asset to SC/RC and
- Accounts under any of the categories of Special Mention Accounts Category

In respect of high value NPAs, the possibility of going for either ARC sale or to NCLT to be examined on case to case basis and a better option out of ARC sale or NCLT proceedings to be chosen.

26.Provisioning pertaining to advances

Provisioning of Non- Performing Assets - NPAs:

RBI guidelines on general provisioning as per IRAC norms vis- a-vis actual practice followed by our Bank as of now are reproduced hereunder:

Asset Category		General guidelines of RBI	Existing system followed by the Bank	Effective Date
Sub Standard	General Provision	15%	15%	01.10.14
	Unsecured exposure **	25%	25%	
Doubtful	Unsecured Portion	100%	100%	
	Secured Portion:			
	D1(upto 1 yr)	25%	25%	01.07.11
	D2 (1-3 yrs)	40%	40%	01.07.11
	D3(>3 yrs)	100%	100%	
Loss		100%	100%	

**Unsecured exposure is an exposure where the realizable value of security is not more than 10 percent, *ab-initio* of the outstanding exposure. „Exposure” shall include all funded and non-funded exposures (including underwriting and similar commitments).

27.Extension of further loans in compromise settled accounts:

- In regard to accounts where compromise settlements have been entered into for realization of dues under OTS, there shall be no sanction of further facilities to that borrower except for the exempted categories as detailed in the Booklet on Credit and Credit related administrative powers or unless approved by MC.
- As regards sanction of additional facilities to any group account connected with a compromise settled borrowal account, prior permission of ZLCC or the respective sanctioning authority at CO to be obtained irrespective of the authority who sanctioned the OTS to the related account.

28. Legal and other measures of recovery

i) Action under SARFAESI ACT

To ensure quick recovery of bad debts, the Securitization and Reconstruction of Financial Asset and Enforcement of Security Interest Act (SARFAESI Act) was enacted in 2002. The provision of the Act empowers the Bank to take possession of mortgaged securities without intervention of the Court and also to dispose it off for recovery of their bad debts.

Action under SARFAESI Act can be initiated in the following:

- The account must be NPA in the books of the Bank.
- The amount outstanding (total dues) in the account should be more than Rs.1.00 lakh and should be more than 20% of the Principal amount and interest thereon.
- The secured asset should not be an Agricultural Land. However it can be enforced where agricultural land given for mortgage is not used for agricultural activities. Field level functionaries should ascertain the use of land at the time of security enforcement and invoke SARFAESI action accordingly.
- The account must be within the period of limitation and the documents are valid and enforceable.
- The secured asset must not be under Bank's lien/pledge. In view of the ruling given by the Hon'ble Supreme court in Transcore Vs Union of India and another case, SARFAESI action can be initiated even in suit filed cases and vice versa. Hence there is no bar for simultaneous action.

Cases where SARFAESI action cannot be initiated

1. Non NPA accounts.
2. Personal assets of the borrower/guarantors not charged to the Bank.
3. Properties not liable for attachment/sale under Section 60 of CPC (except the security specifically charged with the debt recoverable under the Act)
4. If an application filed by the borrower company or by any person before the National Company Law Tribunal for initiating CIRP against the borrower and the same is admitted, there is a moratorium period from the date of admission of the application and no quasi-legal/legal action can be initiated against the borrowers/guarantors.

Appointment of Authorised Officers for the purpose of SARFAESI action

All officers in the rank of Chief Manager and above can be appointed as Authorised Officers for initiating action under SARFAESI act.

Points to be noted while initiating SARFAESI action

- Single Demand Notice under section 13(2) should be served on the borrowers/guarantors/mortgagors to the last available address with the Bank and in case of a company should be served on its Registered Office address.
- If any objection/representation is received from the borrower/guarantor/mortgagor concerning the notice the same should be replied within 15 days of its receipt, as the same is mandatory under the Act.
- Symbolic possession of movable assets is not envisaged in the Act and hence only physical possession should be taken for movable assets..
- Authorised Officer should take steps for obtaining physical possession of the properties by filing application with Chief Metropolitan Magistrate (CMM)/Chief Judicial Magistrate (CJM)/District Magistrate (DM) as the case may be.
- After taking symbolic or physical possession of the secured assets, Authorised Officer to file Caveat in DRT/High Court having jurisdiction, for preventing any ex-parte order in appeal/SA filed or likely to be filed. Caveat filed is valid for 90 days and on expiry, if required, Bank can file another caveat before the concerned DRT/High Court.
- In respect of properties of value Rs.100.00 lakhs and above 2 valuations have to be obtained and the higher of the 2 valuations should be considered for fixing Reserve Price.
- Reserve Price will be fixed by Security Enforcement Committee (SEC) on the recommendations of AO concerned at Zonal Office. However, the Authorized Officer shall not be a member of SEC.
- The SEC may consider the Reserve /upset price 10 to 25% less than the valuation, taking into account the realizable sale

value of the assets at the given point of time, but shall not be less than the distress sale value given by the Approved Valuer or 75% of the market value whichever is higher.

- For the First Sale generally, market value will be the Reserve Price.
- If it is a Resale, Reserve price to be suggested by the SEC at 80% of distress sale value or 60% of the market value whichever is higher. .
- For resale of the property is undertaken, 15 days" notice is sufficient.
- Recently, the amendments have been made to SARFAESI Act and rules which stipulate that Right of Redemption of the borrower/mortgagor is available only till the date of issuance, service, and publication of sale notice as the case may be and not thereafter.
- The Authorised Officer before issuing Sale Certificate should ensure compliance to Income Tax and GST as applicable.
- Only one Sale Certificate to be issued and there is no provision in SARFAESI Act for issuance of duplicate certificate.
- In respect of multiple properties put on sale by fixing a single Reserve Price, only one sale certificate to be issued for the sale value detailing all the properties put on sale and not individual sale certificate.
- Now, after the amendment any tenancy issues on the security which is brought for sale under SARFAESI Act will have to be agitated by the tenants before DRT only under Sec.17(4). Therefore DRT has been conferred with the powers to look into the tenancy issues and adjudicate as to whether it is tenable, for the purpose of enforcement.

Benefits of action under SARFAESI act

- After completion of 60 days" notice period Bank can take possession of the secured properties and recover the dues by sale or lease or assignment of the assets.
- Bank can also take over management of the business of the borrower and can appoint personnel for management of the business.
- The notice under Section 13(2), on receipt of the same by the borrower/guarantor/mortgagor, will automatically bar them from alienating/transferring or dealing in any manner the assets charged to the Bank.

ii) Filing of suit / Recovery application before competent legal forum:

When all the measures taken for recovery fails to yield the desired results, Banks resort to legal measures by filing suit for recovery in the competent courts.

The following points are to be kept in mind while resorting to filing of suits.

- Suit amount below Rs.20.00 lakhs is to be filed in civil courts
- Suit Amount above Rs.20.00 lakhs to be filed in DRT.
- Permission to be obtained from competent authority for filing suit.
- Suit filing before Civil Court/DRT can be adopted simultaneously along with SARFAESI action as it brings the desired effect in expediting recovery.
- Permission to be sought to initiate SARFAESI action as well as to file suit in the first instance itself. It is to be ensured that for both SARFAESI as well as suit filing action, limitations are independent. The initiation of SARFAESI action will not save the law of limitation to proceed against the party personally.
- To verify if any order has been passed declaring moratorium under the Insolvency and Bankruptcy code 2016, by NCLT/DRT against the borrower and is in operation, in such cases, suit filing to be deferred till the moratorium period is in force.
- In all NCLT admitted cases, suit should be invariably filed against the personal guarantors/corporate guarantors (excluding those corporate guarantors against whom CIRP process has been admitted). Insolvency proceedings should be filed in NCLT against all corporate guarantors who have sufficient net worth.
- Bank can consider OTS in suit filed accounts and in case the entire OTS amount is received, an application is to be filed before the Recovery Officer in DRT for closure of the Suit/RC. In certain stages, refund of court fee is permitted as under.
 - (a) 50% of the fee remitted, in cases, which are settled prior to commencement of hearing before the Tribunal.
 - (b) 25% of the fee remitted, in cases, which are settled at any stage of the proceedings but before passing of the final order.

(c) Norefund is allowed when the Recovery proceedings are pending with the Recovery Officer.

Execution for Recovery in Decreed/RC issued accounts

- a) In all cases where Recovery Certificate is issued, up-to-date claim is to be lodged with the Recovery Officer and immediately arrange for bringing the charged properties for sale.
- b) Where no security is available, engage Private Detective agents for finding the personal assets of the borrower/guarantor and file petition before the Recovery Officer for attachment of the same.
- c) While executing decrees awarded by Civil Court, execution petition to be filed if the decretal amount is below Rs.20.00 lakhs and if it is above Rs.20.00 lakhs, transfer application should be filed before DRT for issuance of Recovery Certificate and execution.
- d) In cases where securities are already sold or no security is available and the borrowers/guarantors are not traceable after exhausting all measures to locate, branches will be unable to file execution petitions before the competent Court. At such instances, branches have to obtain permission from the competent authority for waiver of filing EP.
- e) In cases where outstanding book balance are more than Rs.1.00 crore and the borrower/guarantor are not traceable, branches should file a petition before DRT for issue of Public Notice in newspapers to inform whereabouts of the borrower/guarantor and their assets. If they are still untraceable, suitable application to be filed before DRT seeking adjournment of case "sine die" with liberty to revive the case as and when attachable assets or whereabouts of the borrowers/guarantors are traced.

Lok Adalats:

- Lok Adalats may be organized through the Legal Services Authorities both in suit filed accounts as well as non - suit filed accounts.
- The advantage of referring non-suit filed accounts is that Bank can save on Court fees and other expenses as the award passed by Lok Adalats is tantamount to a decree enabling Bank to file execution petition based on the award in instances of non-compliance.
- It is also clarified that Lok Adalats can be organized in all types of accounts whether it is secured/unsecured/small or high value/ suit filed /non-suit filed, etc.
- "In principle" approval from the respective OTS sanctioning authority for indicating Reference Recoverable Amount as per Policy should be obtained before referring the accounts to Lok Adalat.

iv) Empanelment / Engagement /Review of lawyers:

Panel of lawyers shall be created with the following categories:

Category A: Having more than 15 years of experience at High Court Level, Category B: Having experience of 5-15 years and

Category C: Having experience up to 5 years.

Review of performance of lawyers is undertaken periodically, in due compliance of RBI guidelines. Periodical review of performance of advocates is also done on account specific basis to avoid delay and clustering in the hands of a few.

NOMINATION OF STANDING COUNSELS

Bank may consider for nomination of empanelled advocate as a Standing Counsel in High Courts/Supreme Court. The Standing Counsel may be appointed by HO Legal Department on recommendation of FGMO and Zonal Head

v) Empanelment and engagement of Private Detective Agents:

- ZLCC is empowered to create a panel of Private Detective Agencies (PDAs), wherever required, after conducting due

diligence exercise..

- ZLCC has been empowered to fix fees and other contingent expenses to be paid where fees claimed do not exceed Rs.1 lakh per account.
- Wherever the fees claimed exceeds Rs.1 lakh, prior permission of Corporate Office to be taken. COLCC (GM) will be the Competent Authority to decide such cases.

Sale through private treaty mode under SARFAESI Act.

- Sale through private treaty mode as such, is a recognized mode of sale under SARFAESI Act.
- Private Treaty is for all practical purposes a Resale, **can be resorted to after having exhausted public auction mode at least twice.**
- This mode of sale is on mutually arrived terms between the Bank and the proposed buyer.

The procedural modalities of Private treaty mode are:

- The proposal for private treaty mode can be considered only after 2 unsuccessful public auction attempts.
- The proposal for private treaty mode with the recommendation of Branch & Zonal Manager should be sent to Corporate Office irrespective of the amount. COLCC (GM) is empowered for according the approval.
- A Reserve Price has to be fixed as per extant norms of resale i.e. 60% of Market value or 80% of Distress Sale value- based on the latest valuation (which should be 1 year & below), whichever is higher. This reserve price is only the outer limit and need not be this value only.
- To ensure successful sale, filing of CJM /CMM/DM applications should have been done for obtaining physical possession and also to engage Recovery agents to do the base work and scout for bidders.
- As per amended rules of SARFAESI Act, for resale 15 days" notice will suffice.
- The details of Reserve Price, date of sale etc., shall be enumerated in the resale notice also.
- A sale notice for private treaty may be issued to borrower/guarantor/mortgagor, intimating that the bank is going to adopt private treaty mode of sale (15 days prior notice only and not 30 days).
- At the time of submitting offer for private treaty, 10% of the sale price may be taken from the proposed purchaser.
- On the proposed date of sale, if Sale cannot be concluded by receiving the balance consideration and execution of a Sale certificate with the probable bidder, then Agreement of Sale may be executed, by receiving another 25% of sale price. The agreement of Sale shall enumerate the other terms viz., the payment so far received, when the balance shall be paid, the manner and date before which payment has to be received etc. The outer limit /extension of time for depositing the remaining amount to be as per SARFAESI amendment 2016.
- Once the sale price is paid in full and Sale certificate as per statutory format shall be issued which shall be stamped and registered as per local laws, cost of which shall be borne by the purchaser. (The sale proceeds have to be appropriated towards the outstanding dues).
- In instances, where there are more than one offer received in private treaty mode of sale, on the proposed date of sale, there will be inter-se bidding with the highest offer as the reserve price. Whoever makes the highest offer will be declared as the successful bidder and sale would be concluded with the highest bidder in the inter-se bidding.
- Authorised Officers / Zonal Offices may adopt the Sale through Private Treaty mode without any hesitation adopting / adhering all guidelines stated herein.

If COLCC (GM) is of the view that Swiss Challenge Method (SCM) need to be conducted, then SCM can be ordered by

the Committee on the recommendation of ZO/FGMO.

Swiss Challenge Method:

Swiss Challenge Method (SCM) is a transparent price discovery mechanism. The bid (called “anchor bid”) with 25% down payment received from this bidder (called anchor bidder) will be fixed as reserve price. Sealed tenders will be invited from the prospective purchasers accompanied with 25% EMD. In case of receipt of higher bid, the anchor bidder shall be called and given an option to match the enhanced bid or to refuse enhance his bid amount. If anchor bidder matches the value of enhanced bid, he/she will be the winning bidder. However, after declaring the Anchor Bidder as successful bidder under Private Treaty, if, fails to pay balance Sale consideration, the EMD amount shall be forfeited. Otherwise, the bidder who has offered highest amount will be declared as successful bidder and has to pay the balance 75% of such enhanced quote within 15 days of the communication by the branch. In such case, the EMD amount deposited by the Anchor Bidder shall be refunded forthwith.

However, an information Note is to be submitted to the COLCC (GM) after the completion of entire SCM process and finally confirming the Sale in favour of Highest Bidder of the property by A.O.

29. Policy guideline on Insolvency and Bankruptcy Code (IBC)

Bank utilizes combination of various recovery tools in realizing NPAs. Now Insolvency and Bankruptcy Code (IBC) provides single umbrella legislation for Insolvency and bankruptcy issues of all types of borrowers.

As on date only National Company Law Tribunals (NCLTs) have been notified to deal with Insolvency Resolution and Liquidation Process for Corporate Debtors.

The vital IBC provisions having practical implications are as follows:

- Debts Recovery Tribunals (DRTs) have jurisdiction for individuals, partnership firms, proprietary concerns
- National Company Law Tribunals (NCLTs) have jurisdiction for Companies and LLPs.
- IBC Application may be filed by Financial Creditors (Banks and Financial Institutions) or Operational Creditors (Sundry creditors who give line of credit for supplies) or jointly by both.
- Insolvency Resolution Professionals (IRPs) registered with approved agencies of IBBI would be conducting the resolution process.
- In exercise of the powers conferred by the proviso to Section 4 of IBC, 2016, Government of India, Ministry of Corporate Affairs, vide Notification dated 24.03.2020 has specified Rs.1.00 Crore as the minimum amount of default, against Rs.1 lakh.
- Since the provisions of Limitation Act are applicable to applications under IBC, it may be filed within three years from the date of default.
- NCLTs shall within 14 days of receipt of application, ascertain the existence of default, verify credentials of IRP and admit the application and if orders are not passed within such time, it shall record its reasons in writings. When it takes a view to reject the

application, prior to doing the same, 7 days" notice to the applicant shall be given for rectification.

- The entire resolution process (CIRP) is expected to be completed within 180 days which may be extended for reasons to be recorded in writing. This Application for extension shall be filed by RP, based on resolution passed at Committee of Creditors (CoC) by a vote of not less than 66% of voting shares. As per recent amendment, the entire process is to be completed mandatorily within 330 days including time spent on litigation.
- During CIRP period, NCLT shall declare moratorium which brings to standstill, initiation of any legal measures / SARFAESI action etc., The Limitation for filing suit gets extended during moratorium period which is only against the borrower company. As against the guarantors/corporate guarantor SARFAESI action/suit needs to be filed within the limitation period. During moratorium, there is a standstill clause which does not permit for interim finance, altering share of capital structure, amending constitutional documents, change of management etc.,
- IRP shall exercise control over affairs of the borrower and even over powers of the Board of Directors. The officers and managers of borrower shall extend cooperation to IRP.
- IRP will issue a public announcement and call for claims from all Creditors within three days of appointment. IRP shall collate the claims and constitute a CoC and the first meeting shall be within seven days of its constitution, wherein the IRP can be confirmed as RP or can be replaced with another RP by a majority vote of 66%.
- Resolution plan shall be submitted by Financial Creditors and/ or any other Resolution Applicant approved by CoC, by vote of not less than 66% of the financial creditors and same shall be approved by NCLT.
- Once resolution plan fails or where there is no scope for effective resolution plan then it moves to liquidation procedure.
- Under liquidation process, NCLT shall pass an order requiring corporate debtor / borrower to be liquidated and issue a public announcement to that effect.
- Once liquidation order is passed, suit or other legal proceedings cannot be instituted or proceeded against Corporate Debtor. During liquidation process RP shall act as Liquidator too and exercise all powers of Board of Directors, Key Managerial Personnel (KMP) etc., from that date. Maximum time span for liquidation process is laid out to be 1 year.
- Proceedings initiated by or against such corporate debtors and their guarantors, if any, which are pending at other forum shall also be transferred to NCLT concerned.
- Recovery application filed against partnership firm, individuals, proprietorship concerns and its connected liquidation proceedings shall be conducted by DRT (not yet notified).
- Financial creditors shall submit their claim to the liquidator within a period of 30 days from commencement of liquidation process, who shall after verification, either admits or rejects the claim and communicate his decision to Corporate Debtor and Creditor within 7 days. Relinquishment of security if opted has to be done within 30 days.

- Appeal against the orders of NCLT shall lie to NCLAT and from DRT to DRAT within 30 days of the order of lower forum. Further appeal from NCLAT shall lie to Supreme Court.
- When the matter is before NCLT/NCLAT, no other Court or Tribunal can pass any injunction order.
- IBC deals with waterfall mechanism, i.e., order of priority of secured creditors viz-a-viz. Government dues and other dues. The secured creditor dues rank prior to all dues, including Government dues.
- Committee of General Managers is the Competent Authority for according approval of filing of applications under IBC.
- Authorities to take decision on resolution mechanism: Wherever there is scope for revival/rehabilitation/restructuring, the Competent Authorities who are empowered with the sanction of revival/ rehabilitation and restructuring plans as per the Bank's Credit Policy in vogue shall be the Competent Authorities herein also. Wherever there are possibilities of OTS, the Competent Authorities who are empowered with the sanction of OTS and haircut/ write off/ waiver as per the Bank's Recovery Policy in vogue will act as authorities to take a decision on case specific basis.
- Zonal Manager may nominate Officers of Scale IV and above, as Designated Officer (DO), who will sign/file the IBC application.

The Committee of Creditors (CoC) meeting is to be duly represented by Bank officials as follows:

- Branch Headed by GM/DGM/AGM-Branch Manager not below rank of Assistant General Manager or an executive/Senior Manager from concerned FGMO/ZO to be decided by FGM.
- Branch Headed by Chief Manager or below- Branch Manager or an executive from FGMO/ZO concerned to be decided by FGM.
- The Designated Officer and the Branch Manager shall update the Zonal Office / FGMO / Corporate Office(R&L) about the proceedings of CoC, minutes, proposed resolution plan and other incidental matters. The team at ZO/FGMO/CO will provide necessary inputs/guidance on such plans/information then and there to the Designated Officer.

Amendments in Insolvency and Bankruptcy Code – 2019

- ❖ Timeline for completion of Corporate Insolvency Resolution Process is to be mandatorily completed within 330 days including time spent on litigation.
- ❖ Clarity is provided on allowing corporate restructuring schemes such as mergers, amalgamations, demergers, etc. under Resolution Plan.

- ❖ Time bound disposal at the application stage, by making it mandatory for NCLT to pass an order within 14 days. In the event of failure to do so to record the reasons in writing for the delay in determination of default.
- ❖ Voting by an authorized representative on behalf of certain classes of financial creditors in CoC, shall be in accordance with the decision approved by more than 50% of the voting share of the financial creditors of such class who have cast their vote. However, such representative voting process will not be applicable for taking a decision on the withdrawal of a Resolution application wherein individual financial creditor will vote individually.
- ❖ Financial creditors who have not voted in favor of the Resolution Plan and operational creditors shall receive at least the amount that would have been received by them, if the amount to be distributed under the Resolution Plan has been distributed in accordance with Sec. 53 (water fall mechanism) of the code or the amount that would have been received if the Liquidation value of the corporate debtor has been distributed in accordance with Sec. 53 of the code, whichever is higher.
- ❖ Resolution Plan is binding on all stakeholders including Government agencies (Central, State and local bodies) to whom a debt in respect of the payment of the dues may be owed.
- ❖ CoC may take a decision to liquidate the corporate debtor anytime after the constitution of the CoC and before preparation of the Information Memorandum.
- ❖ It provides for a Corporate Debtor (CD) under liquidation to be sold as a going concern without dissolution of the CD.
- ❖ Liquidation process is to be completed within a period of 1 year and it further provides for contribution towards liquidation costs by financial creditors if CD does not have adequate liquid resources.
- ❖ It provides for constitution of a Stakeholders Coordination Committee comprising financial creditors (both secured and non secured) workman and employees, Government, OCs and shareholders to advise the Liquidator, though it does not bind him.
- ❖ Stakeholders can update their claim on liquidation commencement date and inform their decision regarding relinquishment of security
- ❖ 01.12.2019 has been notified as the date of commencement of the provisions relating to personal guarantors to CD towards phased implementation of individual bankruptcy.
- ❖ A person who is not eligible to submit a resolution plan under CIRP shall not be a party in any manner to a compromise or arrangement of the CD. Similarly secured creditor cannot sell or transfer a mortgaged/hypothecated asset to a person who is not eligible under the Code to submit a resolution plan.
- ❖ Time lines of 90 days (of liquidation commencement date) for the secured creditor to contribute its share of cost towards CIRP, Liquidation process cost, Workmen dues, on realizing security interest by itself and 180 days to pay excess of realized value of asset over the amount of its admitted claim. On failure to pay the above amount the asset shall become part of liquidation Estate.
- ❖ Process is given for stake holders to seek withdrawal from the Corporate Liquidation Account which constitutes unclaimed dividends, undistributed proceeds if any and income earned there on.

- ❖ On 24.12.19, Cabinet approved to promulgate an Ordinance to the effect that if the resolution plan results in change of management, the CD shall not be prosecuted for an offence committed prior to the commencement of the CIRP

30.POLICY ON PRE-PACKAGED INSOLVENCY RESOLUTION PROCESS FY 2021-22

- The COVID-19 pandemic has impacted MSMEs severely and exposed many of them to financial distress & resolution of their stress requires different treatment due to the unique nature of their businesses and simpler corporate structures.
- Therefore, it was considered expedient to provide an efficient alternative insolvency resolution process under IBC for MSMEs.
- On 11th April, 2021, the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2021 was promulgated to allow pre-packaged insolvency resolution process (PPIRP) for corporate debtors classified as micro, small or medium enterprises under section 7 of MSME Development Act, 2006, by introducing a new Chapter IIIA in the Insolvency & Bankruptcy Code, 2016 and making consequential amendments to the provision of the said Code.
- The said Ordinance has been passed by the Parliament and received the assent of President of India on 11.08.2021 and notified in the gazette of India as “The Insolvency and Bankruptcy Code (Amendment) Act, 2021”.
- The Preamble to the Ordinance provides that the PPIRP has been introduced as an alternative insolvency resolution process for MSMEs to ensures quicker, cost-effective and value maximizing outcomes for all the stakeholders, in a manner which is least disruptive to the continuity of their businesses and which preserve jobs.
- It is a blend of informal and formal mechanisms, with the informal process stretching upto NCLT admission, followed by the existing NCLT supervised process for resolution as specified under the Insolvency and Bankruptcy Code (IBC).
- A pre-packaged insolvency is an arrangement where the resolution of a company’s business is negotiated with a buyer before the appointment of insolvency professional.
- Pre-packs are seen to be a viable alternative to the current corporate insolvency process and would be significantly less time-consuming and inexpensive as against the formal insolvency proceedings. The framework introduced through the ordinance is an experiment of sorts and different in some ways from the normal CIRP.
- Unlike CIRP, this pre-pack framework for MSMEs will be a debtor in possession and creditor in control model.
- In the case of normal CIRP, it was resolution professional in possession and creditor in control. Put simply, in the pre-pack for MSMEs, the debtor will continue to control and run the enterprise till resolution happens.
- In normal CIRP, the RP comes in and takes over the affairs of the CD on the day of the admission itself.
- The Ordinance is applicable to Corporate Debtor (Company, LLP) classified as MSME who committed

default of Rs. 10.00 lac & above.

- The Ordinance allows PPIRP for ensuring "quicker, cost-effective and value maximizing outcomes for all the stakeholders, in a manner which is least disruptive to the continuity of their businesses and which preserves jobs".

Eligibility / conditions for filing of application for initiation of PPIRP

- **MSME** – PPIRP can be initiated only by a Corporate Debtor (CD) which is either a Company or Limited Liability Partnership classified as MSME under MSME Act, 2006. Presently, the classification of MSME is as under:-

Classification	Investment in Plant & Machinery or equipment	Turnover
Micro	< Rs. 1.00 Cr	< Rs. 5.00 Cr
Small	< Rs. 10.00 Cr	< Rs. 50.00 Cr
Medium	< Rs. 50.00 Cr	< Rs. 250.00 Cr

- For making application for PPIRP, a MSME must be registered with the Udyam Registration portal or other Govt. MSM registration agency. Further, the above classification may be changed under MSME Act, 2006/ subsequent amendment thereof. Corporate Debtor has not undergone Pre-packaged Insolvency Process or Completed CIRP under IBC during period of 3 yrs preceding.
- No order of liquidation of Corporate Debtor is passed by the NCLT.
- Corporate Debtor should be eligible to submit resolution plan U/s 29A of IBC.
- Financial Creditors of the Corporate Debtor should not be related parties.
- A base plan should be submitted to the Financial Creditors by the borrower and the Financial Creditor representing not less than 66% in value of financial debt have given consent for initiation of PPIRP.
 - The majority of the directors or partners of the corporate debtor have *inter alia* made declarations that PPIRP is not being initiated to defraud any person and application for PPIRP shall be filed within 90 days in the prescribed format.
 - A special resolution, approving for filing of an application for initiating PPIRP must have passed by the members of the Corporate Debtor, in case the Corporate Debtor is a Company, or at least three-fourth of the total number of partners of the Corporate Debtor, in case its LLP.
 - All Standard/ NPA accounts are eligible for initiation of PPIRP provided they meet other eligibility criteria. However, Bank may assess the feasibility & viability of the unit.

1. Persons not eligible to be resolution applicant under Section 29A of IBC:

A person shall not be eligible to submit a resolution plan, if such person either individually or jointly with other person submitting the plan who —

- a) is an undischarged insolvent;
- b) is a wilful defaulter in accordance with the guidelines of the Reserve Bank of India issued under the Banking Regulation Act, 1949 has an account classified as NPA in accordance with

- the guidelines of the Reserve Bank of India issued under the Banking Regulation Act, 1949 for more than one year. **(NOT APPLICABLE TO MSMEs)**
- c) has been convicted for any offence punishable with imprisonment (i) for two years or more under any specified Act specified or (ii) for seven years or more under any law for the time being in force;
 - d) is disqualified to act as a director under the Companies Act, 2013;
 - e) is prohibited by the Securities and Exchange Board of India from trading in securities or accessing the securities markets;
 - f) has been a promoter or management control of a corporate debtor in which avoidance transaction (preferential, undervalued, extortionate credit or fraudulent transaction) has taken place and in respect of which an order has been made by the Adjudicating Authority under this Code;
 - g) has defaulted on a guarantee in favour of a creditor in respect of a corporate debtor against which an application for insolvency resolution made by such creditor has been admitted; **(NOT APPLICABLE TO MSMEs)**
 - h) is subject to any disability, corresponding to clauses (a) to (h), under any law in a jurisdiction outside India; or
 - i) is a connected person not eligible under clauses (a) to (i).

2. Initiation Of Process:

- The corporate debtor shall convene meetings of the financial creditors.
- The notice of the meeting shall be served to the financial creditors, at least five days before the date of the meeting, unless a shorter time is agreed to by all of them. The notice shall indicate the date, time and venue of the meeting, and enclose a list of creditors along with the amount due to them.
- The financial creditors who are not related parties of the corporate debtor and have not less than 10% of the value of the total financial debt of such creditors may propose names of Insolvency Resolution Professionals.
- Such appointment of the Resolution Professional shall have to be made by the financial creditors representing not less than 66% in value of the financial debt due to such creditors.

3. Appointment of Resolution Professional:

- An Insolvency Professional registered with IBBI shall be eligible to be appointed or continue as an IRP / RP, if he is in any way not related to corporate debtor, directly or indirectly.
- In case, Bank is sole lender, it should be ascertained that the borrower is eligible for initiating PPIRP. Accordingly, name of the resolution professional should be selected from the Bank's panel & forward the same to the Competent Authority for appointment for PPIRP.
 - In case, the financial facility availed by the borrower under Multiple Banking Arrangement / Consortium, any lender having at least 10% stake in the borrower by value may propose the name of Resolution Professional to be appointed which shall be required to be approved by 66% of the lenders by value.
- FGM shall be the Competent Authority for appointment of Resolution Professional or voting for appointment of Resolution Professional (sole lending or consortium/MBA)

- Fee of resolution professional: Before appointment of resolution professional, the Creditors, in the meeting convened by CD, shall approve the terms of appointment of resolution professional including
 - (a) fee payable to him for performing;
 - (b) fee payable to him and expenses to be incurred by him for conducting the process; and
 - (c) fee payable to him and expenses to be incurred by him in case management of the corporate debtor is vested with him.
- A resolution professional shall disclose item wise process costs at the time of his appointment and thereafter in accordance with the code of conduct as set out in the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016.
- The corporate debtor shall maintain a separate bank account with such amount as may be advised by the committee from time to time and such account shall be operated by the Resolution Professional to meet his fee and expenses incurred by him for conducting the process, which shall be treated as “pre-packaged insolvency resolution process costs”.
- Where the corporate debtor fails to file an application for initiation of Pre Packaged IRP or the application for initiation of the process is rejected, the fee payable to the Resolution Professional for performing duties, shall be borne by the corporate debtor.
- Further, all other expenses to be incurred by the Resolution Professional for conducting the process including engagement of any professional (auditors, legal advisors, valuers, etc) shall also be met from the aforesaid account maintained by CD, which shall form part of the pre-packed Insolvency process Cost. In case, the Pre-packed Insolvency process is terminated or resolution plan is not approved, the entire cost shall be borne by CD.
- In case, a resolution plan is approved by Committee of Creditors, the PPIRP cost shall be borne by the respective Resolution Applicant whose plan has been approved.

4. Admission & Moratorium

- On application of the Corporate Debtor, the Adjudicating Authority shall admit the application if it's complete or reject if it's incomplete, within 14 days from the receipt of application.
- However, if the application is rejected, Adjudicating Authority shall give notice to applicant to rectify the defect within 7 days.
- Application for initiation of PPIRP U/s 54C shall be decided first and pending or new application filed by the financial creditor/Operation Creditor/Corporate borrower before NCLT for initiating CIRP shall be kept in abeyance. However, in case, the above application is pending for more than 14 days prior to filing of application U/s 54C, such application shall be disposed first.
- The pre-packaged insolvency resolution process shall commence from the date of admission of the application
- Once the application is admitted, the Adjudicating Authority shall
 - (a) declare a moratorium which shall have effect till Pre-packaged IRP comes to an end,
 - (b) cause a public announcement by the resolution professional within 2 days of commencement of Pre-packaged IRP, which shall also be sent to all the creditors, Information Utilities and also uploaded on the website of Corporate Debtor & IBBI.

- Within 2 days of PPIRP commencement date, Corporate Debtor shall submit to the resolution professional, the base resolution plan as placed before the lenders before filing application for initiation of PPIRP, updated list of creditors, preliminary information memorandum, details of their security, etc.
- The PPIRP shall be completed within a period of 180 days from PPIRP commencement date.
- From the date of admission, all ongoing litigations/suits and recovery actions initiated against the CD by any Creditor stands stayed

5. Maintenance of claims of Creditors by RP:

- The corporate debtor shall submit a list of claims to the resolution professional which shall be confirmed by the RP based on the records of the CD and other relevant material available on record.
- The resolution professional shall inform every creditor regarding its claims, as confirmed by him, and seek objections, if any.
- A creditor may submit objection along with supporting documents to the resolution professional within seven days from the receipt of communication.
- The resolution professional may call for such other evidence or clarification as he deems fit from a creditor for substantiating the whole or part of its claim.
- The resolution professional shall consider every objection received and modify the claim of the creditor, if required.
- A creditor shall update its claim, as and when the claim is satisfied, partly or fully, from any source in any manner, after the pre-packaged insolvency commencement date.
- The updated list of claim shall be -
 - (a) made available for inspection by the creditors, members, partners, directors and guarantors of the corporate debtor;
 - (b) displayed on the website, if any, of the corporate debtor;
 - (c) filed with the Board on electronic platform; and
 - (d) presented at the meetings of the committee, as and when updated.

6. Duties of Resolution Professional:

- After nomination of the Resolution Professional for the process, RP shall have an authority to access the books of account, record, and other documents to the extent relevant for discharging his duties ie (a) members, promoters, partners, directors and joint venture partner of the corporate debtor, (b) Professional and advisors engaged by the corporate debtor, (c) depositories of securities, (d) registries that the record of the ownership of assets (e) contractual counterparties of the corporate borrower.
- After the approval for appointment of RP, the RP shall prepare a report whether the Corporate Debtor meets the requirement under the code and the base resolution plan confirms to the requirements of the code.
- However, aforesaid duties of proposed RP shall cease if the Corporate Debtor fails to file application for initiation of PPIRP within 90 days as stated in aforesaid declaration or the application is

admitted or rejected by Adjudicating Authority.

- After admission of application for initiation of PPIRP, Resolution Professional shall conduct the PPIRP.
- Constitute CoC within 7 days of pre packaged insolvency commencement date
- Convene meetings, prepare information memorandum, file application for avoidance of transactions or fraudulent or wrongful trading.
- The resolution professional shall verify and finalize the information memorandum and submit copies to members of the CoC within fourteen days of the pre- packaged insolvency commencement date after receiving a confidentiality undertaking.
- File application before NCLT for vesting the management of the Corporate Debtor with the RP, if the conduct of the borrower is detrimental to the interest of the CoC and filing of such application is approved by CoC with 66% vote.
- The Resolution Professional shall submit the resolution plan approved by CoC with 66% vote before the NCLT within 90 days. If no plan is approved by CoC within 90 days, RP shall file an application with NCLT for termination of the PPIRP.
- The Resolution Professional may appoint accountants, legal or other professionals provided that the following persons shall not be appointed as a professional, namely:-
 - (a) a person who is not registered with the regulator of the profession concerned;
 - (b) a related party of the corporate debtor;
 - (c) an auditor of the corporate debtor at any time during the five years preceding the pre-packaged insolvency commencement date;
 - (d) a partner or director of the insolvency professional entity of which the resolution professional is a partner or director; or
 - (e) a relative of the resolution professional or of a partner or director of the insolvency professional entity of which the resolution professional is a partner or director.

7. Vesting of management of corporate debtor with resolution professional:

- During the PPIRP, if CoC is of the view that affairs of the corporate debtor have been conducted in a fraudulent manner or there has been gross mismanagement of the affairs of the corporate debtor, it may resolve for filing application before Adjudicating Authority for vesting of the affairs of the CD with RP.
- On application made by RP and being satisfied, the Adjudicating Authority shall pass an order vesting the management of the corporate debtor with the resolution professional.

8. Appointment of registered valuers for ascertaining Fair Value & Liquidation

Valuation of CD:

- The resolution professional shall within three days of his appointment, appoint two registered valuers to determine the fair value and the liquidation value of the corporate debtor:
- Fair value and liquidation value shall be determined in the following manner:-
 - (a) the registered valuers appointed shall submit to the resolution professional an estimate of

the fair value and of the liquidation value computed in accordance with internationally accepted valuation standards, after physical verification of the inventory and fixed assets of the corporate debtor;

(b) the average of the value determined by the two registered valuers shall be considered the fair value or the liquidation value.

- Resolution Professional shall share the valuation reports to every member of the committee, after the receipt of resolution plans, on receiving an undertaking that such member shall maintain confidentiality of the fair value and the liquidation value and shall not use such values to cause an undue gain or undue loss to itself or any other person.
- The resolution professional and registered valuers shall maintain confidentiality of the fair value and the liquidation value.

9. Committee of Creditors & Meetings of the Committee:

- The resolution professional shall constitute a committee of creditors within seven days of the pre-packaged insolvency commencement date based on the list of claims.
- The first meeting of the committee of creditors shall be held within seven days of the constitution of the committee of creditors.
- A resolution professional may convene a meeting of the committee as and when he considers necessary and also on the request of members of committee representing 33% of voting share.
- A meeting of the committee shall be convened by giving not less than three day's notice in writing to every participant, at the address provided to the resolution professional by the creditor. However, the committee may reduce the notice period from three days to such other period of not less than twenty- four hours, as it deems fit: Provided the committee may reduce the period to such other period of not less than forty-eight hours if there is any authorised representative in the committee.
- A notice may be sent to the participants through e-mail as a text or as an attachment to e-mail or as a notification providing electronic link or URL informing the participants of the venue, time and date of the meeting and shall also provide all the necessary information to enable participation.
- The notice of the meeting shall provide that a participant may attend and vote in the meeting either in person or through a representative, who is not a related party of the corporate debtor. However, such participant shall inform the resolution professional, in advance of the meeting, of the identity of the representative who will attend and vote at the meeting on its behalf and shall forward an authorisation in favour of the representative.

10. Quorum of the CoC Meeting:

- A meeting of the committee shall quorate if members of the committee representing at least 33 percent of the voting share are present either in person or by video conferencing or other audio and visual means:

Provided that the committee may modify the percentage of voting share required for quorum in respect of any future meetings of the committee.

- Where a meeting of the committee could not be held for want of quorum, unless the committee has previously decided otherwise, the meeting shall automatically stand adjourned at the same time and place on the next day and in such case, the adjourned meeting shall quorate with the members of the committee attending the meeting.

11. Conduct of meeting:

- The Resolution Professional shall act as the chairperson of meetings of the committee.
- At the commencement of a meeting, the resolution professional shall take a roll call of every participant attending the meeting for record, the following: -
 - (a) his name;
 - (b) whether he is attending in the capacity of a member of the committee or any other participant;
 - (c) whether he is representing a member or group of members;
 - (d) the location from where he is participating;
 - (e) that he has received the agenda and all the relevant material for the meeting; and
 - (f) that no one other than him is attending or has access to the proceedings of the meeting at the location of that person.
- After the roll call, the resolution professional shall inform the participants of the names of all persons who are present for the meeting and confirm if the required quorum is complete.
- The resolution professional shall ensure that the required quorum is present throughout the meeting.
- From the commencement of the meeting till its conclusion, no person other than the participants and any other person whose presence is required by the resolution professional shall be allowed access to the place where meeting is held or to the video conferencing or other audio and visual facility.
- The resolution professional shall ensure that minutes are made in relation to each meeting of the committee and such minutes shall disclose the particulars of the participants who attended the meeting in person, through video conferencing, or other audio and visual means.

12. Voting by the committee:

- Any action requiring approval of the committee shall be considered in the meetings of the committee.
- The resolution professional shall take a vote of the members of the committee present in the meeting, on any item listed for voting after discussion on the same.
- At the conclusion of a vote at the meeting, the resolution professional shall announce the decision taken by the members present in the meeting, on items along with the names of the members of the committee who voted for or against the decision or abstained from voting.
- The Resolution Professional shall-
 - (a) circulate the minutes of the meeting by electronic means to all members of the committee and authorised representative, within twenty-four hours of the conclusion of the meeting; and
 - (b) seek a vote of the members who did not vote at the meeting on the matters listed for

voting, by electronic voting system in accordance with regulation 37 where the voting shall be kept open for at least twenty-four hours from the circulation of the minutes.

- The authorised representative shall circulate the minutes of the meeting received under sub-regulation (4) to creditors in a class and announce the voting window at least twenty-four hours before the window opens for voting instructions and keep the voting window open for at least twelve hours.

13. Voting through electronic means:

- The resolution professional shall provide each member of the committee the means to exercise its vote by either electronic means or through electronic voting system in accordance with the provisions of this regulation.
- At the end of the voting period, the voting portal shall forthwith be blocked.
- At the conclusion of a vote held under this regulation, the resolution professional shall announce and make a written record of the summary of the decision taken on a relevant agenda item along with the names of the members of the committee who voted for or against the decision or abstained from voting.
- The resolution professional shall circulate a copy of the record made under sub-regulation (3) to all participants by electronic means within twenty-four hours of the conclusion of the voting.

14. Preferential and other transactions:

- On or before the thirtieth day of the pre-packaged insolvency commencement date, the resolution professional shall form an opinion whether the corporate debtor has been subjected to any transaction covered under sections 43 (Preferential Transactions), section 45 (Avoidance of undervalued transactions), Section 50 (Extortionate credit transactions) or Section 66 (Fraudulent trading or wrongful trading) of IBC-2016.
- Where the resolution professional is of the opinion that the corporate debtor has been subjected to any transactions covered under sections 43, 45, 50 or 66, he shall make a determination on or before the forty-fifth day of the pre-packaged insolvency commencement date, under intimation to the Board.
- Where the resolution professional makes a determination under sub-regulation (2), he shall apply to the Adjudicating Authority for appropriate relief on or before the sixtieth day of the pre-packaged insolvency commencement date.

15. Consideration & Approval of Resolution Plan:

- The Corporate Debtor shall submit base resolution plan to RP within 2 days of pre-packaged insolvency commencement date.
- The CoC may provide opportunity to the Corporate Debtor to revise the base resolution plan prior to its approval or invitation of prospective resolution applicants.
- The CoC may approve the base plan of Corporate Debtor if it does not impair any claims of Operational Creditors.
- In case, the CoC does not approve the base plan because it impairs any claim of Operational Creditor(s), the CoC shall invite prospective resolution applicants to submit a resolution plan(s) to

compete with the base resolution plan.

- Where no resolution plan is received or not complies with the requirements of the Code and Regulations thereof, the base resolution plan may be considered by the committee for approval.

16. Invitation of EOI & other Resolution Plan:

- In case the CoC decides that maximisation of value can be achieved only through inviting competitive resolution plans through *swiss challenge*, it can advise the RP to make a public announcement inviting Resolution Plans. A minimum period of 15 days shall be provided to such Resolution Applicants (RA) for submitting Resolution Plans.
- With a view to obtain better resolution plan from prospective resolution applicants, the resolution professional shall publish brief particulars of the invitation for resolution plans not later than 21 days from the pre-packaged insolvency commencement date and such notice shall be published on the website of the Corporate Debtor, Board and any other place decided by the CoC. Such notice shall (a) state where the invitation for resolution plans can be downloaded or obtained from and (b) provide the last date for submission of resolution plan which shall not be less than fifteen days from the date of issue of invitation for resolution.
- The invitation for resolution plans shall detail each step in the process and the manner and purposes of interaction between the resolution professional and the resolution applicant along with the timelines including the basis for evaluation, basis for considering a resolution plan significantly better than another resolution plan, tick size and the manner of improving a resolution plan and shall not require any non-refundable deposit for submission of or along with resolution plan.
- The resolution professional shall require the resolution applicant, in case its resolution plan is approved, to provide a performance security within the time specified therein and such performance security shall stand forfeited if the resolution applicant of such plan, after its approval by the Adjudicating Authority, fails to implement or contributes to the failure of implementation of that plan in accordance with the terms of the plan and its implementation schedule.
- The Resolution Professional shall present the resolution plans which conform to the requirements IBC to the committee of creditors for evaluation and selection of the resolution plan amongst them.
- In case, the CoC decides that the resolution plan selected is significantly better than the base resolution plan, such resolution plan may be selected for approval.
- Even where the resolution plan selected by the CoC after invitation from PRAs is not considered for approval, as aforesaid or such plan is also not significantly better than the base resolution plan, it shall compete with the base resolution plan, in such manner & subject to conditions as may be specified, and one of them shall be selected for approval.
- While considering the feasibility and viability of a resolution plan, where the resolution plan submitted by the corporate debtor provides for impairment of any claims owed by the corporate debtor, the committee of creditors may require the promoters of the corporate debtor to dilute their shareholding or voting or control rights in the corporate debtor, however, where the resolution plan does not provide for such dilution, the committee of creditors, prior to the approval of such resolution plan, shall record reasons for its approval.
- The resolution plan having higher score on the evaluation matrix on completion of process of improvement shall be considered by the committee for approval.

- The selected plan may be approved by CoC for submission to the Adjudicating Authority by a vote of not less than 66% of the voting shares after considering its feasibility and viability, the manner of distribution proposed, taking into account the order of priority amongst creditors u/s 53(1) IBC including the priority and value of the security interest of a secured creditor. After approval of the resolution plan by CoC, the same shall be submitted by the RP before Adjudicating Authority for approval.
- In case, the resolution plan selected for approval is not approved by CoC, the Resolution Professional shall file an application for termination of the pre- packaged insolvency resolution process before the NCLT.
- A resolution plan shall provide for the measures, as may be necessary, for maximisation of value of its assets, including the following:-
 - a) transfer of all or part of the assets of the corporate debtor to one or more persons;
 - b) sale of all or part of the assets whether subject to any security interest or not;
 - c) restructuring of the corporate debtor, by way of merger, amalgamation and demerger;
 - d) the substantial acquisition of shares of the corporate debtor;
 - e) cancellation or delisting of any shares of the corporate debtor, if applicable;
 - f) satisfaction or modification of any security interest;
 - g) curing or waiving of any breach of the terms of any debt due from the corporate debtor;
 - h) reduction in the amount payable to the creditors;
 - i) extension of a maturity date or a change in interest rate or other terms of a debt due from the corporate debtor;
 - j) amendment of the constitutional documents of the corporate debtor;
 - k) issuance of securities of the corporate debtor, for cash, property, securities, or in exchange for claims or interests, or other appropriate purpose;
 - l) change in portfolio of goods or services produced or rendered by the corporate debtor;
 - m) change in technology used by the corporate debtor; and
 - n) Obtaining necessary approvals from the Central and State Governments and other authorities.

17. Application to Adjudicating Authority:

- Where a resolution plan is approved by the committee, the resolution professional shall submit an application, along with a compliance certificate, to the Adjudicating Authority/NCLT for approval.
- The resolution professional shall forthwith send a copy of the order of the Adjudicating Authority approving or rejecting a resolution plan to the participants and the resolution applicant.
- The resolution professional shall, within seven days of the order of the Adjudicating Authority approving a resolution plan, intimate each claimant, the principle or formula, as the case may be, for payment of debts under such resolution plan.
- Where no resolution plan is approved by the committee or where the committee has approved the termination of process, the resolution professional shall file an application to the Adjudicating Authority/NCLT for termination of process.

18. Termination of pre-packaged insolvency resolution process:

- Where the resolution professional at any time after the pre-packaged insolvency commencement date but before the approval of resolution plan, intimates the Adjudicating Authority of the decision of the committee of creditors approved by a vote of sixty-six per cent of the voting shares, to terminate the pre-packaged insolvency resolution process, the Adjudicating Authority shall pass an order for termination of the PPIRP.
- Where no resolution plan is approved by the committee or where the committee has approved the termination of process, the resolution professional shall file an application to the Adjudicating Authority/NCLT for termination of process.

In such cases, the CD shall bear the PPIRP cost.

19. Initiation of corporate insolvency resolution process:

- The committee of creditors at any time after the pre-packaged insolvency commencement date but before the approval of resolution by a vote of 66% of the voting shares may resolve to initiate a corporate insolvency resolution process in respect of the corporate debtor, if such corporate debtor is otherwise eligible for corporate insolvency resolution process.
- Where the Resolution Professional intimates the Adjudicating Authority of the such decision of the committee of creditors, the Adjudicating Authority shall, within thirty days of the date, pass an order to —
 - (a) terminate the pre-packaged insolvency resolution process for initiation of CIRP;
 - (b) appoint the acting RP (in PPIRP) as the interim resolution professional for CIRP, subject to submission of written consent by such RP otherwise the Adjudicating Authority shall appoint RP in accordance with Code; and
 - (c) declare that the pre-packaged insolvency resolution process costs, if any, shall be included as part of CIRP costs.
 - (d) the proceedings initiated for avoidance of transactions or proceedings initiated under section 66 and section 67A, if any, shall continue during the corporate insolvency resolution process;
 - (e) for the purposes of sections 43, 46 and 50, references to “insolvency commencement date” shall mean “pre-packaged insolvency commencement date”; and
 - (f) in computing the relevant time or the period for avoidable transactions, the time-period for the duration of the pre-packaged insolvency resolution process shall also be included, notwithstanding anything to the contrary contained in sections 43, 46 and 50.

20. Liquidation of the Corporate Debtor:

- The Adjudicating Authority shall pass an order of liquidation in respect of the Corporate Debtor u/s 33 -

Where the Adjudicating Authority has passed an order for vesting of the management of the affairs of the CD from the existing promoters/directors to the Resolution Professional during PPIRP, due to mismanagement or fraudulent activity by the existing promoters/directors; and

The resolution plan approved by CoC does not result in change in the management i.e., the existing promoters/directors remains in the management or control of the CD under the approved resolution plan; or

PPIRP is required to be terminated as discussed in Point No. 20 above;

- The Adjudicating Authority shall pass order for liquidation of the CD & declare that the PPIRP

cost, if any, shall be included as part of the liquidation costs for the purpose of liquidation of CD.

21. Management during the Pre-Packaged Insolvency Resolution Process:

- The corporate debtor shall not manage the affairs of the corporate debtor in a manner prejudicial to the creditors of the corporate debtor or in a fraudulent manner.
- The corporate debtor shall not undertake any of the following actions without obtaining prior approval of the committee, namely:-
 - (a) transaction above a threshold as decided by the committee; and
 - (b) any other matter as decided by the committee and not covered under section 28.
- The corporate debtor in consultation with the resolution professional shall prepare a monthly report and forward it to the members of the committee with the following details:-
 - (a) details of legal proceedings having a material impact on the business of the corporate debtor;
 - (b) details of key contracts executed during the reporting period; and
 - (c) any other relevant matter(s) that may have a material impact on the business of the corporate debtor.
- The resolution professional may-
 - (a) call for information related to operations of the corporate debtor, including payments made;
 - (b) visit premise(s) of the corporate debtor;
 - (c) inspect the assets of the corporate debtor;
 - (d) call for information related to compliances applicable to the corporate debtor and its status;
 - (e) ask for details related to litigation initiated by or against corporate debtor; and
 - (f) ask details for ascertaining the conduct of corporate debtor during the process.

22. Completion Period & moratorium period:

- PPIRP shall be completed within 120 days, however approved resolution plan by CoC with 66% vote or application for termination of PPIRP shall be filed by RP before Adjudicating Authority within 90 days from PPIRP commencement date.
- The moratorium shall be available from the pre-pack commencement date till the termination of the process, whether by approval of the resolution plan or otherwise and during moratorium period, no coercive / Recovery action shall be initiated/continued.

23. Failure of Resolution Applicant in implementation of approved Resolution

Plan:

- If, the resolution applicant, after approval of the resolution plan under PPIRP, fails to implement the plan or is contravened affecting the interest of the Bank, any of the Creditor can approach Adjudicating Authority seeking initiation of CIRP or liquidation, as the case may be. Accordingly, branches will have to monitor implementation of Resolution Plans under PPIRP.

24. Grant of Approval to CD for initiating PPIRP:

- On receipt of proposal from CD seeking consent of the Bank for initiating PPIRP, the branch shall examine the feasibility of the proposal and shall submit the proposal along with the required documents

to the Competent Authority (FGM) with their recommendations seeking approval for giving consent on behalf of Bank.

- FGM shall authorize officers to represent before CoC during PPIRP who shall not be below the rank of Chief Manager including for SAM Verticals / Large Corporate Branch, Mid Corporate Branch or any other specialized Branch situated within its territorial/administrative jurisdiction.

25. Competent Authority/Committees to approve/reject a Resolution Plan and other issues of CoC under Pre-packed Insolvency Resolution Process:

- Proposals for Restructuring under Resolution Plan should be processed and taken up to the competent authorities by MSME Division (either NPA or Standard account). Any other resolution plan (except restructuring/re- scheduling proposal) in NPA accounts shall be dealt by Recovery Department.
- The Competent Authority to approve or reject a Resolution Plan shall be the Competent Authority with financial powers in terms of Bank's extant circular guidelines on delegation of Financial Powers for Advances/ Restructuring/ NPA Management Policy, as may be applicable, in force which shall also, including the sacrifice/haircut/notional loss involved on account of the proposed resolution plan. The Agenda may include-
 - For approval of resolution plan –
 - Premature termination of PPIRP and or approval for initiation of CIRP / Liquidation
 - Rejection and termination of PPIRP
 - Rejection of Resolution Plan and initiation of CIRP or Liquidation
- **Delegation of power to FGM** (relating to account of any Branch including SAM Vertical/ LCB/MCB/ any other specialized branch) for the following issues:
 - Approval of initiation of PPIRP after *prima facie* considering the base plan submitted by promoters/directors or the CD
 - Approval of name of RP for appointment
 - Replacement of RP during PPIRP
 - Disposal / sale of unencumbered assets to generate funds
 - Conduct or waiver of forensic audit of CD before PPIRP, except for accounts (above Rs. 50.00 Cr) which falls within the authority of Corporate Office in accordance with NPA Management Policy.
 - Any other decision of CoC which requires minimum 66% vote.
- **Delegation of power to Zonal Manager** where account pertains to any branch within the control of Zonal Office for the following issues:
 - Engagement of other professionals by RP such as Valuers, lawyers, and fees payable to them.
 - Approval for Transaction audit of CD by RP
 - Modification in percentage of voting rights required for quorum

- Reduction of notice period for holding CoC meeting
- Allowing opening of current account of CD for purpose of PPIRP (Account to be funded by CD)
- Any other routine decision which in the opinion of RP requires 51% favourable vote.

- **Delegation of power to Branch Head** where account pertains to SAM Branches/ Large Corporate Branch / Mid Corporate Branch or any other specialized Branch not under direct control of Zonal Office, for the following issues:

Engagement of other professionals by RP such as Valuers, lawyers, and fees payable to them.

Approval for Transaction audit of CD by RP

Modification in percentage of voting rights required for quorum

Reduction of notice period for holding CoC meeting

Allowing opening of current account of CD for purpose of PPIRP (Account to be funded by CD)

- Any other routine decision which in the opinion of RP requires 51% favourable vote.
- Upon initiation of CIRP / Liquidation under IBC after termination of PPIRP, the matters thereafter shall be dealt under the NPA Management Policy in force.

26. Appeals & Appellate Authority:

- Any person aggrieved by the order of the Adjudicating Authority may prefer an appeal to the National Company Law Appellate Tribunal within 30 days of Order.
- An appeal against order approving resolution plan may be filed on the following grounds:
 - The approved resolution plan is in contravention of the any law; or
 - There has been material irregularity by the resolution professional while conducting the process; or
 - The debts owed to the operation creditors of the CD have not been provided in the resolution plan in the manner specified by the Board; or
 - The insolvency resolution process costs have not been provided for repayment in priority to all debts; or
 - The resolution plan does not comply with any other criteria specified by the Board
- An appeal against a liquidation order passed u/s 33 or u/s 54L(4) or u/s 54N(4) may be filed on ground of material irregularity or fraud committed in relation to such a liquidation order
- An appeal against an order for initiation of CIRP passed u/s 54-O may be filed on ground of material irregularity or fraud committed in relation to such order

31.Empanelment/engagement of resolution and management professionals:

Following parameters may be taken for weightage by ZO while recommending for empanelment to Corporate Office/ Recovery & Legal Department.

- Number of years of experience in handling the management affairs of the Companies concerned, Insolvency Resolution and Liquidation process, etc. and matters handled.
- Their exposure in Turnaround of the Companies concerned.
- Whether they had any exposure in enterprise valuation, stock audit, forensic and comprehensive audit, etc.
- Overall understanding/ competency with Insolvency Resolution Process and Liquidation / having infrastructure facility, etc.
- In respect of IBC cases wherein the claim is more than Rs.25.00 crores, the services of IRP firms having more number of partners should be utilized and in case of claim up to Rs.25.00 crores, services of individual IRPs with requisite expertise may be engaged.
- Competent Authority for engagement of IRPs / RPs will be the respective FGM, subject to the decision of CoC / Adjudicating Authority.
- Depending on the need based requirements of Unit, namely, Steel Industry, Power Industry, Textile Unit, etc., IRP/RP may suggest specific Consultants for engagement besides Accountants, Legal consultants and other professionals.
- Based on quotes received (minimum three quotes), FGM may permit such engagement, subject to the decision of CoC.
- The fees payable to IRPs / RPs will be approved by FGM on case to case basis depending upon the size of the entity, insolvency, days taken for resolution, frequency of meetings, successful turnaround, performance and standing of the IRP / RP, scope of work, market trend, etc.

Fee structure for IRP/RP upto resolution stage is as follows. This fee structure is the maximum fee payable and should be negotiated with IRP/RP before entrustment.

Aggregate Exposure with all financial creditors	Consolidated Fees payable by all financial creditors
Upto Rs.10 Crore	Upto a max of Rs.1,00,000/- per month
Above 10 Crore upto Rs.25 Crore	Upto a max of Rs.1,50,000/- per month
Above 25 Crore upto Rs. 50 Crore	Upto a max of Rs. 2,00,000/- per month
Above s. 50 Crore upto Rs. 100 Crore	Upto a max of Rs. 2,50,000/ per month
Above s.100 Crore upto Rs.250 Crore	Upto a max of Rs. 3,00,000/ per month
Above s. 250 Crore upto Rs.500 Crore	Upto a max of Rs. 3,50,000/ per month
Above s. 500 Crore	Upto a max of Rs. 4,00,000/ per month

32. Policy on e- auction Service Providers

Ministry of Finance (MOF) Dept of Financial Services (DFS) in the year 2012 advised all Public Sector Banks / DRTs / DRATs to resort to e-auction mode of sale to control cartels / groups since general public were not allowed to freely participate in these auctions. The concept of e-auctions was introduced with a view to conduct free, fair and transparent auctions.

The procedure suggested was that after issue of sale notice for auction, the concerned Bank shall arrange for e-auction through any of the service providers with whom the Bank has executed necessary agreement.

Therefore, with effect from August 1st 2012, e-auction mode has come to be adopted in for DRT as well as SARFAESI auctions.

The following e-auction service providers have been empanelled for conducting e-auction:

Sr. No	Name of the e-auction Service Provider	Revised Fees w.e.f. 08.02.2018 **
1.	C-1 India Pvt. Ltd	Rs.550/- + applicable GST
2.	Matexnet Pvt. Limited	Rs.550/- + applicable GST
3.	e-Procurement Technologies Pvt. Ltd.	Rs.550/- + applicable GST

For the sake of clarity, the uniform fee of Rs. 550/- +GST shall be paid to the above e-auction service providers irrespective of the fact that whether the auction was successful / unsuccessful / cancelled / stayed event.

The fees indicated are for conducting e auction per property.

However, the fees payable for e-auction / list of e-auction service provider are subject to revision. Branch / Zonal Office should always refer to the latest advisory as regards list of e-auction service provider / fees payable to the e-auction service providers.

Inclusion of new e-auction service provider:

Department of Financial Services, Ministry of Finance had series of meetings with PSBs regarding improvement in common e-auction platform for bank properties and suggested that, Banks should provide search facilities across all PSBs from a single site to avoid the prospective buyers from visiting multiple

sites even for searching and short-listing of properties. After a series of discussion all member Banks agreed to include MSTC Ltd as e-auction service provider for all PSBs to provide common landing platform e-Bikray and on behalf of all PSBs, Allahabad Bank executed agreement with MSTC Ltd on 05.11.2019 with following commercial/ payment terms:

- (a) Listing Charges per property for conducting auctions irrespective of outcome of e-auction, Rs.900/- + GST per property or
- (b) Success Fee of Rs.9000/- + GST per sold property.

We have opted for Rs.9000/- + GST per sold property till revision of commercial terms with MSTC Ltd.

As per direction of Department of Financial Services, Ministry of Finance, all e-auctions under the SARFAESI Act is to be listed through common web portal e-Bikray developed by MSTC Ltd.

As per old guidelines, in e-auction process, Digital Signature Certificate (DSC) of the bidders was suggested and has been adopted for safety and security reasons. At the same time, factoring in the operational convenience, as it was not feasible to insist on digital signature in few instances which poses a blockade, involving the timeline for arranging for the digital signature certificate, clearance was obtained that Digital Signature Certificate may be waived for bidders in the e-auction process for securities wherein Reserve Price has been fixed up to Rs. 100.00 Lakhs, subject to strict compliance and validation of KYC norms.

As per common web portal developed for all PSBs and concept note signed with MSTC Ltd all intending bidders shall register with the e-auction portal of MSTC Ltd to create their user ID and password and registration of bidders involves a process of filling up an online form and then submitting KYC documents which will be verified by MSTC Ltd. No Digital Signature Certificate is proposed for bidders to submit bid at this stage.

Please make use of the following web link for steps / procedure for e-auction / powers of Authorized Officers in the e-auction process, use of digital signature etc

https://ibapi.in/Sale_Info_Home.aspx#

<https://www.mstcecommerce.com/auctionhome/ibapi/index.jsp>

THANK YOU

References

1.	NPA Management Policy 2021 2022	ADV-11 /2021-22 dt 19/04/2021
2.	Policy On Pre-Packaged Insolvency Resolution Process (PPIRP) under Insolvency & Bankruptcy Code, 2016	ADV- 119 /2021-22 dt 17/09/2021