



eCircular

Department: STRESSED ASSETS RESOLUTION GROUP

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Circular No.: Stressed Assets Resolution

Group/SARG/OTS/18/2020 - 21

Date: Wed 23 Dec 2020

The Chief General Manager
State Bank of India
LHO / CAG / CCG / SARG

SARG/OTS / KKT / 2020-21

Date: 23.12.2020

Madam / Dear Sir

REVIEW OF COMPROMISE SETTLEMENT POLICY

Compromise settlement refers to a negotiated settlement where a borrower offers to pay, and the Bank agrees to accept in full and final settlement of its dues an amount less than the total amount due to the Bank under the relative loan contract. Thus, the settlement invariably involves certain sacrifice by the Bank by way of write off and / or waiver of a portion of its dues.

2 . Recovery of advances through compromise settlement is accepted as an effective non-legal resolution by the Bank. It is not possible to lay down precise guidelines which can be followed uniformly in all compromise cases. However, certain basic principles and RBI guidelines have to be kept in view by the branches and their controllers, while processing compromise proposal.

3 .The Policy for Compromise Settlement has been circularized vide e-Circular No. Circular No.: CCO/CPD-ADV/167/2019 - 20 dated 18.01.2020. Based on the feedback received from operating Units / Branches, Policy has been reviewed accordingly which is attached as Annexure with this circular.

4 . Please arrange to bring the contents of this circular to the notice of all the operating units / branches under your control for compliance. For further clarification in this regard, please refer to SARG, Corporate Centre, Mumbai.

Yours faithfully

for Dy. Managing Director

Rationale: Review of Compromise Settlement Policy.



(For Internal Use only)

Policy on Compromise Settlement

Stressed Assets Resolution Group

Corporate Centre

Mumbai - 400021

Issue Date:23/12/2020

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Policy on Compromise Settlement

Compromise settlement refers to a negotiated settlement where a borrower offers to pay, and the Bank agrees to accept in full and final settlement of its dues an amount less than the total amount due to the Bank under the relative loan contract. Thus, the settlement invariably involves certain sacrifice by the Bank by way of write off and /or waiver of a portion of its dues.

Recovery of advances through compromise settlement is accepted as an effective non-legal resolution by the Bank in cases where it is appropriate to adopt this option. It is not possible, at the same time, to lay down precise guidelines which can be followed uniformly in all compromise cases, as each offer is unique in the context of the circumstances necessitating its consideration as a recovery option. However, certain basic principles and guidelines to be kept in view by the branches and their controllers, while processing compromise proposals, are detailed in the subsequent paragraphs.

1. Basic principles for Compromise Settlement proposals

- i. **Bank's Approach:** The compromise will be a negotiated settlement under which the Bank will endeavour to recover its dues to the maximum extent possible with minimum sacrifice and this process will be initiated after the Bank has exercised its right to set off or lien against any deposits of the borrower/guarantor lying with the Bank.
- ii. **Realisable Value of Securities, and NPV of compromise amount & Securities:** The realisable value of security charged to the Bank as also the Bank's ability to take possession of the security and sell it will be the basic factors which would decide the compromise amount. While assessing the realisable value of security, proper weightage would have to be given to its location, condition and marketability. For this purpose, services of approved valuers may be engaged and it should be ensured that the valuation reports are not more than twelve months old. However, on account of COVID-19 scenario, valuation report upto two years old will be considered as valid for Compromise upto 31.12.2020. There would be no requirement to obtain fresh valuation report, if the report is valid as above. In case value of property is above Rs.1cr, two valuation reports from Bank's approved valuers have to be obtained and the higher value has to be taken into account for deciding the compromise amount. The NPV of settlement amount should generally not be less than Net Present Value (NPV) of the realizable value of the available securities. In case of lower value, the same has to be justified with valid reasons.

For calculation of NPV, the rate of discount should be taken as the Prevalent Benchmark Rate (presently MCLR for 6 months tenor) with half yearly rests and

the maximum estimated time to realize the securities may be taken as 5+1=6 years from the date of notice under section 13(2) in case of SARFAESI action and 7+1=8 years from the date of filing suits in case of DRT / Court cases. This relaxation of one year additional time in the maximum estimated time to realize securities is permitted upto 31.03.2021 due to the prevailing Covid 19.

- iii. **Influence of Group Companies:** In case the borrower has other group companies, influence of these companies or the parent company may be used for a better settlement.
- iv. **Initial Deposit:** Normally an initial deposit of at least 5% (15% for wilful defaulters) of the offer amount may be taken from the borrower under no lien account as an evidence of the borrower's intention to pursue the compromise settlement with the Bank along with the compromise offer letter
- v. **Terms of Payment: Time Period for Payment & Charging of Interest on Compromise Settlement amount:** It will be the endeavour of the Bank to get the entire compromise amount paid up in lump sum. In cases where the amount is agreed to be recovered in instalments, normally at least 15% of the approved settlement amount (inclusive of initial deposit) would be payable upfront with the balance instalments spread over a maximum period of 12 months. Repayments exceeding 12 months should not generally be considered unless the repayment source is assured to the satisfaction of the Bank. Further, repayment period shall not be extended beyond a period of 18 months without obtaining administrative approval from an official not below the rank of Chief General Manager. Efforts should be made in such cases to tie up the payment directly to the Bank. The sources from which the borrowers and/or guarantors will raise funds to pay the compromise amount will be identified and recorded, particularly in those cases where the payment is proposed to be made in instalments. In case, the compromise amount is not paid as per terms of sanction, the Bank will be entitled to treat the compromise settlement as cancelled.

If the entire compromise amount is not paid within six months, interest at prevalent benchmark rate (presently MCLR for 6 months tenor) on the balance amount paid after six months shall be charged from 30th day from the date of letter conveying approval of the compromise to the borrower. This relaxation is available only for the compromise where payment is received by 31.03.2021. The interest free period will be restored to four months from 01.04.2021.

The failed compromise proposals may be restored/revalidated by the sanctioning authority within one year if the delay is beyond the final payment date.

However, delay in an instalment within the final repayment date can be condoned administratively by the following authority, provided there is no NPV loss:

Sanctioned by	Approved by
CCSC & above	CGM (Controlling the account)
Upto SARCC-2	GM (Controlling the account)

- vi. Cases of willful defaulters:** In the matter of settling compromise amount, distinction will need to be made between willful defaulters and the borrowers defaulting for reasons beyond their control. In case of the former, a tough stand has to be taken and the proposal should be put up after obtaining in-principle approval of the GM(NW/CCG/CAG/SARG) based on a review of such cases. Further, in case of willful defaulters, initial deposit under no lien accounts will be 15% of offer amount and on approval of the compromise, upfront payment including initial deposit will be 25% of the approved compromise amount. If the entire compromise amount is not paid within **four** months, interest at prevalent Bench mark rate (presently MCLR for 6 months tenor) +1% on the balance amount paid after four months shall be charged from the 30th day from the date of letter conveying approval of the compromise to the borrower.
- vii. Cases of Non-Cooperative Borrowers:** In the matter of settling compromise amount, distinction should be made between Non- Cooperating Borrowers and the borrowers defaulting for reasons beyond their control. In case of the former, a tough stand has to be taken and the proposal should be put up after obtaining in-principle approval of the GM (NW/CCG/CAG/SARG). It should also be ensured that when, investigation reports (Such as Forensic Audit, Stock Audit etc) are pending due to non-cooperation of such borrowers, then compromise proposals should be entertained only after receipt of investigation reports.
- viii. Default Clause:** Compromise settlement will be arrived at with borrowers/guarantor's subject to the condition that in the event of any failure to honour any of the terms of the compromise settlement, the Bank will be entitled to exercise against the borrowers / guarantors all the rights and remedies available prior to the compromise settlement. This will include collection from the borrowers/guarantors of the entire amount due prior to the compromise settlement, together with interest thereon at the applicable rates minus the amount paid through compromise. **In case of failure of a compromise**

proposal, branches should strive to conduct auctions under SARFAESI within three months from the date of cancellation of Compromise/OTS.

- ix. **Consent Decree:** An application duly signed by borrower/Bank, for obtaining Consent Decree from the appropriate Court/DRT should be filed immediately on sanction of the compromise proposal incorporating therein a clause that in the event, the borrowers / guarantors fail to adhere to the terms of compromise, the compromise settlement shall stand automatically cancelled and the Bank will be entitled to recover the entire outstanding amount due together with interest at the contractual rate. A consent decree/recovery certificate should be obtained from the competent court/DRT recording the settlement. In case the borrowers / guarantors do not adhere to the settlement terms, the Bank can proceed with the execution of the decree/recovery certificate.
- x. **Position of other recovery action:** The sanctioning authority must satisfy itself that all possible steps to recover the dues have been taken and that compromise settlement is in the larger interest of the Bank.
- xi. **Opportunity cost analysis:** While arriving at a negotiated settlement, the advantage available to the Bank from prompt recycling of funds should be considered in comparison to the likely recovery by following legal or other protracted course of action i.e. opportunity cost analysis be made.
- xii. **Uncharged assets of the borrowers / guarantors:** Before entering into any compromise settlement, details of uncharged assets of the borrowers and guarantors should be collected by engaging the services of investigative agencies if required.
- xiii. **Compromise settlement proposals from Guarantors:** Compromise Settlement proposals from guarantors should be treated at par with proposals from borrowers.
- xiv. **Dealing with Third Parties:** It has been observed in some cases that third parties are approaching the branches either in person or telephonically for settling the dues of defaulters. It may be noted that when third parties are involved in this process, there are possibilities that the process and the outcome of the negotiations may not be communicated to the Borrower(s) / Guarantor(s) correctly by them. The third parties may create communication gap between the Bank and the defaulters. They may even resort to mis-representation of facts to the defaulting borrowers which may adversely affect the Banks' image.

In view of the above, the operating units / branches are advised to deal directly with the Borrower(s) / Guarantor(s) only, for settlement of dues through compromise. Third parties should not be entertained and involved in this process, unless they are duly authorized by the Borrower(s)/ Guarantor(s), or accompany them.

- xv. **Compromise settlement involving a borrower declared as fraud:** Compromise settlement involving a borrower declared as fraud will be allowed only with the condition that the criminal complaint will be continued even after settlement of compromise case as per the law of the land and will be pursued as per the order of concerned court/adjudicative authority. The terms and conditions will be those applicable for Willful Defaulters. **Original document(s), which is/are part of evidence especially title deed(s), will not be handed over to borrower (s)/ Guarantor (s).**

2. Analysis of Bank's Strengths and Weaknesses

Bank's approach to compromise as a recovery option will be based on an analysis of the Bank's strengths and weaknesses in a given case. The parameters for such an analysis are:

- i. Value of securities charged to the Bank and their saleability;
- ii. Other assets of the borrowers / guarantors;
- iii. Status of legal action;
- iv. Ability of the Bank to enforce the security.
- v. Time involved in realising the security.

3. Extent of Concessions under Compromise Settlements

The extent of concessions which the Bank may extend while accepting a compromise offer will depend on a number of factors. The guiding principle, in all compromise cases, will always be to realise maximum so that the Bank's loss is the minimum. Based on the factors mentioned above under paragraph 2 and depending on the merits of each case, anyone or more of the following concessions may be considered:

Waiver, either in full or part of penal interest, if charged.

- i. Reduction in the rate of interest, from the date the account became NPA.
- ii. Partial or complete waiver of interest charged / accrued after the unit became NPA.
- iii. Waiver of a part of the principal dues.

- iv. Partial or complete waiver of legal and other expenses incurred by the Bank.

The amount of sacrifice per se involved in a compromise offer would not hinder consideration of the offer. All compromise proposals will clearly spell out the basis on which the amount of settlement has been arrived at.

4. Screening Procedure

4.1 All proposals for compromise will be first processed by the Prescribed Screening Committees.

4.2 Scrutiny & Recommendation by External Screening Committee.

A close and independent scrutiny of compromise proposals, **which are having net loss of Rs.50.00 Crores and above**, which falls under the sanctioning powers of CCSC and above is required as the amount of sacrifice involved is very high. In order to bring greater transparency/independence, an External Screening Committee has been created to scrutinize and recommend Compromise proposals which falls under the sanctioning powers of CCSC and above to the concerned Credit Committee. The committee is mandated to examine compromise proposal for verification of various aspects of the proposal to ensure that it is as per the Bank's and RBI guidelines and recommend/ or reject the same for further consideration by the Credit Committees. **However, revalidation/restoration of compromise proposal need not be referred to the External Screening committee provided there are no changes in terms of Compromise.**

The External Screening Committee comprises of external members from the categories of Retired High Court Judges, Retired IPS Officers, Retired RBI officers of the Rank of General Manager and above and Retired Vigilance Commissioners. The committee will have a total of 5 external members. One of them will be the Chairman of the Committee. The quorum required to conduct the Screening Committee Meeting will be 3 external members (including Chairman). The DGM (OTS, Compromise & AUCA at SARG) is a non-member secretary of the committee.

5. Approving Authority: Power to write off net loss

The appropriate authority to approve the compromise proposal will be as per the Scheme of Delegation of Financial Powers based on the net loss involved in the account excepting that such authority should not be the one who sanctioned the advance in question in his individual capacity. The amount of net loss to be written off will be the criteria to decide the competent authority irrespective of the outstanding in the account. While arriving at the net loss for the purpose of compromise exercise, the accrued / notional interest is to be calculated at Prevalent Benchmark Rate (presently

MCLR for 6 months tenor) with annual rests from the date of NPA. In case of decreed cases, the decreed rate has to be used. However, the accrued/notional interest will also be calculated as per contracted rate of interest as hitherto and the net loss at contracted interest rate should also be mentioned in the compromise proposal. In case of non- payment of Bank's dues as per approved terms of compromise, the Bank will be entitled to recover the total dues including accrued/notional interest as per terms of sanction of advance.

Any deviation regarding payment of initial deposit/ upfront money from the compromise policy must be made part of the compromise proposals and the sanctioning authority may approve the deviation sought in the proposals looking at the merit of the case.

The Net Loss is calculated as under:

- Amount Outstanding in the account
Plus
- Notional interest i.e. interest accrued at "MCLR for 6 months tenor with annual rests" but not debited to the loan account up to the last date of the month in which the proposal is submitted by the branch. In case of decreed cases, the decreed rate has to be used. Plus
- Expenses incurred but not debited to the accounts of the borrowers.
Minus
- Amounts of guarantee claims (only the amount retainable by the Bank) and proceeds of sale of assets not credited to the account, for whatever reason; and
- Amount to be received as per compromise settlement.

6. **Staff Accountability**

Staff accountability will need to be examined as usual in compromise cases also. However, the status of this exercise need not hold up decisions covering compromise settlements. However, it will be ensured that the staff accountability examination is completed expeditiously within a timeframe. In cases where staff lapses have been observed on the part of Bank's officials leading to the account becoming NPA, the authority structure for writing off net losses involving compromise proposals is as under:

Writing off net losses falling within the powers of ZCC/ SARCC III and above	Sanctioning authority
Others	Next higher authority

7. Compromise Settlements - PSUs / Advances backed by GoI Guarantee / State Government Guarantee

In respect of non-performing loans to the PSUs and advances backed by GoI Guarantee / State Govt. guarantee, fully / partially, the Bank would be willing to consider compromise settlement offers with the extent of waiver being determined on merits of each case and all such proposals will be sanctioned only by CCCC/ECCB.

8. RBI Clause – Compromise Settlement Proposal is in conformity with RBI directives

The officer/authority sanctioning a compromise / one time settlements should append a certificate stating that the compromise settlements are in conformity with the RBI Guidelines.

9. Compromise Settlement in cases referred to NCLT under IBC:

9.1 In cases where the Bank is CIRP applicant and the application is not yet admitted:

- a. **In case where Bank has filed the CIRP application** and the application is yet to be admitted by NCLT, Branch may negotiate compromise with the borrower subject to following conditions: -
 - a.i. The borrower must pay minimum 25% of total offered compromise amount plus actual CIRP filing expenses upfront.
 - a.ii. Balance compromise amount must be paid within a period of 3 months from the date of compromise approval. Balance compromise amount may also be paid within 6 months from the date of compromise approval provided at least 50% of the Compromise amount is paid within 3 months and before we vote for withdrawal U/s 12A in CoC. In the meantime, Branch may advise our legal counsel to arrange deferment of admission of CIRP till entire compromise amount is received.
 - a.iii. On receipt of entire compromise amount, the Bank's counsel may approach the NCLT to withdrawal of CIRP application.
 - a.iv. The Branch, while accepting compromise offer should also ascertain that no other CIRP application filed by any other creditor is pending before NCLT.
- b. However, in situation A above, where another CIRP application is pending before NCLT, if the payment of dues / compromise amount is proposed to be made by the guarantors or a third party investor without affecting Corporate

Debtor(s)'s assets or funds, the Bank may accept the same and may withdraw the CIRP application from NCLT after receipt of 25% compromise amount plus CIRP application expenses. Remaining funds must also be received within 3 months. (Note: If funds are received from sources other than Corporate Debtor, it will not come under the purview of Preferential Transactions under Section 43 of IBC.)

9.2 In cases where the Bank is not CIRP applicant and the application not yet admitted

In cases where the application for CIRP under IBC is filed by a third party and the same is yet to be admitted no compromise proposal should be considered in such a situation unless the Borrower settles dues of the party who filed the application for CIRP and the application is withdrawn and requisite proof is shown to the Bank.

9.3 In cases where CIRP application is admitted and IRP is appointed

After admission of CIRP application in NCLT, CIRP process commences and IRP is appointed who invites claims and form Committee of Creditors (CoC). Therefore, in such a scenario there may be two type of case:

A. Where the Bank has filed application for CIRP and the Bank is the sole lender:

If Borrower/Corporate Debtor submits compromise proposal after admission of application for CIRP but before formation of CoC, in such type of cases if **the Bank is the sole lender**, the compromise proposal of the Borrower may be considered and the broad procedure mentioned in para 9.1 above as regards payment schedule, may be followed.

B. Where the application for CIRP is not filed by the Bank and there are multi lenders/claimants:

In such cases where the case involve multi lenders / financial creditors and the application for CIRP is already admitted then whether or not CoC is formed or not, the borrower/ Corporate Debtor (CD) will have to settle dues of all such lenders and other claimants so as to have a legally tenable settlement. Therefore, in such cases, following instructions may be followed:-

- a. No compromise proposal may be accepted directly by the Bank in such cases. The borrower/Corporate Debtor may however be advised to approach all the members of CoC with a compromise offer.
- b. Since, under IBC, it is only the Original Applicant who can file application for withdrawal of CIRP, the borrower must also negotiate and settle dues with CIRP applicant and agree him/her for withdrawal of the CIRP and such applicant must approach Resolution Professional with the withdrawal application.
- c. The CD/Borrower may then place his compromise proposal before the CoC for consideration. It is essential that the Borrower/CD settles with all its creditors as it is only CoC (after it is formed by IRP/RP) who can approve proposal for withdrawal of CIRP process with minimum 90% majority vote under Sec 12A of the Code.
- d. In such cases also, the borrower must be asked to deposit the entire compromise amount with all CoC members/Banks within 3 months of CoC approval.

9.4 In cases where liquidation order has been passed by NCLT

- A. No compromise proposal can be accepted from Borrower/CD/Promoters in cases where NCLT has already passed a liquidation order as the Code bars the liquidator or the secured financial creditor to sell assets to a person who is not Sec 29 A compliant. However, this condition shall not apply on MSME borrower who are exempt from the provision of 29 A subject to conditions like not declared wilful defaulter etc.
- B. However, at liquidation stage too scope of settlement with the guarantors of the Borrower remains open as their liability towards Bank is independent of any action against the Borrower. Therefore, at liquidation stage too proposals from guarantors for release of their personal guarantee/ corporate guarantee may be considered.

9.5 Default after compromise approval

- A. Needless to mention that in case of compromise as mentioned above, since, NCLT does not record details of settlement reached between the Borrower/ Lenders, depending upon other legal action taken in the particular case, and depending upon the tenure of payment of OTS amount, suitable order will have to be obtained in such legal proceedings.

- B. If the Borrower/ guarantors default in making payment of the compromise amount, the Bank will be at liberty to recommence the CIRP by moving an application with NCLT/ take other legal steps for recovery of dues.

Any deviation from these provisions can be approved only by SANCTIONING AUTHORITY.

10. Documentation

After concluding the compromise arrangement, the settlement should be documented on the basis of terms & conditions of sanction as per legal requirement.

11. Debt Asset Swap as part of compromise proposals

Debt-Asset swap can be helpful in arriving at compromise settlement in large value NPA accounts, when the settlement amount is proposed to be sourced through disposal of landed properties and when such disposal at reasonable prices is difficult in depressed real estate market conditions. In such cases, the Bank may consider taking over the properties in lieu of settlement amount.

Debt-Asset swap may be considered highly selectively subject to the following:

- (a) Eligibility: Debt Asset Swap to be considered only in cases where no legal problems are envisaged in taking possession, maintenance or peaceful enjoyment thereafter. Minimum value of asset to be swapped for debt as part of compromise is Rs.50 lacs.
- (b) Valuation: The asset should be valued by the Bank's approved valuers besides the Branch Manager / Divisional Manager / Field Officer in R&DB, Relationship Manager / Credit Analyst in CAG /CCG, CLO / CO in SARG.
- (c) Approval
 - All debt - asset swap proposals should be considered only after administrative approval of CGM (Circle/CCG/CAG/SARG).
 - In case of debt-asset swap as part of compromise, the proposal will go through the normal process of screening / sanction / control reporting as applicable to compromises & acquisition of immovable properties.
- (d) Control reporting: Approval for debt-asset swap to be reported to the appropriate Committee in the usual manner.

12. Relending to Borrowers / Guarantors who have settled their dues under Compromise

(i) Ordinarily, no fresh finance will be considered either to the existing unit or to any new unit being promoted by the same promoters / guarantors, whose loans were settled with our Bank or Other Banks/FIs. However, in exceptional cases, fresh finance may be considered by sanctioning authority after minimum cooling period of 3 years from the date of settlement of compromise amount in full, in respect of the following cases:

- a. To the unit for the same activity.
- b. Loan for a new venture by the same promoters/guarantors.
- c. Loan for another unit (existing/promoter) of the same promoters/guarantors, as a new connection.

(ii) Further, the sanctioning authority should be satisfied that the compromise/OTS was due to genuine failure of business and not account of integrity issue as a reason for failure of the unit and promoters/borrowers/guarantors are not in the list of wilful defaulter or not facing any criminal action on account of a fraud / suspected fraud.

(iii) Cooling period may be waived by the authority not below ECCB on merits and on a case to case basis.

(iv) Group Approach: If any of the entities, belonging to group compromised / settled their dues with our Bank / Other Banks/FIs, Bank's approach would be as under:

- a. Existing facilities of other units of the Group: Renewal/Continuation/enhancement of the credit facilities may be considered by sanctioning authority not below than RCCC based on merit of the proposal.
- b. Facilities to the new entity floated by the group: May be considered by the authority not below ECCB.
- c. Further, preliminary view on the approach to other group accounts may be taken at the time of compromise settlement itself. However, the final view, if any, shall be taken by the authority mentioned in (a) & (b) above, as the case may be.

13. Periodicity of review of the Policy: Annual.

14. References

Review of compromise settlement policy, e-Circular No.: CCO/CPD-ADV/167/2019 – 20, dated 18.01.2020.

15. Acronyms

- CAG : Corporate Accounts Group
- CCG : Commercial Clients Group
- SARG : Stressed Assets Resolution Group
- MCLR : Marginal Cost of Funds based Lending Rate
- RCCC : Regional Corporate Credit Committee
- CD : Corporate Debtor
- SARCC : Stressed Assets Resolution Credit Committees

- ECCB : Executive Committee of the Central Board
- CCSC : Corporate Credit Sanction Committee.