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CREATE & GROW
RESEARCH FOUNDATION

# INDEX



குறள்: 472
ஒல்வ தறிவது அறிந்ததன் கண்தங்கிச்
செல்வார்க்குச் செல்லாதது இல்.

**Thirukural: 472**
There is nothing which cannot be accomplished by those who, before they attack (an enemy), make themselves acquainted with their own ability, and with whatever else is (needful) to be known, and apply themselves wholly to their objective.

## From the Editor's Desk

**Esteemed Readers of SandBox**

It is our pleasure to bring out the March 2021 Issue of CGRF SandBox on a very positive note as the economy is limping back to normalcy, showing strong signs of recovery. True, there has been eruption of Covid-19 cases in a few States like Kerala, Maharashtra but by and large the pandemic has been effectively contained.

**The year-end blues**

As the Financial Year 2020-21 draws to a close, corporates are racing against time to report respectable financials. Banks, on the other hand, are juggling with various options of recovery of NPA and understandably focusing on the provisioning norms to be complied with and its impact on their P&L Account.

**RBI Provisioning norms**

In this context, CGRF team thought it would be appropriate to highlight in this issue of CGRF SandBox the relevance and importance of the provisioning requirements of Reserve Bank of India vis-à-vis the banks.

**Proposal for Bad Bank**

Be that as it may, taking due note of the mounting non-performing assets (NPA) and their impact on the performance of banks, the Union Finance Minister has proposed setting up of a "Bad Bank" the concept of which has been doing rounds for quite some time. Banking industry will set up the Bad Bank and capitalize it with some initial contribution and later that entity may raise funds on its own to fund its acquisition of NPAs and off-loading later.

Conceptually, the Bad Bank will perform the role of an asset reconstruction company. Whether the role of the proposed Bad Bank will interfere with the role of the Asset Reconstruction Companies (ARCs) set up under the Recovery of Debts and Dues to Banks and Financial Institutions Act, 1993 (subsequently renamed as Recovery of Debts and Bankruptcy Act, 1993) is not yet known. RBI Governor has recently come out with a statement that the structure of present ARCs will be upgraded and their role will not come into conflict with the role of the Bad Bank.

It appears that the bad assets will be transferred to the bad bank at pre-agreed price; but bids will be called from others later and the highest bidder will get the asset. It is likely that Swiss challenge method will be followed for price discovery of the bad assets. It is gathered that bad assets worth Rs.500 crores and above against which 100% provisioning has been done may be transferred to the Bad Bank provided 75% of the banks holding such assets agree to such transfer. Reports are afloat that Indian Banks' Association (IBA) is closely working with RBI and Finance Ministry on the modalities of identification, bidding and transfer of the bad assets.


**(Image Source: Website)**

Let us hope that the new financial year 2021-22 will bring out the animal spirits in entrepreneurs given the right climate for spurt in consumption and industrial growth. CGRF SandBox Team takes great pleasure to wish its readers a brand-new financial year and new opportunities for all the players.

Yours truly

S. Rajendran

## Provisioning Norms for Banks

**Ms. B. Mekala**
**Insolvency Professional**

*RBI's prudential framework for resolution of Stressed Assets of banks and Impact on Provisioning when IBC proceedings are initiated.*

### Background

In tune with the international best practices, the Reserve Bank of India (RBI) has introduced, over a period of time, prudential norms for income recognition, asset classification and provisioning for the advances portfolio of the banks so as to move towards greater consistency and transparency in the published accounts.

The regulator felt that the policy of income recognition should be very objective and should be based on record of recovery, rather than on any subjective considerations. Likewise, the classification of assets of banks has to be on the basis of objective criteria which would ensure an uniform and consistent application of the norms. Hence, provisioning should be made on the basis of the classification of assets, which is based on the period for which the asset has remained non-performing, the availability of security and its realisability. A brief note on non-performing assets (NPA), their classification and the general provisioning norms is given below:

### a) Non-Performing Assets

An asset, including a leased asset, becomes non-performing when it ceases to generate income for the bank. A 'non-performing asset' (NPA) is defined as a credit facility in respect of which the interest and/ or instalment of principal has remained 'past due' for a specified period of time as under:

i) overdue for a period of more than 90 days in respect of a term loan, Overdraft/ CC, bills purchased and discounted,

ii) overdue for two harvest seasons but for a period not exceeding two half years in the case of an advance granted for agricultural purposes, and

iii) any amount to be received remains overdue for a period of more than 90 days in respect of other accounts.

On an account becoming NPA, banks should reverse the interest already charged and not collected, by debiting P&L and stop further application of interest. However, banks may continue to record such accrued interest in a memorandum account in their books. Often this non application of interest by banks on NPA advances is mis construed by the bankers that the banks cannot charge interest and therefore, the borrower is not liable to pay Interest on NPA advances. This is not correct. **The borrower continues to be liable to pay interest for the banks ever after NPA date.**

### b) NPA Classification

NPAs are being classified into three categories as under based on the period for which the asset has remained non- performing and hence dues are not realised.

| | | |
|---|---|---|
| 1. | Substandard Assets | **Remained NPA for a period not less than or equal to <u>one</u> year.** (the current net worth of the borrower/guarantor or market value of the security charged is not enough to ensure recovery of the bank's dues and likely to sustain some loss if deficiencies are not corrected) |
| 2. | Doubtful Assets | **Remained in substandard category beyond <u>one</u> year** **(**Recovery - highly questionable and improbable). |
| 3. | Loss Assets | **Asset considered uncollectible and of little value but not written off wholly by the bank**. (Continuance as bankable assets is not warranted, although it may have some salvage or recovery value.) |

### c) General Provisioning Norms

In conformity with the prudential norms, and on the basis of classification of assets, etc. banks are required to make provisions on funded outstanding on loan portfolio as under: -

| Category of Advances | Rate of Provision |
|---|---|
| **Standard Assets** | |
| MSME & Agriculture Advances | 0.25% |
| MSME Restructured | 5.00% |

| Category of Advances | Rate of Provision |
|---|---|
| MSME Covid restructured – additional provision over and above the provision already held | 5.00% |
| Commercial Real Estate – Residential Housing **(CRE RH)** | 0.75% |
| Exposure to Commercial Real Estate **(CRE)** | 1.00% |
| All Others | 0.40% |
| **Sub Standard Assets** | |
| Fully Secured | 15% |
| Unsecured Exposures (if any) | 25% |
| Unsecured Exposure (infrastructure loan where escrow accounts are available) | 20% |
| **Doubtful Assets** | |
| Unsecured portion | 100% |
| **Secured Portion *** | |
| D1 – remained in substandard category beyond 1 year upto 2 years | 25% |
| D2 - remained in substandard category beyond 2 years upto 4 years | 40% |
| D3 - remained in substandard category beyond 4 years | 100% |
| **Loss Assets** | 100% |
| **Restructured accounts classified as Standard Assets** | 5% |
| **Covid Restructuring** – RBI circular dated 6th August 2020 | 10% |

**Secured Portion * Example:**

| If the NPA Date is 01.04.2015 | Sub-Standard | D1 | D2 | D3 |
|---|---|---|---|---|
| | Up to 31.3.2016 | 1.4.2016 to 31.3.2017 | 1.4.2017 to 31.3.2019 | From 01.4.2019 |

Having understood the basic framework of NPAs in this article we will further dwell upon the application of the framework under three specific categories in details:

I. **Framework for Resolution of Stressed Assets**
II. **Resolution framework for Covid-19 Related Stress**
III. **Resolution framework for Covid-19 MSME Sector**

## I. Framework for Resolution of Stressed Assets

**RBI came out with a modified guideline for resolution of Stressed Assets, in June 2019, known as Prudential Framework for Resolution of Stressed Assets Direction 2019 (PFRSA).**

The purpose of these directions are to provide a framework for **early recognition, reporting and time bound resolution of assets under stress**, including for initiation of insolvency under the Insolvency and Bankruptcy Code, 2016 (IBC). A brief discussion on the salient features of PFRS is given below:

### A. Early identification and reporting of stressed assets

Banks/Lenders shall identify the stress in loan accounts and classify them as Special Mention Accounts (**SMA**) based on Principal or Interest payment or any other amount wholly or partly overdue for periods as below and also as per the following categories:

| Category | Overdue |
|---|---|
| **SMA-0** ⇒ | **1-30 days** |
| **SMA-1** ⇒ | **31-60 days** |
| **SMA-2** ⇒ | **61-90 days** |

In the case of revolving credit facilities like Cash Credit--Outstanding balance remains continuously in excess of the sanctioned limit or drawing power, whichever is lower, for a period mentioned below and classified as per the following categories:

| Category | Overdue |
|---|---|
| **SMA-1** ⇒ | **31-60 days** |
| **SMA-2** ⇒ | **61-90 days** |

Banks/Lenders having exposure of Rs.5 crores and above shall report on a weekly basis, default by the borrowers to CRILC (Central Repository of Information on Large Credits) and further reporting is also required to relevant authorities.

### B. Resolution Plan

Default* with any Bank/Lender is an indicator of financial stress faced by the borrower. It is expected and is also a healthy practice if the lenders initiate the process of resolution and implementing a Resolution Plan even before a default occurs.

[***Default--**means non-payment of debt (as defined under Sec. 3(12) of the IBC) when whole or any part or instalment of the debt has become due and payable and is not paid by the debtor or the corporate debtor, as the case may be.]

Lenders shall initiate the process of Implementation of **Resolution Plan**

Before the event of default- when stress is observed or within 30 days of default, **known as review period**.

During the review period (30 days), lenders may decide on

- The resolution strategy, nature of the resolution plan and the approach for its implementation.
- The lenders may also choose to initiate proceeding for insolvency or recovery also.

To implement a Resolution plan, lenders shall enter into an Inter – Creditor Agreement (**ICA**), during the above-said Review Period (30days)

Any decision agreed by lenders shall be binding on all the lenders. (ie., 75% by value of total outstanding credit facilities and 60% of lenders by number)

*ICA shall provide for the rights and duties of the majority lenders and duties / protection of dissenting lenders.

*Resolution Plan shall provide for payments not less than the liquidation value due to the dissenting lenders.

## C. Conditions for Implementation of Resolution Plan

i. Resolution Plan to be implemented within 180 days **from the review period** (i.e., within 30 days from the date of default)

ii. Resolution Plan is deemed to have been implemented if the borrower is not in default with its lenders as on 180th day from the **end of review period (30 +180)**

iii. Subsequent default to be treated as fresh default

iv. Resolution Plan having a restructuring or change in ownership plan, shall be deemed to have been implemented

i. All related documentation / execution of agreement between lenders and borrowers/creation of charges are done as per resolution plan.

ii. The new capital structure and changes in the terms of existing loans get reflected in the books of lenders and borrowers.

iii. Borrower is not in default with any of the lenders.

Resolution Plan which involves restructuring or change in ownership—above the threshold of Rs.100 crores or Rs.500 crores require Independent Credit Evaluation done by either **one or two Credit Rating Agencies** as required respectively. The Acceptable Credit rating from CRAs is from RP1 to RP4.

In case, Resolution Plan involves assignment of exposure to third party or involves recovery action

Resolution Plan shall be deemed to have been implemented if the exposure is fully extinguished by the borrower.

## D. Delayed implementation of Resolution Plan:

In case a viable Resolution Plan is not implemented within the time-lines given below, all lenders shall have to make additional provisions as under:

**Resolution Plan not implemented within:**

| | |
|---|---|
| 180 days from the end of review period | additional provision of 20% of total outstanding |
| 365 days from the commencement of review period | 15% more (i.e., total 35%) |

However, the overall total provision is capped at 100% of total outstanding.

## E. Reversal of Additional Provisions:

Under the following circumstances, the additional provision mentioned above can be reversed.

| No. | Scenario of reversal | Condition for reversal |
|---|---|---|
| 1 | Resolution Plan involves only payment of overdues by the borrower | Borrower is not in default for 6 months from the date of clearing the overdues with all the lenders |
| 2 | Resolution Plan involves restructuring /change in ownership | Upon implementation of Resolution Plan outside IBC |
| 3 | Resolution is pursued under IBC | Half of the additional provision once application is filed in NCLT and the remaining upon admission in NCLT. |
| 4 | Assignment of Debt/ Recovery proceedings | Completion of the assignment of debt/recovery |

## F. Prudential Norms applicable for Restructuring

Restructuring is an act of the Bank/lender - granting concessions to the borrower, as borrowers are facing difficulties to pay back their debt. Restructuring may involve modification of terms of the loan/advances or securities, alteration of payment period/rate of interest/ payable amount/ number of instalments, sanctioning of additional credit facility etc., (Financial difficulties are assessed based on quantitative and qualitative parameters).

### i. Asset Classification

In case of restructuring, the assets classified as Standard shall be immediately downgraded as NPAs. Upon restructuring, would continue to have the same asset classification as prior to restructuring and the asset classification shall also continue to be governed by the same ageing criteria.

### ii. Conditions for upgrade

- ✓ Standard accounts classified as NPA, and NPA accounts retained in the same category on restructuring by the lenders may be upgraded only if the account demonstrate **"Satisfactory Performance"** during the period of resolution plan and upto the date of upgradation by which time at least 10% of the sum of outstanding principal debt (including interest capitalised) is repaid during the **Monitoring Period (see Footnote)**.
- ✓ To upgrade the NPAs, in addition to satisfactory performance they shall also be rated as investment grade ie BBB- or better (Rs.**100 crores and above** by **one** CRA, **Rs.500 crores and above**, by **two** CRAs).
- ✓ Failure on the part of the borrower to perform satisfactorily, the asset classification upgradation is subject to implementation of fresh restructuring or change in ownership under the framework or under IBC. **Lenders shall make additional provision of 15% for such accounts at the end of the review period.** This additional provision, along with any other additional provisions shall be reversed, as per reversal of additional provision under para 'E' above.
- ✓ Provision of restructured assets may be reversed once the asset classification is upgraded to standard category.
- ✓ Any default by the borrower after upgradation of assets but before **Specified Period (see Footnote) lenders shall make additional provision of 15% of such accounts at the end of the review period**. This additional provision, along with any other additional provisions shall be reversed, as per reversal of additional provision iii.

### iii. Provisioning Norms for accounts being restructured under IBC

- ✓ Assets restructured under the revised framework shall attract provisioning as per the current provisioning norms of RBI.
- ✓ In accounts where resolution plan is approved by Committee of Creditors (COC) and is submitted to NCLT (as per IBC) provisions already held by lenders are frozen for six months from the date of submission of resolution plan or 90 days from the date of approval of resolution plan by NCLT whichever is earlier.
- ✓ Freezing the quantum of provision is available only to such accounts where there is excess provision already made. Lenders shall not reverse the excess provisions at the point of submission of resolution plan to AA. In case of accounts where the provision is less than the required amount, the difference amount must be provided by the lender. The facility of freezing will get lapsed once the AA rejects the resolution plan.


**(Image Source: Website)**

### iv. Supervisory Review of RBI:

Any action by the lender to conceal the actual status of the borrower will invite stringent supervisory enforcement action by RBI and in addition to higher provisioning, monetary penalties also. Lenders should also disclose the details with respect to resolution plan implementation in their financial statements under notes on accounts.

## II. Resolution Framework for Covid-19 Related Stress – Provisioning Norms

### a) Provision to be made.

| | |
|---|---|
| Assets that are classified as standard and not in default for more than 30 days as on 31st March 2020 will come under resolution framework for Covid -19 Related Stress. Resolution under this facility is available to borrowers who have suffered stress due to Covid 19. → | The accounts should remain as standard till the date of invocation (Date on which both the borrower and the lending institution have agreed to proceed with a resolution plan under this framework). |
| Where a resolution plan is implemented, those institutions which have signed ICA within 30 days of invocation. → | Shall keep provisions as per IRAC norms or 10 % of the total debt including debt securities (residual debt). |
| Where a resolution plan is implemented, those institutions which have not signed ICA within 30 days of invocation. → | Shall keep provision of 20% of the debt on their books as on date or as per IRAC norms whichever is higher. In such cases where invocation has lapsed on account of ICA signing, institutions shall keep 20% provisions on carrying debt. |

### b) Additional Provision

In case a viable resolution plan is not implemented within the time frame, all lenders shall have to make additional provisions as under as if a resolution process were never invoked under this window:

**Resolution Plan not implemented within :**

| | |
|---|---|
| 180 days from the end of review period ⟺ | additional provision of 20% of total outstanding |
| 365 days from the commencement of review period ⟺ | 15% more (i.e., total 35%) |

### c) Reversal of Additional Provision

| | |
|---|---|
| **In case of ICA signatories** ⇒ | Half of the provisions may be reversed upon the borrower paying at least 20% of the residual debt. And the remaining half may be reversed upon the borrower paying at least 10% of the residual debt without slipping into NPA. |
| **In respect of non-ICA signatories** ⇒ | Half of the provisions may be reversed upon repayment of 20% of the carrying debt, the other half of the provisions may be reversed upon repayment of 10% of the carrying debt, subject to required IRAC provisions being maintained. |

In case the borrower is in default with any of the lenders whether they are signatories of ICA or not, at the end of the review period the asset classification of the borrower shall be termed as NPA from the date of implementation of the resolution plan or from the date of classification of NPA before implementation of the plan, whichever is earlier.

III. **Resolution Framework for Covid-19-MSME Sector –Restructuring of Advances**

Existing Loans classified as “Standard” may be restructured without downgrading under asset classification subject to following conditions.

i. As on 1/3/2020 the aggregate exposure of account to be restructured shall not exceed more than Rs.25 crores and the asset categorised as standard.
ii. Assets classified as NPA between 2nd March 2020 and date of implementation shall be upgraded as “Standard” on the date of implementation of restructuring plan.

For this purpose, banks shall maintain additional provision of 5% over and above the required provision already held by them.

**Conclusion**

Thus, RBI by notifying this PFRSA, desires to address the issue of stress in loan accounts especially in medium / large loan accounts, ab initio, by finding a way out for a resolution plan for such accounts. The resolution plan can be either by banks/lenders themselves or through the IBC process. This will preserve the value of such assets and protect not only the interest of Banks/lenders but also the interest of all other stakeholders.

By nudging the banks to work out a resolution plan, the Regulator’s desire is to prevent Banks/lenders from making additional provisions i.e., if no resolution plan is attempted and implemented, they must make provisions as per ageing criteria. There are benefits like reversal of provisions/additional provisions with successful resolution plan for Banks/lenders. However, there are also some penal measures for the Banks/lenders if a suitable resolution plan is not arrived at and implemented within stipulated time, by making them to provide additionally than what they should have otherwise provided for by following the ageing criteria.

On the whole, it augurs well for Banks/lenders to identify stress at an early stage and implement a suitable resolution plan, which will enable them to avoid making ageing-based provisions out of their income. This would enable them to lend and earn more, ultimately resulting in a healthy bottom line.

(Note: RBI circular dated 1st July 2015, 7th June 2019 and 6th August 2020 have been referred. The above article is not exhaustive.)

**Footnote:**

**Monitoring Period** - starts from the date of implementation of the resolution plan till the borrower pays 10% of the residual debt, to a minimum of 1 year from the commencement of the 1st payment of interest or principal (whichever is later) with longest period of moratorium.

**Specified Period** - which starts from the date of implementation of the Resolution Plan up to the date by which at least 20 % of the sum of outstanding principal debt as per resolution plan and Interest capitalisation sanctioned as per restructuring is repaid.

**Introduction of MGT-7A Form for Small Companies and OPC**

Ministry of Corporate Affairs (MCA) vide its Notification dated 5th March 2021 amended the Companies (Management and Administration) Amendment Rules, 2021, wherein a new Form MGT-7A has been introduced for One Person Company (OPC) and Small Company, in the place of filing Form MGT-7. According to the said Notification, Form MGT-7 is required to be filed by Companies except, One Person Companies and Small Companies. From financial year 2020-21 onwards, Small Companies and OPC will have to file Form MGT-7A.

## Magnum opus

Magnum opus, from the Latin meaning "great work", refers to the largest, and perhaps the best, greatest, most popular, or most renowned achievement of a writer, artist, composer, or craftsman.

## Is "Bad Bank" a good idea?

**Mr. N. Nageswaran**
**Insolvency Professional**

### Bad Bank

The committee of bankers, led by Mr.Sunil Mehta, then Chairman of Punjab National Bank, in 2018 submitted a report named "Project Sashakt". As the name depicts, the aim was to strengthen the credit culture,credit capacity and credit portfolio of public sector banks. The five-pronged strategy to deal with the NPAs contained an idea of floating a separate entity for that purpose which is now named as Bad Bank.

### What is a Bad Bank?

In the words Gabriel Brenna and others of McKensey &Co, "A bad bank is a corporate structure which isolates illiquid and high risk assets (typically non-performing assets or loands) held by a bank or a financial organisation, or perhaps a group of banks or financial organisations".

### The concept of a Bad Bank

The main activity of a Bank is to lend monies, and this results in creation of asset in their balance sheets. These assets give rise to interest income which is the main stay for the banks to take such a risk. However, irrespective of various safeguards the banks might put in, with the efflux of time and due to various reasons, the interest charged on these advances may not be earned, that is, not collected and at this point of time along with any principle dues they are called "non-performing assets" (NPA). The default can happen either partially or in full. If the quantity of such non-performing assets as a ratio of other performing assets, then it makes it difficult for the bank to raise capital, for example through sales of bonds. In these circumstances, the bank may wish to segregate its "good" assets from its "bad" assets through the creation of a bad bank. A bad bank might be established by one bank or by a group of banks to deal with the situation. As a part of its financial sector reforms to keep and attract further investors, a government may also float such a bank.

In addition to segregating or removing the bad assets from parent banks' balance sheets a bad bank structure permits specialized management to deal with the problem of bad debts. This approach allows good banks to focus on their core business of lending while the bad bank can specialize in maximizing value from the high-risk assets.

### Global history of Bad Bank

The first of its kind of Bad Bank was floated in USA in 1988 to bail out Mellon Bank, to save the bank from the lending it had made to energy and real estate loans which turned non-performing. A separate institution named Grant Street National Bank and was entrusted with bad loans to the tune of USD 1.4 billion. The bank was dissolved in 1995 after repaying all bondholders and meeting its objectives.

In 1992, a similar situation arose in Sweden and two bad banks namely Retriva and Securum were formed to take over the non-performing assets of Gota Bank and Nordbanken respectively. The good assets of both the banks were then allowed to be managed by a third bank, Nordea. The government stood behind in all the banks holding 51% of the shares. Subsequently both the bad banks turned around and Nordea Bank became the strongest bank.

During Asian Financial Crisis in Indonesia and several other countries in Asia in 1997 and 1998, the Indonesian government established the Indonesian Bank Restructuring Agency (IBRA) as an official body to oversee the asset disposals of an extensive number of distressed Indonesian banks.

Banks in Switzerland are internationally known for their best banking practices. However, during the financial meltdown that happened in 2008 Union Bank of Switzerland was the one outside US that was most affected, and the concept of Bad Bank was effectively used to fight out the problem. Within a period of 5 years, Union Bank of Switzerland along with Government turned around to become one of the best case study, details of which are outlined below, for understanding the concept of Bad Bank (BB).

### Union Bank of Switzerland

Immediately after the financial crisis of 2008, Union Bank of Switzerland (UBS), which was functioning as the safe keeper for the wealth of the world faced serious challenges and faced bankruptcy. As it was going down, it inflicted damages and created more of unemployment and was taking along with it the loan books (assets) of most of its borrowers. It lost its depositors and thereby the liquidity also.

At this point of time the Swiss National Bank, the central bank of Switzerland came to its assistance and created a fund with USD 25.8 billion and thereby a "Bad Bank" to buy out the toxic assets of UBS. The Swiss government, for its part, extended a soft loan of USD 6 billion to UBS, from the taxpayer's monies which was invested by UBS to capitalise the BB to buy the toxic assets. As the turnaround of the economy happened, the investors and depositors came into UBS to improve its liquidity and the borrowers of UBS whose securities were held by BB resumed repayment of their loans. Since the assets it held picked up value, BB was able to attract capital infusion from investors and eventually refund loans to the Swiss National Bank and UBS with interest. It became a happy ending to everybody and in the process the analysts of financial sector got the steps for a successful BB.

Comparing the above true story, the author is attempting to draw the picture of what a BB in India need to look like and the various points to be noted in floating a BB in India though undoubtedly it is the need of the hour for banking institutions in India as well as to the Government of India.

**Why BB is needed in India now?**

In its latest Financial Stability Report released in January 2021, RBI has come out with the following numbers:

| The likely rise in Gross Non-Performing Assets (GNPA) | September 2020 | September 2021 |
|---|---|---|
| Of Scheduled Commercial Banks | 7.5% | 13.5% |
| Of Public Sector Banks | 9.7% | 16.2% |
| Of Private Sector Banks | 4.6% | 7.9% |
| Of Foreign Banks | 2.5% | 7.4% |

While taking note of these numbers, it needs to be remembered that there is a ban on banks that they should not hold any account as NPA if they had not declared so as on 28th Feb 2020. The survey itself has suggested in its report that "The government must get rid of the forbearance window provided by banks to borrowers due to the COVID-19 induced economic challenges as soon as the economy starts to revive as it is only an "emergency medicine" and not a "staple diet".

While unveiling her budget for 2020-2021, Mrs.Nirmala Sitharaman, the Finance Minister said that "The high level of provisioning by public sector banks for their stressed assets calls for measures to clean up the bank's books".

All the above indicate that time has arrived in India to consider introduction of Bad Bank.

**The model of BB proposed**

The finance minister has made the following remark in her abovementioned budget speech while remitting her budget for 2020-2021 to the august house:

"An Asset Reconstruction Company (ARC) and Asset Management Company (AMC) would be set up to consolidate and take over the existing stressed debts and then manage and dispose of the assets to Alternate Investment Funds and other potential investors for eventual value realization".

The most important point which is left unstated in the above statement is the modality of capitalising the new ARC. It is to be noted that Government of India is not planning to invest any amount into the equity of the new ARC, that is, the Bad Bank. Similarly, the role of the Asset Management Company and the backup that they would get and from whom while formulating various schemes and floating Alternative Investment Funds would be the key success point in the entire saga of bad bank formation.

**Calculating the value of the assets being transferred**

The key question that is to be answered will be at what price the substandard assets would be transferred to the new ARC by the parent banks, that is, the banks which are holding such assets. The three different models are:

- **a.** Allow the parent banks to transfer the assets on a bilateral basis, meaning thereby, on original cost basis wherein the banks will not have to run down their assets and thereby not require injecting of any fresh liquidity;
- **b.** Allow the parent banks to transfer the assets at the values in which they are holding them in their books, that is, after adjusting the provisions already created;
- **c.** Allow the parent banks to transfer the assets to the ARC as if the assets were auctioned on a price quoted by the new ARC.

Every one of the model discussed above is attached with pros and cons but since no finality has been achieved, further discussion on this can wait.
Simple advantages of the concept of Bad Bank:

1. A separate entity get created which will concentrate on the management of stressed assets which today inhibits the parent banks from concentrating on growth strategies.
2. Allow the banks, particularly the Public Sector Banks (PSBs) to clean up their balance sheets, go for a better rating for their portfolios and attract investors. Thereafter, it becomes easy for such banks to issue any instrument for raising capital.

3. As the capital flows from investors, they become more accountable to the stakeholders and the efficiency of the banks improve on overall basis.
4. As far as the Bad Bank is concerned, they can become a specialised institution of realising the assets which they would have acquired at competitive price.
5. When the assets of the Bad Bank are turned around, the profit would accrue to the government or the parent banks depending upon what model was followed for initial funding of the Bad Bank.
6. The Asset Management Company which will be associated with the Bad Bank in managing the realisation of the assets of the Bad Bank would be able issue instruments to raise funds to meet the capital requirements of the Bad Bank so that over a period it will stand on its own feet.

**Disadvantages of the concept of Bad Bank**

1. If the Bad Bank is created and asked to be handled by the same set of staff from the parent banks, then it could create structural issues as well as accountability for performance.
2. The Bad Bank will miss the line of action and also the special knowledge required or developed by the parent bank when they were managing the specific account.
3. On account of pressure created on the Bad Bank to show recovery performance, they may end up practicing unethical ways to book recoveries.
4. If the model is not structured on firm grounds, the Bad Bank may not go for acquiring the critical loans of the parent bank, which are more difficult to recover and may concentrate only on acquiring the easily recoverable loans.
5. While shifting toxic assets to a Bad Bank will help banks lend more, it does not address the core issue of NPAs.

**Way Forward**

1. It should be ensured that the creation of Bad Bank does not create a moral hazard and the criteria should be suitably worked out. The Bad Bank as an entity should have a sunset date fixed and should not become a perennial model for the parent bank to off load their NPAs identified subsequent to a cut off date.
2. Before selling the toxic assets to Bad Bank, the selling bank should be asked to put the assets to a strict performance test.
3. The operational model of the Bad Bank should be highly transparent.
4. Restructured assets should also form part of the assets picked up by the Bad Bank.
5. The Bad Bank should be allowed to have specialised staff with different traits to match with the requirements of different skill sets.

**Requirement**

We need to have a model of a Bad Bank that would efficiently function in our eco system where there is no debt market is in existence. Creating such a market with a good number of participants would help a better price discovery for the toxic assets after it is taken over by the Bad Bank.

**Tail piece**

It seems, Indian Banks' Association has asked lenders to furnish data on stressed assets with principal outstanding with Rs 500 crores and above and that it is working with Department of Financial Services and a few lenders to set up a Bad Bank.


**(Image Source: Website)**

It has been reported that Nine banks and two non-bank lenders (State Bank of India, Punjab National Bank, Bank of Baroda, Canara Bank, Union Bank of India, ICICI Bank, Axis Bank, IDBI Bank, Power Finance Corporation, REC) are coming together to promote a Bad Bank that will take over the bad loans struck in the banking system. The initial joint investment is expected to be Rs. 7000 crores. Foreign investors such as BlackRock, Brookfield, KKR and International Finance Corp (IFC) may join the Bad Bank promoted by the bankers.

So, the ball has started rolling.

## Beware of Excess Borrowings

**Mr. V. Srinivasan, FCA**

It is important for all businessmen to evaluate borrowings and keep a tab on their optimal debt capacity and stick with that.

Debt is a double-edged sword. While it helps the business to expand quickly, it has a negative side too. Insolvency and Bankruptcy Code (IBC) now covers the debts of the corporate borrowers (called Corporate Debtor, CD) to be adjudicated by National Company Law Tribunals (NCLT). Slowly, the time taken to adjudicate such issues has been reduced to less than two years, unlike the past when it would take too many years.

During the Corporate Insolvency Resolution Process (CIRP), there could be an audit of Preferential, Undervalued, Fraudulent and Extortionate (PUFE) transactions which would have taken place in the "look back" period, leading to NCLT ordering "claw-back" of "ill-gotten" gains.

Action against the Personal Guarantors to Corporate Debtors (PG2CD) where the credit extended to CD have become an issue is now a reality under which there will be insolvency proceedings which may culminate into bankruptcy of the personal guarantors. Eventually, IBC will get extended to partnership firms and individuals too.

In this exacting environment, it is important to establish corporate debt absorbing capacity and follow a definitive credit discipline. Following heads-up could be handy for those at the helm of corporates handling finance portfolio:

**The following "Golden Rules" will be appropriate in ensuring proper Credit Discipline:**

- ✓ Don't borrow more than the actual requirement
- ✓ Borrow only if the asset can be sold easily in a public market
- ✓ Borrow only against an asset which generates positive cash-flows
- ✓ Don't fund marketing or research expenses through borrowings
- ✓ Don't fund losses by diverting bank borrowings
- ✓ Ensure there is no Asset-Liability Maturity – Mismatch. Short term funds should not be used to fund long-term assets.
- ✓ Use more of TReDS facility and less of Book Debt loans
- ✓ Use more of Supplier Bill discounting and less of Cash Credit.
- ✓ Ensure all related party transactions are at arm's length.
- ✓ Create a risk assessment framework and abide by it.


(Image Source: Website)

While there may not be "one size fits all" panacea for the issues faced due to excess borrowings in the past, an honest attempt to put things in order would be helpful in the long run to avoid lenders chasing the borrowers till the end to realise their dues.

**Relaxation on filing GSTR-9 and GSTR-9C**

The Ministry of Finance vide press order dated 28th February 2021 has further extended the due date for furnishing of GSTR-9 and GSTR-9C for the financial year 2019-20 to 31.03.2021 with the approval of Election Commission of India.

## When does the liability relating to a company become unlimited?

**Ms. M. Sribalambika**
**CGRF Team**

One of the chief traits that makes a person prefer corporate entity as a business form over the other options like proprietary or partnership firms is its 'limited liability'. "Limited Liability" means the liability of the shareholders is limited to the extent of the share capital amount subscribed but that remains unpaid. While in case of company limited by guarantee, the liability of the members is limited to the amount he/she has guaranteed to pay, a company may also be formed as an unlimited company.

Notwithstanding the above, under the following circumstances, the liability in relation to a company becomes unlimited:

**Unlimited Company**

Where the company itself is formed as an unlimited company under Section 3(2)(c).

**Reduction of members**

Section 3A of Companies Act, 2013 states that,

- if the number of members of a public company or a private company reduces below the limit specified under Section 3(1)(a) & Section 3(1)(b), and
- if the company continues to operate for more than a period of six months

every person who is a member of the company after the said period of 6 months and who is aware of such reduction in number of members below the statutory limit shall be individually liable for the entire debts of the company undertaken at that time.

Section 3(1)(a) – a public company shall have minimum of seven members.

Section 3(1)(b) – a private company shall have minimum of two members.

**Hoodwink Incorporation**

Next in the line is Section 7(7)(b) where the National Company Law Tribunal on an application, can direct that the liability of the members of a company, which was commenced by providing false or incorrect information or by concealing any essential fact or details in the documents or statements filed for the establishment of the company or by any deceitful action, to be unlimited.

**Misleading Prospectus**

As per Section 35(3), if the prospectus has been provided with an objective to cheat the public applying for securities or any other person with a dishonest motive, the director, or a person named in the prospectus as director or who has agreed to be the director of the company immediately or after an interim period or a person who is the promoter of the company or a person who has been permitted to issue prospectus or an expert are accountable without any limitation of liability for all or any of the losses sustained by the persons who took securities believing the prospectus to be genuine.


**(Image source: website)**

**Impairment caused due to fraud**

Section 75 deals with damages caused due to fraud. On the failure of the company to repay deposit in full or in part or any interest within time stated or such time extended by the NCLT and on the confirmation that the deposits has been accepted to delude the depositors or for any crooked reasons, officer accountable for such acceptance shall be liable personally for all or any of the damages caused.

**Fraud in operating business**

Section 224(5) The Central Government can place a complaint before the NCLT citing the Inspector's report to the Central Government. The report outlines the fraud that has occurred in the company and any director, key managerial personnel or any officer or any person took unfair advantage or profit in the form of asset, property, or cash.

The NCLT may after due consideration, order for disgorgement of such asset, property or cash and hold the director, key managerial personnel, or any officer as if he is personally liable.

**Duplicitous application**

A company may suo moto apply to the Registrar for removal of its name from the register of companies under Section 248(2). However, as per Section 251, if the application is made with an intent to dodge the liabilities or outwit the creditors or any other person, the person at the helm of the company shall be jointly and severally liable.

(Image source: website)

**Deception in carrying out business**

Section 339(1) expresses that if it is found during the winding up process that the company has been operating to bamboozle the creditors or any other person or for any pseudo purposes, on a plea from Official Liquidator or the Company Liquidator or any claimant or contributory, the National Company Law Tribunal may proclaim that the accountability of the director, manager or officer or any person who has been running the business deliberately with the aforesaid intention to be individually responsible for all or any of the dues specified by the NCLT.

### Stare Decisis

Stare decisis is a legal doctrine that obligates courts to follow historical cases when making a ruling on a similar case. Stare decisis ensures that cases with similar scenarios and facts are approached in the same way. Simply put, it binds courts to follow legal precedents set by previous decisions.

## When are the promoters of Corporate Debtors are ineligible under Sec.29A of IBC to submit a resolution plan?

**CGRF Bureau**

### Preamble

Sec.29A was introduced into the Insolvency and Bankruptcy Code by way of an Amendment Act with retrospective effect from 23rd November 2017. It may be recollected that the amendment was brought while in the insolvency resolution process of Essar Steel India Limited, the promoters were making a last-ditch attempt to wrest control of the company.

Upholding the contention that the persons responsible for the downfall of the corporate debtor should not have an undue gain by wresting the control of the company at steep discounts, Sec.29A was brought in to make ineligible certain classes of persons, including promoters of the corporate debtor, to submit a resolution plan for the corporate debtor. This move by the Government was seen as a measure to tighten the leash on the unscrupulous promoters.

A few more amendments were made in the provisions of Sec.29A with effect from 6th June 2018 to mellow down the restrictions as the earlier provisions were having a wider sweep of limiting several genuine applicants from submitting resolution plans and thus curtailing the possibilities for maximizing the value of the assets of the corporate debtor.

**Can a promoter having an NPA account submit a resolution plan?**

While there are several limbs in Sec.29A which cast their spell on the resolution applicants, the one relating to default in loan accounts of banks has gained more attention as invariably most of the corporate debtors dragged into IBC process were non-performing assets (NPA) in the books of the lenders.

Sec.29A (c) talks about this ineligibility of a resolution applicant. It would be more fruitful to analyse the provisions of Sec.29A (c) splitting them into different segments.

It states that a person shall not be eligible to submit a resolution plan:

if such person or any other person acting jointly or in concert with such person, at the time of submission of the resolution plan has

i. an account, or

ii. an account of a corporate debtor under the management or control of such person or

iii. an account of a corporate debtor of whom such person is a promoter,

which has been classified as NPA in accordance with the guidelines of RBI issued under the Banking Regulation Act or the guidelines of a financial sector regulator issued under any other law for the time being in force; and

at least a period of one year has lapsed from the date of such classification till the date of commencement of the corporate insolvency resolution process of the corporate debtor.

As could be seen above, the event for ineligibility triggers when the resolution applicant, at the time of submission of the resolution plan, has an NPA account and at least one year should have lapsed between the date of such classification and the date of commencement of CIRP. Also, if the resolution applicant is having management or control of a company which is classified as NPA, the ineligibility kicks in. Another event that could trigger is the resolution applicant is a promoter of a corporate debtor which is classified as NPA. To simplify, the entire clause does not kick in where the time difference between the dates of declaration of NPA and commencement of CIRP is less than a year.

Interestingly, even in respect of those cases of NPA continuing for more than one year before the commencement of CIRP, the proviso to Sec.29A(c) gives a relief that such person can be a resolution applicant and shall be eligible to submit a resolution plan if all overdue amounts with interest thereon and charges relating to such NPA asset accounts are paid before submission of resolution plan.

In all these situations, the corporate debtor referred could be either the corporate debtor which is undergoing CIRP or any another company which may or may not be under CIRP. Further, it may be noted that becoming NPA per se is not an ineligibility. The default might even continue for a period just under one year and till this point of time, the ineligibility tag doesn't stick with the resolution applicant.

It may be worthwhile to know that in many cases, the operational creditors file application under Sec.9 of IBC to initiate IBC proceedings against a corporate debtor. It is quite possible that the corporate debtor does not have any default against the banks and therefore, the question of NPA test does not arise and hence, the promoters of such a corporate debtor have no bar in submitting a resolution plan for the company.

**Why period of one year is provided after becoming NPA?**

Going by the deliberations of the Bankruptcy Law Reforms Committee, it was even proposed that the period after becoming NPA could be enlarged to three years as many accounts turn NPA due to pure business failures and opportunities should be given to such entrepreneurs to reclaim their businesses through a resolution plan process. However, it was finally decided that a period of one year is reasonable for a person to make good the default and until that time the ineligibility tag shouldn't get pasted on the promoters.

Therefore, technically, a promoter, whose company's account is classified as NPA but one year has not lapsed from such classification, can submit a resolution plan for that company or for any other company.

**Exemption under Sec.240A for MSME companies**

While amending the provisions of Sec.29A with effect from 6th June 2018, the Government also brought in Sec.240A of IBC to provide that in the case of CIRP of micro, small and medium enterprises (MSME), the provisions of clauses (c) and (h) of Sec.29A shall not be applicable. This paved way for all promoters having NPA account to submit a resolution plan for a corporate debtor if it falls under MSME category. The underlying assumption was that only a promoter of an MSME may know the nuances of his business better than any other outsider and bring out a resolution in true sense.

**When a promoter is prevented from submitting a resolution plan?**

Apart from the test of lapse of more than 1 year after NPA classification, clause (g) of Sec.29A provides another ineligibility test for a promoter or a person in the management and control of a corporate debtor which is undergoing CIRP or which has undergone CIRP and in which preferential / undervalued / extortionate credit or fraudulent transactions have taken place and in respect of such transactions an order has been made under the provisions of IBC by the Adjudicating Authority. An exemption has been carved out in the case of resolution applicants who have acquired a corporate debtor pursuant to a resolution plan provided that such resolution applicant has not otherwise contributed to such transactions.

Interestingly, Sec.29A(g) does not provide a sunset clause for such ineligibility. Whether such ineligibility will persist for an indefinite period or it can come to an end when a "clawback" happens as per the orders of the Adjudicating Authority is not specified.

Barring these situations, the provisions of IBC do not prevent a promoter or a person in the management or control of a corporate debtor from submitting a resolution plan.

**Transition provisions under Sec.30 of IBC**

It may be relevant to highlight here that when Sec.29A was introduced, it was felt necessary to bring in a transition provision that the committee of creditors shall not approve a resolution plan submitted before 23rd November 2017 where the resolution applicant was ineligible under Sec.29A and the resolution professional may be asked to invite fresh resolution plans if no other resolution plan complying with Sec.29A was available for consideration. Further, the transition provision added that such ineligible resolution applicants shall be allowed by the committee of creditors not exceeding thirty days to make payment of the overdue amounts.

Therefore, the intention of the provisions of Sec.29A is not to completely debar the promoters and persons in management or control of corporate debtors from submitting a resolution plan. Enough time as well as opportunity was given to them.

Arcelor Mittal had to pay off the overdues in respect of another company wherein they were found to be associated as a related party of an account which had been classified as NPA in order to become an eligible resolution applicant for Essar Steel.

**Decisions by Adjudicating / Appellate Authority/ Supreme Court**

**a.** The National Company Law Appellate Tribunal in the case of **Sreeram E. Techno School Private Limited Vs Beans and More Hospitality Private Limited** upheld the order dated July 19, 2019 passed by the NCLT, III bench, Delhi and held that IBC has no bar for the 'promoter' to submit a resolution plan, even if otherwise not eligible in terms of Section 29A.

**Observations of the NCLAT**

The NCLAT, in the above matter, held that there was nothing on record to suggest that the Resolution Applicant is an undischarged insolvent or a wilful defaulter in accordance with the guidelines of the Reserve Bank of India, issued under the Banking Regulations Act, 1949; or at the time of submission of the resolution plan has an account classified as a 'Non-Performing Asset' in accordance with the guidelines of the Reserve Bank of India; or that the promoter or its directors have been convicted for any offence punishable with imprisonment; or is disqualified to act as a director under the Companies Act, 2013; or was prohibited by the Securities and Exchange Board of India; or made any preferential transaction, an undervalued transaction or granted extortionate credit transaction or entered into a fraudulent transaction, etc.

**Decision of the NCLAT**

The NCLAT upheld the order of the Adjudicating Authority, approving the resolution plan submitted by the successful resolution applicant and stated that as the successful resolution applicant proposed to pay 100% dues of all the financial creditors with interest including the Appellant, no interference was called for and the appeal was dismissed.


**(Image source: website)**

**b.** In the matter of **RBL Bank Limited v. MBL Infrastructures Limited,** the Kolkata Bench of NCLT, while dealing with clause (h) of Section 29A, was of the view that "clause (h) of section 29A is not to disqualify the promoters as a class for submitting a resolution plan. The intent is to exclude such class of persons from offering a resolution plan, who on account of their antecedents, may adversely impact the credibility of the processes under the Code".

The NCLT further added that "in insolvency proceedings, the promoters of Insolvent Company is the most natural person to submit a plan unless the insolvency is caused due to his acts of omission and commission or if he has an indulgence, fraud, malfeasance or other criminal activity and causes financial loss to creditors, knowingly or with criminal intent."

This order of Kolkata Bench of NCLT was later upheld by the Hon'ble NCLAT.

**c.** In **Chitra Sharma v. Union of India,** the Hon'ble Supreme Court of India held that the promoters were ineligible to participate in the CIRP by virtue of Section 29A of IBC and added that accepting the proposal submitted on behalf of the promoters would cause serious prejudice to the discipline of the IBC and would set at naught the salutary provisions of the statute. It further went on to observe that the provision of Section 29A of IBC is intended to ensure that among others, persons responsible for the insolvency of the corporate debtor do not participate in the resolution process. It may be noted that subsequent amendments to Sec.29A softened the rigors and restricted the too large sweep of the provisions.

**Can the promoters cause a Sec.12A withdrawal application rather than submitting a resolution plan?**

Well, the question is right. In the case of Sec.12A withdrawal, there is no mischief of Sec.29A. However, such a withdrawal application can be filed with Adjudicating Authority only when it is approved by a 90% voting of the committee of creditors. Though the Section does not talk about any timeline for withdrawal, Regulation 30A of the IBBI (IRPCP) Regulations give detailed procedure for withdrawal. While the Code speaks of 90% approval of the committee of creditors, the Regulation is even contemplating a withdrawal before constitution of the CoC.

Be that as it may, in the case of Sec.12A withdrawal, a settlement happens between the corporate debtor and the applicant financial / operational creditor. The promoter does not seek any relief or concession from the Adjudicating Authority. Whereas in the case of a resolution plan, the resolution applicant can provide for various measures including reliefs and concessions for the revival of the corporate debtor. The voting share requirement for approval of a resolution plan is only 66% in contrast to the 90% voting share required for approving a withdrawal.

**Immunity under Section 32A**

When a resolution plan is approved, the resolution applicant qualifies himself for the immunity under Sec. 32A as long as the new management is entirely with no trace of the promoters or earlier management of the CD. Such immunity is not available when the promoters submit a resolution plan either after clearing the requirement under Sec.12A or under Sec. 29A. This, of course, has to be kept in mind while a promoter submits a resolution plan for the corporate debtor.

**Conclusion**

Section 29A was introduced with the objective of preventing defaulting promoters and any other person who had contributed to the downfall of the corporate debtor from participating in the CIRP of the corporate debtor and ultimately restricting them from acquiring the corporate debtor at steep discounts.

However, within the four walls of Sec.29A, there are possibilities for a promoter to submit a resolution plan for the corporate debtor. All said and done, ultimately such a resolution plan has to be considered by the Committee of Creditors for its viability, feasibility and compliance under the provisions of the Code before its approval. Also, not to forget the well-accepted fact that the commercial wisdom of the Committee of Creditors shall prevail as the legislation has not endowed the adjudicating authority with the jurisdiction or authority to analyze or evaluate the commercial decision of CoC much less to enquire into the justness of the rejection of the resolution plan by the dissenting financial creditors. (K. Sashidhar Vs IOB & others)

# Feedback Matters!!!!

Thank you, sir, very relevant & useful info or reminders for bankers.

- Mr. S Biju, AGM, Union Bank of India

February issue is class apart.

- Mr. R Ganesh, Head- Strategic Solutions Group-SME, ICICI Bank

KIND ATTENTION!!

Articles are Invited!

We would be delighted to have you in our panel of writers to contribute articles / snippets / write-ups to add value to CGRF SandBox. This will go a long way in enhancing the quality of CGRF SandBox which has wide readership amongst top bankers, corporates and professionals.

Your materials for publishing may please be sent to create.and.grow.research@gmail.com in 'MS Word'.

## Court Orders

**CGRF Legal Team**

***Ramesh Kymal vs Siemens Gamesa Renewable Power Pvt Ltd***
***Supreme Court (CA No.4050 of 2020)(09.02.2021)***

*Bar against initiation of CIRP) applies retrospectively, even if the application is filed before the date on which the provision came into force.*

In view of the nationwide lockdown imposed due to COVID-19 pandemic and its impact on business and financial markets all over the world, the Central Government through an Ordinance dated 5th June 2020 suspended initiation of CIRP under the Code by inserting a new Section 10A for any default arising on or after 25th March 2020 initially for a period of 6 months, or such further period not exceeding 1 year.

In this case an application under section 9 of the Code by a Operational Creditor (OC) against Corporate Debtor - Siemens Gamesa Renewable Power Pvt Ltd (CD) was filed on 11th May 2020 with NCLT. Hon'ble NCLT declined to admit the application holding that there was bar created by law in terms of the newly inserted (Section 10A) provision coming into force.

When the matter came to be considered before the Hon'ble NCLAT, the appeal was dismissed, in view that the default has occurred after the cut-off date (i.e, date of default is 30th April, 2020), and the bar imposed under Section 10A was clearly attracted and therefore the NCLT was perfectly justified in rejecting the application.

Thereafter, an appeal was preferred by OC, in the Hon'ble SC.

The issue which falls for determination by the Hon'ble SC in this appeal was whether the provisions of Section 10A of Code, stand attracted to an application for initiation of CIRP, which was filed before 5th June 2020 (*the date on which the provision came into force*) in respect of a default which has occurred after 25th March 2020.

Hon'ble SC upheld the decision of NCLAT and emphasised that the embargo contained in Section 10A must receive a purposive construction which will advance the object which was sought to be achieved by enacting the provision. It was clarified that the correct interpretation of Section 10A cannot be merely based on the language of the provision; rather it must consider the object of the Ordinance and the extraordinary circumstances in which it was promulgated. Further, it also made clear that the retrospective bar on the filing of application for the commencement of CIRP during the stipulated period does not extinguish the debt owed by the CD or the right of recovery.

***Phoenix Arc Private Limited Vs Spade Financial Services Limited & Ors.***
***(SC) (01.02.2021)***

*Related party financial creditors who cease to be related parties in order to circumvent the exclusion under the first proviso to section 21(2), should also be excluded from CoC*

At the initial phase of the Corporate Insolvency Resolution Process (CIRP) initiated against Corporate Debtor (CD), AKME Projects Limited, the claims of Spade Financial Services Ltd. (Spade) and AAA Landmark Pvt. Ltd. (AAA) were rejected by the IRP. Spade and AAA filed an Application in the Hon'ble NCLT, Delhi against the rejection. The Hon'ble NCLT, vide an order on 31.05.2018, allowed them to submit their claims with a direction to the IRP to consider the claims. Consequently, the other CoC members Viz., Phoenix Arc. & YES Bank, were aggrieved due to the dilution of their voting rights in the CoC, approached the Hon'ble NCLT on the ground that Spade & AAA are related parties to the CD.

The Hon'ble NCLT held that both the entities (Spade & AAA) cannot be termed as 'FCs', as the transactions between them and the CD were found to be collusive in nature.

Spade's claim was based on an alleged MOU executed with the CD and stated that Rs.66,00,00,000 (approx.) of ICDs were permitted to the CD by Spade between Jun'2009 and Jan'2013, bearing interest of 24% and repayable in terms of mutual agreement between the parties., of which Rs.23,00,00,000 towards principal and Rs. 43,06,00,000 was credited in the account of AAA, which is a wholly owned subsidiary of Spade. The total claim of Spade increased to Rs. 109,11,00,000 in 7yrs. on account of rate of int. at 24%.

AAA's claim was based on an alleged Development Agreement with the CD for a sale consideration to purchase, development rights in a project. Thereafter Sale Consideration was enhanced and the Development Agreement was terminated vide an Agreement to Sell along with a Side Letter, executed between AAA and the CD for purchase of flats.

The transactions of AAA were such that AAA entered in multiplicity of Agreements regarding the same property, with no explanation or rational reasoning regarding variation in values of transaction and with an attempt to divert the properties of the CD to AAA.

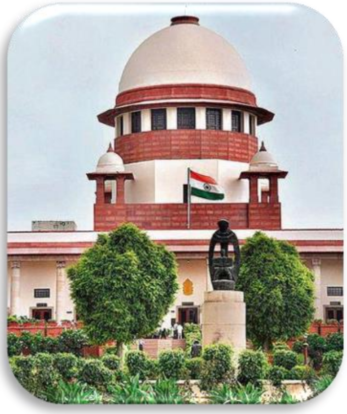
The transactions of Spade were such that the MOU for Intercorporate Deposits (ICD) has been signed more than two years after the beginning of the transaction, and the rate of interest actually stated to be charged is half of the interest mentioned in the MOU, as also a major portion of the ICD was credited to the account of Arun Anand, Director of Spade.

In view of this the Hon'ble NCLT held that since the debt in relation to the above transactions, do not constitute 'financial debt', the entities cannot be included in the CoC, therefore the reliefs sought by Phoenix Arc and YES Bank for the exclusion of AAA and Spade from the CoC, were allowed by the Hon'ble NCLT.

The Hon'ble NCLAT while the matter was before it, reversed the findings of the Hon'ble NCLT and held that the entities as FCs. However, the Hon'ble NCLAT upheld the order of the Hon'ble NCLT to exclude both Spade and AAA from participation in the CoC, but, on the ground that they are '*Related Parties*' of the CD.

Separate Appeals were preferred by both the parties before the Hon'ble SC, in thuence to the above.

Phoenix's Appeal was on the issue, that although the Hon'ble NCLAT correctly dismissed the appeal filed by Spade and AAA, holding that they are related parties of the CD and are hence to be excluded from the CoC, its finding is erroneous that they are FCs.



**(Image source: website)**

On the other hand, Spade's and AAA's Appeal was filed to assail the decision of the Hon'ble NCLAT affirming their exclusion from participating in the CoC on the ground that they are related parties of the CD in terms of Section 5(24) and the first proviso to Section 21(2) of IBC.

<u>On the issue, whether Spade & AAA were related parties of the CD:</u>

The findings precisely were that, one Mr Arun Anand, former director of CD, has held multiple positions in companies which form part of one Mr. Anil Nanda's Group Companies. Further, Mr Anil Nanda has himself invested in companies owned by Mr Arun Anand, and had commercial transactions with them. Mr. Arun Anand was appointed as the Group CEO of the Anil Nanda Group of Companies for a substantial period of time on circular approval by Mr Anil Nanda himself. Finally, Mr Arun Anand's brother-in-law, Mr Sonal Anand, has also been consistently associated with companies in the Anil Nanda Group of Companies, including the CD and, Joint Investment Pvt. Ltd, a holding company of the CD. Mr. Anil Nanda subsequently transferred the control of the CD and Mr. Arun Anand also became the Director of the CD. Around the same time, Spade and AAA, entered into various transactions, ICDs and MOUs with the CD which had the effect of the CD borrowing money from Spade and AAA. During the relevant transactions with Spade and AAA, Mr. Anil Nanda held the position of Consultant or Strategic Advisor to the CD, and later became the Group CEO of the Mr. Arun Anand's Group of Companies. The Hon'ble Bench also noted that the parties (CD & AAA) converted the Debt agreement into Agreement to Sell along with side letter to circumvent the legal prohibition on splitting the development licence into two parts.

In view of the above the decision of the NCLAT upholding <u>Spade and AAA as related parties of the CD under section 5(24) was also affirmed by the Hon'ble SC.</u>

<u>On the issue whether Spade and AAA were FCs.</u>

The Hon'ble SC took note that there was deep entanglement between the entities of Mr Arun Anand and Mr Anil Nanda, and Mr Arun Anand held positions during the relevant period which could have been used by him to guide the affairs of the CD. The Hon'ble SC also observed that the parties entered into the transaction with ulterior motives and the real agreement between the parties is something other than advancing a financial debt.

Therefore, it was held that Spade and AAA cannot be labelled as FCs under Section 5(7) due to collusive nature. <u>Thus, the order of the Hon'ble NCLAT that Spade and AAA were FCs was set aside.</u>

<u>On the application of first proviso of Sec. 21(2):</u>

The issue of interpretation in relation to the first proviso of Section 21(2) was whether the disqualification under the proviso would attach to a FC only *in praesenti*, or if the disqualification will also extend to those FCs who were related to the CD at the time of acquiring the debt.

In the present case Spade and AAA were found to be related parties to the CD at the time of the transaction however due to resignation Mr. Arun Anand had from all the Companies of Anil Nada Group he was no longer a related party.

Thus, they were not related parties *in praesenti* (at present, here, during the CIRP commencement date) and that the respective section (Sec. 21(2) of the IBC), more particularly in its proviso (reproduced hereunder), uses the word "is".

> *"Provided that a financial creditor or the authorised representative of the financial creditor referred to in sub-section (6) or sub-section (6-A) or sub-section (5) of Section 24, if it is a related party of the corporate debtor, shall not have any right of representation, participation or voting in a meeting of the committee of creditors."*

Decision:

The Hon'ble SC on looking into various aspects more particularly considering the object and purpose of the Code, concluded that, while the default rule under the first proviso to Section 21(2) is that *only those FCs that are related parties in praesenti would be debarred from the CoC, those related party FCs that cease to be related parties in order to circumvent the exclusion under the first proviso to Section 21(2), should also be considered as being covered by the exclusion thereunder.*

In view of the above, Spade and AAA were ordered to be excluded from CoC.

***Phoenix ARC Private Limited vs Ketulbhai Ramubhai Patel***
***Supreme Court (CA No.5146 / 2019)(03.02.2021)***

*Pawnee are not Financial Creditors, if a Corporate Debtor has only given security by pledging shares,without an agreement undertaking to discharge borrower's liability.*

In this case Supreme Court has held that if a Corporate Debtor has only offered security by pledging of shares and not undertaken to discharge the borrower's liability, then the creditor is not a 'financial creditor' within the meaning of Section 5(8) of the Code.

L&T Infrastructure Finance Company Ltd (L&T Infra) advances financial facility to Doshion Ltd (Borrower). Towards security for the said borrowings, 40160 shares of Gondwana Engineers Limited (GEL) held by Doshion Veolia Water Solutions Pvt Ltd were pledged with L&T Infra. In December 2013, L&T infra assigned its debt of the Borrower, including security interest to Phoenix ARC Pvt Ltd.

Bank of Baroda initiated the CIRP against Doshion Veolia Water Solutions Pvt. Ltd (Corporate Debtor) and the same was admitted on 31.08.2018. Phoenix ARC Pvt Ltd filed its claim as financial creditor with RP of the Corporate Debtor. RP rejected the claims of Phoenix ARC Pvt Ltd, stating that the liability of the Corporate Debtor was restricted to pledge of shares only, as there was no separate Deed of Guarantee executed by the corporate debtor in favour of the L&T Infra the Assignor.

Phoenix ARC Pvt Ltd filed an Misc. Application with NCLT, Mumbai seeking a direction to the RP to admit its claim as financial debt. AA after hearing the parties, rejected the Misc. Application stating that the Phoenix ARC Pvt Ltd status as financial creditor of the Corporate Debtor is not proved in the light of Section 5(8) of the Code.

Aggrieved by the judgement, Phoenix ARC Pvt Ltd filed and appeal with NCLAT. NCLAT also dismissed the appeal stating that pledge of shares do not amount to "*disbursement of any amount against the consideration of time value of money*" as does not fall under Section 5(8) of the Code.

Again, aggrieved by the judgement of NCLAT, Phoenix ARC Pvt Ltd filed an appeal with Supreme Court. The counsel for Phoenix ARC Pvt Ltd argued that "*the term guarantee is not to be understood narrowly and it has to be understood to include any security created by third party to secure repayment of financial debt including pledge of shares*." (emphasis added).

The key question for consideration by the Supreme Court was whether Phoenix ARC Pvt Ltd could be regarded as a '*financial creditor*' within the meaning of Section 5(8) of the Code on the strength of the Pledge Agreement and Deed of Undertaking entered with L&T Infra.

Supreme Court after analysing in detail the Section 5(8) of the Code, including Section 126 (Contract of Guarantee) and Section 172 (Pledge, Pawnor and Pawnee) of the Contract Act, 1872, held that a pledge agreement is not akin to a guarantee and therefore, not covered under Section 5(8) of the Code. As the pledgor had only extended a security by a pledging certain share of GEL without making any promise to pay any amount to the creditor, the Supreme Court relied on its previous judgement in the matter of Anuj Jain, IRP for Jaypee Infratech Ltd vs Axis Bank Ltd and others and held that Phoenix ARC Pvt Ltd, at best a secured creditor qua its security but cannot be a financial creditor within the meaning of Section 5(7) and (5(8) of the Code.

***National Aviator's Guild (NAG) vs Ashish Chhawchharia, Resolution Professional of Jet Airways (India) Ltd. and Anr.***

**Order dated 22.02.2021 NCLT, Mumbai**

*Whether the copy of the Resolution Plan approved by the CoC can be shared with the employees of the corporate debtor?*

In the matter Corporate Insolvency Resolution Process (CIRP) of Jet Airways (India) Ltd., the Committee of Creditors (CoC) had approved one of the two resolution plans placed before it by the Resolution Professional. The CoC approved plan was placed before the Adjudicating Authority (AA) for its approval. Pending approval of the resolution plan by the AA, several unions and associations of pilots, cabin crew, maintenance engineers, ground staff of the corporate debtor, i.e., Jet Airways (India) Ltd. had preferred several applications before the AA seeking a full copy of the entire resolution plan as approved by the CoC as request for the same was refused by the Resolution Professional on the grounds on confidentiality. The grouse of the employees was that they were unaware of the terms of the resolution plan and any decision on the approval would have a bearing on their interests as they are the assets of the corporate debtor. Any plan for revival in terms of employment or provision for payment of outstanding wages / dues, or any sacrifice from them was vital for their sustenance and mutual benefit was highlighted.

(Image source: website)

However, the AA, after considering the contentions of the employees, held that the Resolution Professional is duty bound to maintain and ensure the confidentiality of the information concerning the insolvency resolution process as per the IBC and the IBBI Regulations and therefore his refusal to share a copy of the Resolution Plan cannot be held against him.

The Code doesn't envisage sharing of the Resolution Plan with the Operational Creditors or any other creditor, except the CoC, as there is no requirement of them to be heard during the process, the AA observed. Relying on the judgment in Swiss Ribbons vs Union of India (2019) 4 SCC 17 where the constitutional validity of IBC was upheld, the AA held that the Code is complete in itself and therefore it would be inappropriate for the AA to say otherwise than what is expressed in the Code.

The AA further observed that the role of the operational creditors in the CIRP was very limited and confined to the satisfaction of their claims and therefore not entitled to a copy of the resolution plan or portion thereof and that they would not be eligible to be heard/intervened during the process of considering the resolution plan.

## In. Re: Cognizance for Extension of Limitation

Hon'ble Supreme court vide its order dated 8th March 2021 has finally declared that the extension of limitation period under various laws granted on various dates due to COVID-19 pandemic shall be for a period of one year, i.e., 15.03.2020 to 14.03.2021. For cases where the limitation period expired during the period between 15.03.2020 till 14.03.2021, 90 days extension has been granted.

## IBBI amends Liquidation Process Regulations

Insolvency and Bankruptcy Board of India (IBBI) vide its Notification dated 4th March 2021 amended the Regulation 31 of the IBBI (Liquidation Process) Regulations 2016, specifying that the liquidator is required to file the list of stakeholders with IBBI electronically. Further, IBBI also vide its circular dated 4th March 2021 provided the format of the list of stakeholders and has instructed for filing the list of stakeholders within 3 days of the preparation/modification thereof, as the case may be. Liquidators are required to file the said list of stakeholders for all ongoing cases within 15 days of this Circular. It may be noted that the requirement to make the public announcement regarding filing of the list of stakeholders has been dispensed with.

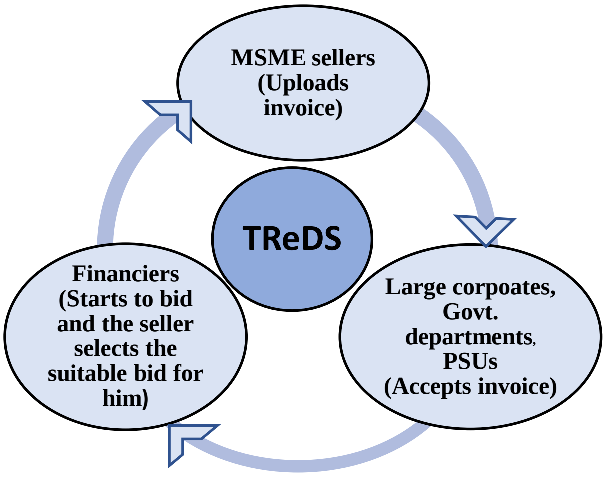
## TReDS

Ms. Janaki Ravichandran,
CGRF Team

**Proem to TReDS:**

Trade Receivable Discounting System (TReDS) is an online platform regulated by Reserve Bank of India to facilitate financing of trade receivables of Micro Small and Medium Enterprises (MSME) from corporates and other buyers including, Government departments and Public sector undertakings through multiple financiers. It deals with both factoring and reverse factoring.

As per the standard nomenclature used in the TReDS, an invoice or a bill may be created either by the MSME seller (in the case of factoring) or by corporate and other buyers, including Government Departments and PSUs, (in case of reverse factoring) is referred to as factoring unit. Financier refers to a bank as well as an NBFC factor participating in the TReDS and who accepts the factoring units for financing purpose.




The Government of India has enacted the Micro, Small and Medium Enterprises Development (MSMED) Act, 2006 in which the definition of micro, small and medium enterprises is as under:

**Micro Enterprise:**

- A micro enterprise is an enterprise where investment in plant and machinery does not exceed Rs. 1 crore and Annual Turnover does not exceed Rs. 5 crores.

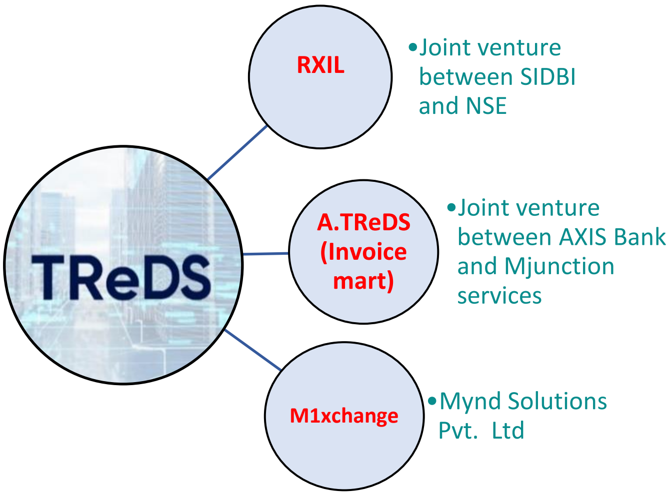
**Small Enterprise:**

- A Small enterprise is an enterprise where investment in plant and machinery does not exceed Rs.10 crore and Annual Turnover does not exceed Rs. 50 crores.

**Medium Enterprise:**

- A Medium enterprise is an enterprise where investment in plant and machinery does not exceed Rs.50 crores and Annual Turnover does not exceed Rs. 250 crores.

There are three E-Platforms where the MSME sellers OR buyers can upload their invoices on TReDS, namely:




**Who all are needed to register mandatorily on TReDS?**

- MSME sellers
- All companies registered under Companies Act 2013 and having an annual turnover of more than Rs. 500 crores.
- Government departments.
- Public sector undertaking units.

**Let us see how it works:**

The process of discounting the invoice begins when the seller uploads the invoices. The uploaded invoice must be accepted by the buyer. Once the buyer verifies and accepts the invoices, he flags it as a factoring unit.

After converting the invoice into factoring units, the financiers can start to bid. Financiers discount the bill depending on the credit rating of the buyers and the seller can pick the best suitable bid offered by financiers. Once the bid is accepted by the MSME seller there will be no option available for the financier to revise the quoted bid. The sellers' account gets credited within T+2 days.

Financiers will receive the dues from the buyer on the due date. The transactions under TReDS are without recourse to the seller so the financier cannot ask the seller for any default made by the buyer. On the due date buyer's bank account gets debited and financiers account gets credited. Intimation of each transaction will be given to the buyers.

The buyer can also upload the invoice and convert it into factoring unit. The financiers, after converting the invoice into factoring unit can start to bid. Then the MSME seller can select the suitable quotation offered by the financiers. This process is called reverse factoring of units.

**Now the Government has proposed to pull the Defence and Railway departments into TReDS to benefit the MSME sellers.**

**Benefits of TReDS to MSME sellers:**

- ❖ It involves one time documentation and less paperwork.
- ❖ Payment processing time is quicker than the traditional bill discounting by bankers.
- ❖ Transparent bidding process.
- ❖ Strong relationship between MSME sellers and Buyer
- ❖ MSME sellers can enhance their cashflow and productivity.
- ❖ Without recourse to the MSME sellers.
- ❖ Reduced interest cost.

As per recent report of Economic Times around 10,000 MSME sellers and 1,300 buyers are registered on TReDS platform.

## SPAC
## (Special Purpose Acquisition Company)

**CGRF Team**

**What is a SPAC?**

SPAC stands for "Special Purpose Acquisition Company".

A SPAC is a shell company without any commercial operations that is formed strictly to raise capital through an IPO, for the purpose of acquiring an existing company. It is an investment structure or an entity, which is set up specifically or specially for the purpose of acquiring operating companies later and take it public without going through the traditional route of IPO.

**SPACs** have transpired as a promising option to raise public funding from offshore markets. They may be suited for companies without profit track record such as start-ups who otherwise find it difficult to enthuse the conservative retail investors.


**(Image Source: Website)**

**Is it a New Concept?**

SPACs have been around for decades in US market, as they were also called as "Blank Check Companies".

SPACs have become more popular in recent years as they have attracted big name investors such as Goldman Sachs, Credit Suisse and Deutsche Bank, with their IPO fundraising hitting a record $13.6 billion in 2019 (more than 4 times of $3.2 billion they raised in 2016).

In 2020, as of the beginning of August, more than 50 SPAC, have been formed in the US. which have raised upto $ 21.5 billion. (Approx. Rs.158000 crores).

It may be interesting to note that the following Indian Companies have raised funding via SPAC.

Videocon D2H in the year 2015 had raised $ 375 Million and, Yatra (Online Travel Agency) in the year 2016 had raised $ 218 Million.

## How A SPAC Works

- SPACs are generally formed by experienced management team or sponsors, with expertise in a particular industry or business sector, with the intention of pursuing deals in that area.

- Normally 20% of the Capital is invested by the Sponsors (commonly known as founder shares) and the remaining 80% is raised by offering shares to public via IPO.

- The money SPACs raise in an IPO is placed in an interest-bearing trust account. These funds cannot be disbursed except to complete an acquisition or to return the money to investors if the SPAC is liquidated.

- SPAC sponsors have a deadline by which they have to find a suitable deal, typically within 24 months from IPO.

- Otherwise, the SPAC is liquidated, and investors get their money back with interest.

**Grofers Eyes Nasdaq Listing Via Merger with Blank-Check Firm**

Egrocer in talks with Cantor Fitzgerald, others; explores regular IPO option too

Samidha.Sharma @timesgroup.com

Mumbai: Grofers is in talks to make its public market debut through a merger with New York-based Cantor Fitzgerald's blank-check firm, sources told ... in what could be the first instance of an Indian startup taking this lesser-known route to tap funds.

The online grocer is expected to raise between $400 million and $500 million through the listing in May—on the tech-heavy Nasdaq—at a valuation of more than $1 billion, the sources said.

Blank-check firms — or special purpose acquisition companies (SPACs) — typically have a business plan centred around a merger with or acquisition of another company.

Anshu Jain, the India-born former co-chief executive of Deutsche Bank, is the president of Cantor Fitzgerald.

**SPAC for Growth**

- Grofers looks to raise $400-500 m through US listing in May
- It was valued at over $1 b as part of a pre-IPO placement
- Videocon d2h in 2015 & Yatra in 2016 used special purpose acquisition cos (SPACs) for Nasdaq listing
- SPACs raised a record $82 b through IPOs last year
- About $38.3 b raised so far this yr via SPACs compared to about $19.8 b via traditional IPOs

**(Economic Times Dated 24.02.2021)**

DEAL STREET

**ReNew Power Merges with US SPAC Co RMG, Raises $1.2 b**

*ReNew to use $700 m to pare debt, use the rest to give partial exits to existing investors*

Arijit.Barman@timesgroup.com

Mumbai: Capitalising on growing investor frenzy, Goldman Sachs-backed ReNew Power has become the first renewable company from India to reverse-merge with a US-listed blank cheque financier also known as special purpose acquisition company (SPAC), RMG Acquisition Corp II, at $4.4 billion post-money valuation, excluding debt.

The company made an official announcement on Wednesday evening. ReNew will be raising $1.2 billion of new money, which includes $855 billion private placement from a bunch of new investors including BlackRock, BNP Paribas asset management, Sylebra Capital, Zimmer Capital, TT International and serial entrepreneur Chamath Palihapitiya, among others.

RMG, sponsored by Riverside Management Group, raised $345 million in its initial public offering including so-called greenshoe shares last December. Since pricing its first SPAC in February 2019, RMG Capital has raised over $1.1 billion in three separate IPOs.

Its CEO Robert Mancini also led Goldman Sach's on-balance sheet power asset investment business in the past. From the money raised, $700 million will be used as primary capital to pare its $1.6 billion net debt and to pursue growth, including its ambitious solar panel manufacturing plans.

"ReNew's commitment to measured growth through long-term partnerships with Indian central and state government agencies, scale, technological innovation, and strong financial position should enable it to take advantage of the incredibly positive trends in the Indian power market over the next decade and beyond," said Mancini.

**OFFERING PARTIAL EXITS**

The remaining $500 million will be used to give partial exits to existing investors, such as Goldman Sachs, CPPIB, Abu Dhabi Investment Authority (ADIA) and Global Environment Fund, which have been seeking a "liquidity event" for long. ET was the first to report about ReNew's SPAC listing plans with RMG and Peridot in its edition dated February 1.

"ReNew plans to maintain its track record of market share growth, and contribution to the greening of the Indian power sector, and to help meet the Indian government's ambitious renewable energy targets," said Sumant Sinha, chairman, ReNew Power.

Goldman Sachs, the largest shareholder of ReNew with a 48% stake, has been looking to lower its holding and unlock value for some time after the company was forced to shelve its IPO plans mid-2018 at a $4 billion valuation.

**Checking In**

ReNew Portfolio: 5.56 GW (operational) + 4.76 GW (pipeline)

Existing investors: Goldman Sachs, ADIA, CPPIB, GEF

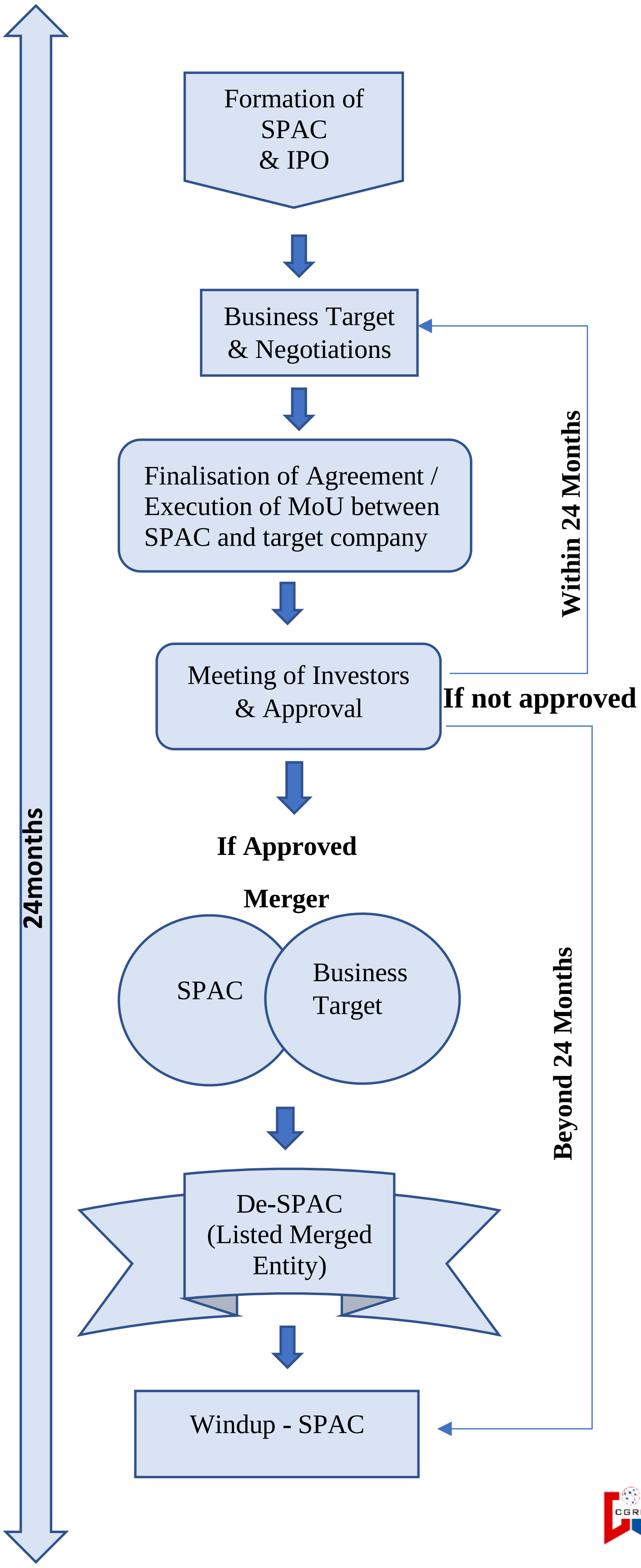
New investors: Blackrock, BNP Paribas AMC, Zimmer Partners, TT International, Chamath Palihapitiya among others

GS to remain single largest shareholder with 30% stake

RMG Capital has raised over $1.1b in three separate IPOs

**(Economic Times Dated 25.02.2021)**

Typical SPAC Timeline



Mr. S. Srinivasan, Senior Partner
**SR *Srinivasan & Co* LLP**

SandBox takes pride in announcing that **Mr. S. Srinivasan,** Chairman of CGRF and Senior Partner of SR Srinivasan & Co LLP has been empanelled as a Quality Reviewer under the aegis of the Quality Review Board of ICSI. SandBox wishes him good luck in his endeavour.

## Find the words!!

| CLUES | WORDS |
|---|---|
| 1. An introductory statement | |
| 2. Procure the release of a person from legal custody | |
| 3. Promise to discharge the liability of third person | |
| 4. A business carried on by all or any of them acting for all | |
| 5. A security provided in exchange for a loan | |
| 6. Rate at which commercial banks borrow money from RBI | |

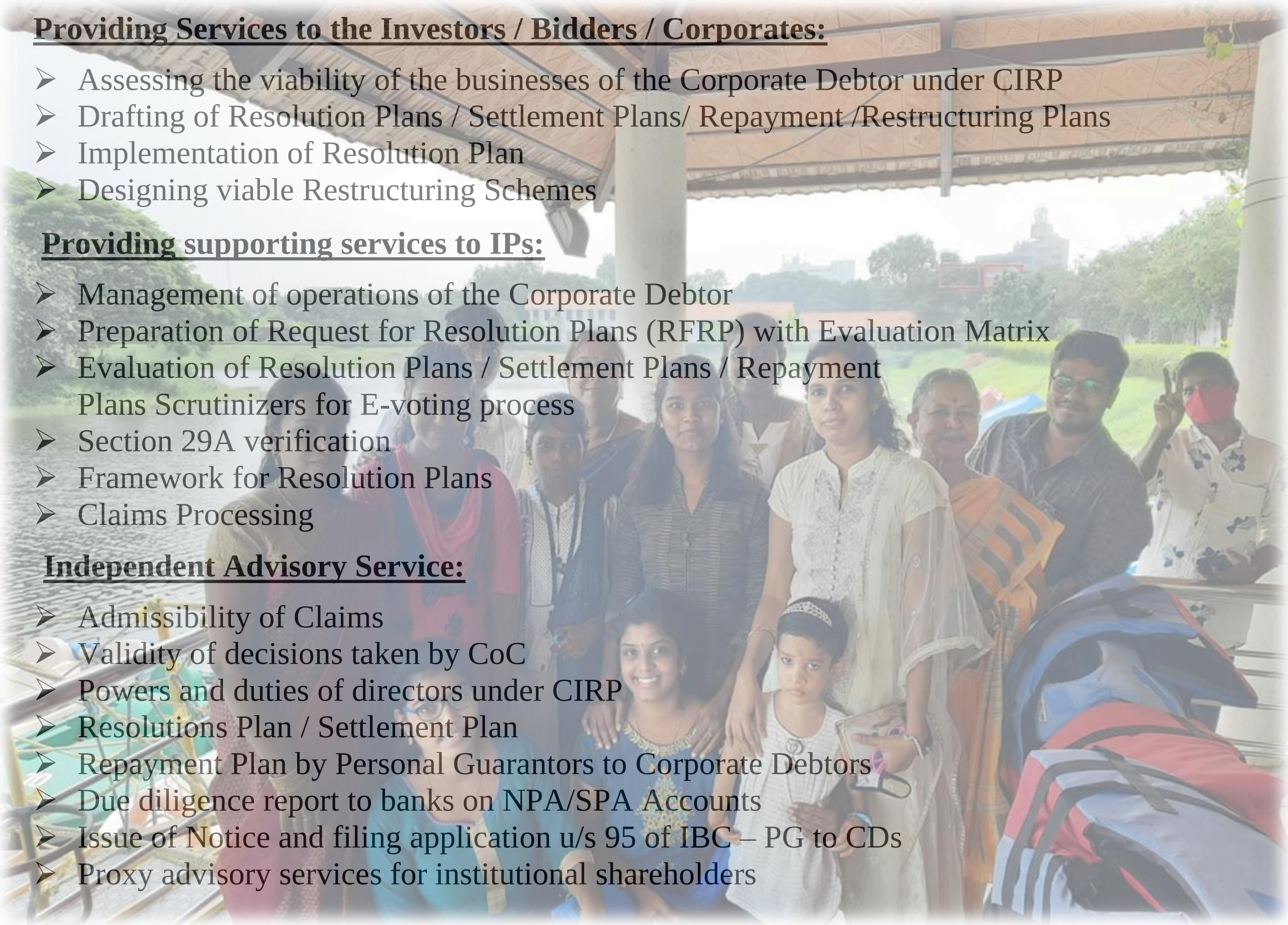
**Note: The below group of letters can be used repeatedly for different clues**

| | | | | | |
|---|---|---|---|---|---|
| CO | IL | BLE | LLAT | BA | PO |
| PAR | RE | RAN | AM | ERAL | GUA |
| PRE | RA | SHIP | TEE | TE | TNER |

Answers:

1. Preamble 2. Bail 3. Guarantee 4. Partnership 5. Collateral 6. Repo Rate

# Our Services



**Providing Services to the Investors / Bidders / Corporates:**

- Assessing the viability of the businesses of the Corporate Debtor under CIRP
- Drafting of Resolution Plans / Settlement Plans/ Repayment /Restructuring Plans
- Implementation of Resolution Plan
- Designing viable Restructuring Schemes

**Providing supporting services to IPs:**

- Management of operations of the Corporate Debtor
- Preparation of Request for Resolution Plans (RFRP) with Evaluation Matrix
- Evaluation of Resolution Plans / Settlement Plans / Repayment Plans Scrutinizers for E-voting process
- Section 29A verification
- Framework for Resolution Plans
- Claims Processing

**Independent Advisory Service:**

- Admissibility of Claims
- Validity of decisions taken by CoC
- Powers and duties of directors under CIRP
- Resolutions Plan / Settlement Plan
- Repayment Plan by Personal Guarantors to Corporate Debtors
- Due diligence report to banks on NPA/SPA Accounts
- Issue of Notice and filing application u/s 95 of IBC – PG to CDs
- Proxy advisory services for institutional shareholders

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