CHAPTER 5

ELIGIBILITY CRITERIA
CHAPTER – 5

ELIGIBILITY CRITERIA

5.1 WHICH CORPORATE IS ELIGIBLE

WHAT TYPES OF ACCOUNTS DOES CORPORATE DEBT RESTRUCTURING COVER?

1. All Standard or Sub – standard and “Doubtful” advance accounts in which:
   - More than one Bank; or,
   - One Bank and one Financial Institutions; or
   - More than one Financial Institutions.
   - Have exposure (outstanding) aggregating to Rs. 20 crore or more.

2. All advance accounts classified as “Standard” and “Sub – Standard” in the books of the lenders, will be categorized as Category – 1.

3. All advance accounts, classified as “Doubtful” in the books of all the majority of the lenders, will be categorized as Category – 2.: in such a situation Corporate Debt Restructuring may be implemented if a minimum of 75 percent (by value) of the lenders satisfy themselves of the viability of the account and consent for such restructuring, subject to the following conditions:
   - It will not be binding on the Creditors to take up additional financing worked out under the debt restructuring package and the decision to lend or not to lend will depend on each Creditors Bank /
Financial Institutions separately. In other words under the proposed second categorized of the CDR mechanism, the existing loans will only be restructured and it would be up to the promoter to firm up additional financing arrangement with new of existing lenders individually.

- All other norms under the CDR mechanism (such as the "stand - still" clause) during the pendency of restructuring under Corporate Debt Restructuring etc. will continue to be applicable to this category also.

4. There may be situation where a small portion of debt by a Bank might be classified as doubtful. In that situation, if the account has been classified as “Standard or Sub-standard” in the books of at least 90% of lenders (by value), the same would be treated as Standard or Sub-standard only for the purpose of judging, the account as eligible for Corporate Debt Restructuring, in the books of the remaining 10% of lenders as category – 1.

5. There would be no requirement of the account / Company being sick, NPA or being in default for a specified period before reference to the Corporate Debt Restructuring system.

6. However, potentially viable cases of NPAs will get priority.
7. In no case, the request of any corporate indulging in willful default, fraud or misfeasance, even in a single Bank, will be considered for restructuring under Corporate Debt Restructuring system.

8. The accounts where recovery suits have been filed by the lenders against the Company, may be eligible for consideration under the Corporate Debt Restructuring system provided, initiative to resolve the cases under the Corporate Debt Restructuring system is taken by at least 75 percent of the lenders (by value). However, for restructuring for such accounts under the Corporate Debt Restructuring system, it should be ensured that the account meets the basic criteria for becoming eligible under the Corporate Debt Restructuring mechanism.

9. BIFR cases are generally not eligible for restructuring under the Corporate Debt Restructuring system. However, large value BIFR cases may be eligible for restructuring under the Corporate Debt Restructuring system if specifically recommended by the Corporate Debt Restructuring Core Group. The Core Group sb recommended exceptional BIFR cases on a case to case basis for consideration under the Corporate Debt Restructuring system. It should be ensured that the lending institutions complete all the formalities in seeking the approval from BIFR before implementing the package.
ELIGIBILITY CRITERIA

The Corporate Debt Restructuring mechanism will cover only multiple banking accounts / syndication / consortium accounts with outstanding exposure of Rs.10 crore and above by banks and institutions.

In terms of the extant instructions, in no ease, requests of any corporate indulging in willful default, fraud or misfeasance even in a single bank will be considered for restructuring under the Corporate Debt Restructuring mechanism. Modifications introduced recently in the system laid down for the identification of the willful defaulters has made it more transparent and has provided an opportunity to the borrower before final classification is made. As a general principle therefore, willful defaulters should not be entertained under the Corporate Debt Restructuring mechanism. However, in deserving cases, the Core Group may review the reasons for classification of the borrower as willful defaulter and satisfy itself that the borrower is in a position to rectify the willful default provided he is granted an opportunity under the Corporate Debt Restructuring mechanism. Such exceptional cases may be admitted for restructuring only with the approval of the Core
Chapter - 5

Eligibility Criteria

Group. The Core Group may evolve policies and safeguards for dealing with cases of willful default.

The accounts where recovery suits have been filed by the lenders against the company, may be eligible for consideration under the Corporate Debt Restructuring mechanism provided, the initiative to resolve the case under the Corporate Debt Restructuring mechanism is taken by at least 75% of the lenders (by value) and 60% of lenders in number.

5.2

STATUS OF BIFR CASES

BIFR cases are generally not eligible for restructuring under the Corporate Debt Restructuring system. However, large value BIFR cases may be eligible for restructuring under the Corporate Debt Restructuring system if specifically recommended by the Corporate Debt Restructuring Core Group. The Core Group is recommended exceptional BIFR cases on a case to case basis for consideration under the Corporate Debt Restructuring system. It should be ensured that the lending institutions complete all the formalities in seeking the approval from BIFR before implementing the package.

1 Website of Board for Industrial & Financial Reconstruction
Chapter 5

Eligibility Criteria

The Corporate Debt Restructuring mechanism will cover only multiple banking accounts / syndication / consortium accounts with outstanding exposure of Rs.10 crore and above by banks and institutions.

In terms of the extant instructions, in no ease, requests of any corporate indulging in willful default, fraud or misfeasance even in a single bank will be considered for restructuring under the Corporate Debt Restructuring mechanism. Modifications introduced recently in the system laid down for the identification of the willful defaulters has made it more transparent and has provided an opportunity to the borrower before final classification is made. As a general principle therefore, willful defaulters should not be entertained under the Corporate Debt Restructuring mechanism. However, in deserving cases, the Core Group may review the reasons for classification of the borrower as willful defaulter and satisfy itself that the borrower is in a position to rectify the willful default provided he is granted an opportunity under the Corporate Debt Restructuring mechanism. Such exceptional cases may be admitted for restructuring only with the approval of the Core Group. The Core Group may evolve policies and safeguards for dealing with cases of willful default.

The accounts where recovery suits have been filed by the lenders against the company, may be eligible for consideration under the Corporate Debt Restructuring mechanism provided, the initiative to resolve the case under the Corporate Debt
Restructuring mechanism is taken by at least 75% of the lenders (by value) and 60% of lenders in number.

The account can be subjected to CDR at any of the following stages:

1. Before commencement of commercial production; or,
2. After commencement of commercial production but before the asset has been classified as Sub-Standard; or,
3. After commencement of commercial production and the asset has been classified as Sub-standard.

However, since Corporate Debt Restructuring is generally applicable for Standard j Sub-standard accounts, the date of NPAs recognition assumes significance before proceeding for the Corporate Debt Restructuring -mechanism. Therefore, the NPA- recognition is to be done as per the following (OBOD. No. BP.BC.108j21.04.048j2001-02 dated 28.05.2002):

Category- Where the projects have achieved financial closure and it has been documented formally. The date of completion of original financial closure and the asset can be treated as standard for a period not exceeding two years beyond the date of completion as stated above.
Chapter - 5

Eligibility Criteria

Category-II  ✓ Projects sanctioned before 1997; and,

✓ With original project cost of Rs 100 crore or more; and,

✓ Where financial closure was formally not documented.

An independent Group, drawing experts from Financial Institutions and Banks, was formed to decide deemed date of completion of projects. This Group, based on all material and relevant facts and circumstances, has decided deemed date of completion of the project on a project-by-project basis. In such cases, the asset will continue to remain as Standard for a period not exceeding two years beyond the deemed date of completion as stated above. (The said Group's reports are available with the Financial Institutions)

Category- III - (A)  ✓ Projects sanctioned before 1997; and,

✓ With original project

The deemed date of completion project would be as originally envisage (at the time of
Chapter - 5

Eligibility Criteria

cost less than Rs 100 crore; and,

✓ Where financial closure was formally not documented.

sanction. In such cases the asset will continue to remain a standard asset for a period no exceeding two years beyond the deemed date of completion as stated above.

Category:

✓ Projects sanctioned after 1997; and,

✓ Where financial closure was formally not documented.

Notes:

1) In all the three categories stated above, in case of time overruns beyond the state (period of 2 years, the asset should be classified as Sub-standard regardless of the recon of recovery and provided for accordingly.

2) In case of projects to be financed in future by Banks / Financial Institutions, the date of completion a the project should be clearly spelt out at the time of financial closure. In such cases, I the date of commencement of commercial production extends beyond six months after the deemed
date of completion, the account should be treated as Sub-standard.

3) Income was not to be recognized up till 26.02.2003 on accrual basis in respect of the projects restructured when as per the extant instructions; the account is non-performing though the asset is classified as Standard in terms of above said guidelines a restructuring. However, since 27.02.2003 (vide RBI notification No. DBOD.BP. BC.74. 21.04.0481 2002-03 dated February 27, 2003), banks may recognize income on accrual basis in respect of the above three categories of projects under implementation which are classified as 'standard' under the above said guidelines.

4) In light of the above, wherever the income is wrongly recognized in the past, it needs to be reversed or a provision is to be made.

5) In case of recognition of income due to "funding of interest", "conversion into equity", "issuance of bonds etc.", the following is to be observed:
5.3 LEGAL BASICS

WHETHER CORPORATE DEBT RESTRUCTURING IS A STATUTORY MECHANISM?

It is a non-statutory mechanism among the Banks and Financial Institutions on voluntary participation.

If Corporate Debt Restructuring is non-statutory mechanism, then what is the legal basis in CDR mechanism?

ICA (Inter-Creditor Agreement) signed by at least 75% of secured lenders so that it may be made binding upon remaining secured creditors; and

DCA (Debtors-Creditor Agreement), signed by debtors either at the time of original loan documentation (for future cases) or at the time of reference to Corporate Debt Restructuring cell, to have "stand-still" agreement for 90 / 180 days binding both sides whereby the parties commit themselves not to take legal proceedings during that period.

STAND STILL CLAUSE:

One of the most important elements of Debtor - Creditor Agreement would be "stand-still" agreement binding for 90 days, or 180 days by both sides. Under this clause, both the Debtors and Creditors shall agree to a legally binding "stand-still" whereby both the parties commit themselves not to taking resource to any other legal action during the "stand-still"
period, this would be necessary for enabling the Corporate Debt Restructuring system to undertake the necessary debt restructuring exercise without any outside intervention, judicial or otherwise. However the "stand - still" clause will be applicable only to any civil action either by the borrower or any lender against then other party or will not cover any criminal action. Further, during the "stand - still" period, outstanding foreign exchange forward contracts, derivative products, etc. can be crystallized, provided the borrower is agreeable to such crystallization. The borrower will additionally undertake that during the "stand - still" period the documents will stand extended for the purpose for limitation and also that he will not approach any other authority for any relief and the directors of the borrowing Company will not resign from the Board of Directors during the "stand - still" period.

When Corporate Debt Restructuring is non - statutory mechanism, then what is the legality in respect of "lenders participating in the Corporate Debt Restructuring - process" and the lenders not participating in the Corporate Debt Restructuring - process"?

The Debtor -Creditor Agreement (DCA) and the Inter- Creditor Agreement (ICA) provide the legal basis to CDR mechanism.

The Debtors shall have to accede to the DCA, either at the time of original loan documentation (for future cases) or at the time of reference to Corporate Debt Restructuring Cell.
Similarly, all participants in the CDR mechanism through their membership of the Standing Forum shall have to enter into a legally binding agreement, with necessary enforcement and penal clauses, to operate the system through laid-down policies and guidelines.

The Inter-Creditor Agreement signed by the Creditors will be initially valid for a period of 3 years and subject to renewal for further periods of 3 years thereafter.

The lenders in foreign currency outside the country are not a part of Corporate Debt Restructuring system. Such lenders and also lenders like GIC, LIC, UTI and other third parties who have not joined the Corporate Debt Restructuring system, could join CDR mechanism for a particular corporate by signing transaction - to - transaction Inter-Creditor Agreement, wherever they have exposure to such corporate.

The Inter-Creditor Agreement would be legally binding agreement amongst the Creditors with necessary enforcement and penal clause, wherein the Creditors would commit them to abide by the various element of Corporate Debt Restructuring system. Further the Creditors shall agree that if 75% of Creditors by value, agree to be restructuring package of an existing debt (i.e. debt outstanding), the same would be binding on the remaining Creditors.
Chapter - 5

Eligibility Criteria

Since Category - 1 (vide Question No. 8 infra) Corporate Debt Restructuring scheme covers only Standard or Sub-standard accounts, which in the opinion of 75% of the Creditors, are likely to become performing after introduction of the Corporate Debt Restructuring package, it is expected that all other Creditors (i.e. those outside the minimum 75 percent) would be willing to participate in the entire Corporate Debt Restructuring package, including the agreed additional financing.

However, in case for any internal reason, any Creditors (outside the minimum 75 percent) does not wish to commit additional financing, that Creditors will have the option. At the same time in order to avoid the "free rider" problem, it is necessary to provide some disincentive to the Creditors who wishes to exercise this option. Such Creditors can either –

- Arrange for his share of additional financing to be provided by a new or existing Creditors, or
- Agree to deferment of the first year’s interest due to him after the Corporate Debt Restructuring package become effective. The first year’s deferred interest is mentioned above, without compounding, will be payable along with the last installment of the principal due to the Creditors.

The dissenting institutional lenders, having exposure of or less than 25% to the borrower and not opting to abide by the decision of CDR process, would have the option to sell their
existing share to either the existing lenders or fresh lenders, at an appropriate price, which would be decided mutually between the existing lender and the taking over lender. The new lenders shall rank on par with the existing lenders for repayment and servicing of the dues since they have taken over the existing dues to the existing lender.

In addition, the "exit option" will also be available to all other lenders within the minimum 75 percent, provided the purchaser agrees to abide by the restructuring package approved by the Empowered Group.

When one or more institutional lenders / banks is not a signatory to Inter-Creditor Agreement:

In such a case, CDR process / decision cannot be enforced upon that Bank/ Financial Institutions and that Bank / Financial Institutions is free to adopt any course of action including filing of suit against the borrower.

Whether Corporate Debt Restructuring contemplates conversion of debt into equity by the lenders in deserving cases?

The Corporate Debt Restructuring Empowered Group, while deciding the restructuring package, should decide on the issue regarding convertibility (into equity) option as a part of restructuring exercise whereby the Bank / Financial Institutions shall have the right of convert a portion of the restructured the Banks / Financial Institutions shall have the right to convert a
portion of the restructured amount into equity, keeping in view in the statutory requirement Under Section 19 of the Banking Regulation Act, 1949, (in the case of Banks) and relevant SEBI regulation. Exemptions from the capital market exposure ceiling prescribed by Reserve Bank of India in respect of such equity acquisitions should be obtained from Reserve Bank of India on a case-to-case basis by the concerned lenders.

**LEGAL BASICS OF CDR**

The legal basis to the CDR System is provided by the Debtor-Creditor Agreement (DCA) and the Inter-Creditor Agreement (ICA). All banks/financial institutions in the CDR System are required to enter into the legally binding ICA with necessary enforcement and penal provisions. The most important part of the CDR Mechanism which is the critical element of ICA is the provision that if 75% of creditors (by value) agree to a debt restructuring package, the same would be binding on the remaining creditors.

Similarly, debtors are required to execute the DCA, either at the time of reference to CDR Cell or at the time of original loan documentation (for future cases). The DCA has a legally binding 'stand still' agreement binding for 90/180 days whereby both the debtor and creditor(s) agree to 'stand still' and commit themselves not to take recourse to any legal action during the period. 'Stand Still' is necessary for enabling the CDR System to undertake the necessary debt restructuring exercise without any outside intervention, judicial or otherwise. However, the 'stand still' is applicable only to any civil action, either by the borrower
or any lender against the other party, and does not cover any criminal action.

Besides, the borrower needs to undertake that during the ‘stand still’ period the documents will stand extended for the purpose of limitation and that he would not approach any other authority for any relief and the directors of the company will not resign from the Board of Directors during the ‘stand still’ period.

In order to ensure discipline in the Corporate Debt Restructuring mechanism, members of Corporate Debt Restructuring may jointly or severally decide that those banks that have not joined the mechanism as members would not be eligible for future consortium / syndication arrangements for lending. For this purpose, a collective action clause may be incorporated in the loan agreements involving multiple lenders whereby all lenders agree to abide by the majority decision for restructuring of the account in case of need.

If 75 per cent of creditors by value and 60% of the creditors in number approve a restructuring package of an existing debt (i.e., debt outstanding) under CDR mechanism, it shall be binding on the remaining creditors.

**ELIGIBILITY CRITERIA**

The scheme will not apply to accounts involving only one financial institution or one bank. The CDR mechanism will cover only multiple banking accounts / syndication / consortium accounts of corporate borrowers with outstanding fund-based and non-fund based exposure of RS.10 crore and above by
banks and institutions.

The Category 1 CDR system will be applicable only to accounts classified as 'standard' and 'sub-standard'. There may be a situation where a small portion of debt by a bank might be classified as doubtful. In that situation, if the account has been classified as 'standard' / 'substandard' in the books of at least 90% of creditors (by value), the same would be treated as standard / substandard, only for the purpose of judging the account as eligible for CDR, in the books of the remaining 10% of creditors. There would be no requirement of the account / company being sick, NPA or being in default for a specified period before reference to the CDR system. However, potentially viable cases of NPAs will get priority.

The accounts where recovery suits have been filed by the creditors against the company, may be eligible for consideration under the CDR system provided, the initiative to resolve the case under the CDR system is taken by at least 75% of the creditors (by value) and 60% of creditors (by number). (The requirement as to 60% of creditors by number was added by the aforementioned RBI Circular of November 10, 2005.)