

OFFICE MEMORANDUM

Subject: Framework for Revival and Rehabilitation of Micro, Small & Medium Enterprises (MSMEs) Order 2015 (DRAFT)

Kindly refer to this Ministry's O.M. of even No. dated 9.3.2015 seeking comments on the Framework for Revival of Micro, Small & Medium Enterprises. Based on the comments received, the framework has been revised and is enclosed.

2. It is requested that the comments on the revised framework may be sent to this Ministry within 15 days.

A handwritten signature in black ink, appearing to be 'S.N. Tripathi', is written over the date '24/4/15'. The signature is enclosed in a circle.

(S.N. Tripathi)
Joint Secretary

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Email: js.sme@nic.in

Enclosed: As above.

To

1. Governor, Reserve Bank of India, Central Office Building, 18th Floor, Shaheed Bhagat Singh Road, Fort, Mumbai 400001
2. Chief Executive Officer, NITI Ayog, NITI Bhawan, Sansad Marg, New Delhi 110001.
3. Secretary, Ministry of Corporate Affairs, Shastri Bhawan, New Delhi 110001.
4. Secretary, Ministry of Development of North Eastern Region, Vigyan Bhawan Annexe, Maulana Azad Road, New Delhi - 110011
5. Secretary, Department of Economic Affairs, Ministry of Finance, North Block, New Delhi 110001.
6. Secretary, Department of Financial Services, Ministry of Finance, Jeevan Deep Building, Sansad Marg, New Delhi 110001.
7. Secretary, Department of Industrial Policy & Promotion, Udyog Bhawan, New Delhi 110011.
8. Secretary, Ministry of Labour and Employment, Shram Shakti Bhawan, Rafi Marg, New Delhi - 110001.
9. Secretary, Legislative Department, Ministry of Law and Justice, Shastri Bhawan, New Delhi 110001

Issued with concurrence

10. Secretary, Department of Revenue, Ministry of Finance, North Block, New Delhi 110001.
11. Secretary, Ministry of Social Justice & Empowerment, Shastri Bhawan, New Delhi 110001.
12. Secretary, Ministry of Tribal Affairs, Shastri Bhawan, New Delhi 110001.
13. CMD, SIDBI, MSME Development Centre, Plot No. c-11, G-Block, Bandra Kurla Complex, Bandra East, Mumbai 400051

NCEUS Cell/4/2010-Pt
Government of India
Ministry of Micro, Small and Medium Enterprises

Udyog Bhawan, New Delhi 110 107
Dated: April, 2015

DRAFT ORDER

Subject: Framework for Revival and Rehabilitation of Micro, Small & Medium Enterprises (MSMEs) Order 2015

Whereas, the Micro Small and Medium enterprises have limited access to finance and are particularly vulnerable to fluctuation in the business environment brought about by changes in technology and markets, even minor business disruptions causing firms with otherwise bright and innovative ideas to lose their bearings and be driven to insolvency;

And whereas, there is a need to deal with the insolvency of MSMEs in a manner that would enable viable enterprises weather temporary credit disruptions, while allowing unviable entities to close down speedily, liberating various economic resources –financial or human for alternative deployment in the economy;

And whereas, subject to the eligibility criteria and satisfying the grounds referred to in this Framework, all micro, small and medium enterprises (MSMEs) shall have access to a Committee for Distressed Micro, Small and Medium Enterprises for deciding on a Corrective Action Plan (CAP) and determining the terms thereof in accordance with regulations prescribed in this Framework;

And whereas, all banks shall constitute one or more Committees at such locations as may be considered necessary by the board of directors of such bank to provide reasonable access to all eligible micro, small and medium enterprises which have availed credit facilities from such bank;

And whereas, the objective of the framework is to enable MSMEs to seek standard as well as customized relief and concession to revive and tide over difficult financial times and also to provide an easier and expeditious procedure for the benefit of promoters and guarantors to unlock the potential of asset and job creation;

And whereas, for facilitating promotion and development of MSMEs, the Central Government or the State Government, as the case may be, by order notify from time to time, such programmes, guidelines or instructions, as it may deem fit.

Now, therefore, in exercise of the powers conferred in section 9 of the Micro, Small and Medium Enterprises Development (MSMED) Act 2006, the Central Government, for the purpose of facilitating the promotion and development of Micro, Small and Medium

enterprises and enabling their quick adjustment keeping in view the global market conditions, by Order, notifies the Framework for Revival and Rehabilitation of Micro, Small and Medium Enterprises (MSMEs) (hereinafter referred to as the "Order").

2. Short title and commencement. -

2.1 This Order is titled as 'A Framework for Revival and Rehabilitation of Micro, Small and Medium Enterprises (MSMEs) Order, 2015'.

2.2 It shall come into force with effect from date of issue.

3. Identification of incipient stress

3.1 Identification by Banks/creditors: Before a loan account of a MSME turns into a Non Performing Asset (NPA), banks/creditors are required to identify incipient stress in the account by creating three sub-categories under the Special Mention Account (SMA) category as given in the table below:

SMA Sub-categories	Basis for classification
SMA-0	Principal or interest payment not overdue for more than 30 days but account showing signs of incipient stress
SMA-1	Principal or interest payment overdue between 31-60 days
SMA-2	Principal or interest payment overdue between 61-90 days

3.2 Identification by the Enterprise: Any Micro, Small or Medium enterprise may voluntarily initiate proceedings under this Order if enterprise reasonably apprehends failure of its business or its inability or likely inability to pay debts and before the accumulated losses of the enterprise equals to half or more of its entire net worth. The application for initiation of the proceedings under this Order shall be verified by an affidavit of authorized person.

When such a request is received by lender, the account should be processed as SMA-0 and the Committee should be formed immediately.

4. Committees for Distressed Micro, Small and Medium Enterprises.

4.1 Subject to any regulations prescribed by the Reserve Bank for this Order, all banks shall constitute one or more Committees at such locations as may be considered necessary by the board of directors of such bank to provide reasonable access to all

eligible Micro, Small and Medium enterprises which have availed credit facilities from such bank.

4.2 Subject to inclusion in categories referred to in para 3, distressed Micro, Small and Medium enterprises shall have access to the Committee for Distressed Micro, Small and Medium Enterprises as stated in sub para (1) above for deciding on a corrective action plan and determining the terms thereof in accordance with regulations prescribed in this Order:

Provided that where the Committee decides that recovery is to be made as part of the corrective action plan, the manner and method of recovery shall be in accordance with the existing policies approved by the board of directors of the bank which has extended credit facilities to the enterprise, subject to any regulations prescribed by the Reserve Bank.

5. Composition of Committee for Distressed Micro, Small and Medium Enterprises.

5.1 The constitution of the Committee shall be as under:

- (a) The Regional/Zonal head of the bank, who shall be the Chairperson of the Committee;
- (b) Officer in charge of the MSME Credit Department of the Bank at the Regional/Zonal office level, who shall be the member and convener of the Committee;
- (c) One independent external expert with expertise in MSME related matters to be nominated by Bank.
- (d) One representative from State Government

5.2 The composition of the Committee, the terms of appointment of its members, the manner of filling vacancies, and the procedure to be followed in the discharge of the Committee's functions shall be as prescribed by the board of directors of the Bank

6. Application to the Committee for a Corrective Action Plan (CAP).

6.1 Any eligible distressed Micro, Small or Medium Enterprise or a bank/creditor which has provided credit facilities to such enterprise may file an application to the Committee in the prescribed manner for a decision on a corrective action plan and the terms thereof:

Provided that if a Micro, Small or Medium Enterprise has availed credit facilities from more than one bank-

- (a) the application shall be made to the Committee of that bank to which the enterprise owes the maximum amount of debt;
- (b) such Committee shall include representatives from other concerned banks in such proportion as maybe specified in the regulations prescribed by the Reserve Bank;
- (c) the participating banks/affected creditors shall cooperate with each other in all proceedings of the Committee; and
- (d) in case of a disagreement between the participating banks/affected creditors on any issue before the Committee or any matter contemplated in this Order, such disagreement shall be resolved in accordance with regulations prescribed by the Reserve Bank.

6.2 The eligibility criteria and the grounds for filing an application and the time limits within which such application shall be made will be in accordance with the regulations prescribed by the Reserve Bank . Only applications meeting the said eligibility criteria and grounds will be admitted by the Committee.

6.3 Where an application is filed by a Micro, Small or Medium Enterprise, such application shall be -

- (a) filed in a form prescribed by the Central Government in consultation with the Reserve Bank ; and
- (b) accompanied by details of all liabilities of the enterprise, including the liabilities owed to State or Central Government and unsecured creditors, if any.

6.4 Where an application is filed by a bank and admitted by the Committee, the Committee shall notify the concerned enterprise about such application within the time limit prescribed by the Reserve Bank and require the enterprise to -

- (a) respond to the application or make a representation before the Committee; and
- (b) disclose the details of all its liabilities, including the liabilities owed to State or Central Government and unsecured creditors, if any, within fifteen working days of receipt of such notice:

Provided that if the enterprise does not respond within the above period, the Committee may proceed ex-parte and no appeal (including appeal against 'recovery' option if decided by the Committee) against the decision of the Committee will be permitted.

6.5 On receipt of information relating to the liabilities of the enterprise, the Committee may send notices to such creditors of the enterprise as it may deem fit, informing

them about the application and permit them to make a representation before the Committee within fifteen working days of receipt of such notice:

6.6 On admitting an application received the Committee shall take a decision on the option to be adopted under the corrective action plan in accordance with the regulations prescribed by the Reserve Bank and notify the enterprise about such a decision, within the time limit prescribed by the Reserve Bank.

6.7 If the corrective action plan decided by the Committee envisages revival of the enterprise, the Committee shall finalize the terms of such a plan in accordance with the regulations prescribed by the Reserve Bank and notify the enterprise about such terms, within the time limit prescribed by the Reserve Bank.

6.8 Upon finalization of the terms of the corrective action plan for revival, the implementation of that plan shall be completed by the concerned banks within the time limit prescribed by the Reserve Bank. On and from the date of the coming into operation of the corrective action plan the plan shall be binding on all the parties to the corrective action plan.

6.10 On admitting the application, the Committee shall notify the enterprise within a period of 7 (seven) working days from the date of admittance of such application, stating that such an application is under consideration by the Committee.

6.12 The Committee shall make suitable provisions for payment of taxation or any other statutory dues in the corrective action plan and the enterprise shall take necessary steps to submit such plan to the concerned taxation or statutory authority and obtain approval of such payment plan.

7. Corrective Action Plan (CAP) by the Committee

7.1 The Committee may explore various options to resolve the stress in the account. The intention is not to encourage a particular resolution option, e.g. restructuring or recovery, but to arrive at an early and feasible solution to preserve the economic value of the underlying assets as well as the lenders' loans and also to allow the enterprise to continue with its business. During the period of operation of Corrective Action Plan (CAP), the enterprise shall be allowed to avail both secured and unsecured credit for its business operations.

The options under Corrective Action Plan (CAP) by the Committee may include:

7.1.1 Rectification - Obtaining a specific commitment from the borrower to regularize the account so that the account comes out of SMA status or does not slip into the non-performing asset (NPA) category. The commitment should be supported with identifiable cash flows within the required time period and without involving any loss or sacrifice on the

part of the existing lenders. If the existing promoters are not in a position to bring in additional money or take any measures to regularize the account, the possibility of getting some other equity/strategic investors to the company may be explored by the Committee in consultation with the borrower. These measures are intended to turn-around the entity/company without any change in terms and conditions of the loan. The Committee may also consider providing need based additional finance to the borrower, if considered necessary, as part of the rectification process. However, it should be strictly ensured that additional financing is not provided with a view to ever-greening the account.

7.1.2 Restructuring - Consider the possibility of restructuring the account if it is prima facie viable and the borrower is not a willful defaulter, i.e., there is no diversion of funds, fraud or malfeasance, etc. At this stage, commitment from promoters for extending their personal guarantees along with their net worth statement supported by copies of legal titles to assets may be obtained along with a declaration that they would not undertake any transaction that would alienate assets without the permission of the Committee. Any deviation from the commitment by the borrowers affecting the security/recoverability of the loans may be treated as a valid factor for initiating recovery process. For this action to be sustainable, the lenders in the Committee may sign an Inter Creditor Agreement (ICA) and also require the borrower to sign the Debtor Creditor Agreement (DCA) which would provide the legal basis for any restructuring process. The formats used by the Corporate Debt Restructuring (CDR) mechanism for ICA and DCA could be considered, if necessary with appropriate changes for Enterprise Debt Restructuring (EDR) as may be prescribed by Reserve bank of India. Further, a 'stand still' clause could be stipulated in the DCA to enable a smooth process of restructuring. The 'stand-still' clause does not mean that the borrower is precluded from making payments to the lenders. The ICA may also stipulate that both secured and unsecured creditors need to agree to the final resolution.

7.1.3 Recovery - Once the first two options at (a) and (b) above are seen as not feasible, due recovery process may be resorted to. The Committee may decide the best recovery process to be followed, among the various legal and other recovery options available, with a view to optimizing the efforts and results.

7.2 The decisions agreed upon by a majority of the creditors by value in the Committee would be considered as the basis for proceeding with the restructuring of the account, and will be binding on all lenders under the terms of the ICA. However, if the Committee decides to proceed with recovery, the minimum criteria for binding decision, if any, under any relevant laws/Acts would be applicable.

7.3 The Committee is required to arrive at an agreement on the option to be adopted for CAP within 30 days from (i) the date of an account being reported as SMA-2 by one or more lender, or (ii) receipt of request from the borrower to form a Committee, with substantiated grounds, if it senses imminent stress. The Committee should sign a detailed final CAP within the next 30 days from the date of arriving at such an agreement.

7.4 If the Committee decides on options (1) (a) or (b), but the account fails to perform as per the agreed terms under option (1) (a) or (b), the Committee should initiate recovery under option (1) (c).

8. Restructuring Process

8.1 RBI's extant prudential guidelines on restructuring of advances lay down detailed methodology and norms for restructuring of advances under sole banking as well as multiple/ consortium arrangements. If the Committee decides restructuring of the account as CAP, it will have the option of either referring the account to EDR Cell after a decision to restructure is taken or restructure the same independent of the EDR mechanism.

8.2 Any creditor may seek information from the Committee at any time during the operation of the CAP.

9. Restructuring by Committee

9.1 If the Committee decides to restructure an account independent of the EDR mechanism, the Committee should carry out the detailed Techno-Economic Viability (TEV) study, and if found viable, finalise the restructuring package within 30 days from the date of signing off the final CAP as mentioned above.

9.2 For accounts with aggregate exposure (AE) of less than Rs.100 million, the above-mentioned restructuring package should be approved by the Committee and conveyed by the lenders to the borrower within the next 15 days for implementation.

9.3 For accounts with AE of Rs.100 million and above, the above-mentioned TEV study and restructuring package will have to be subjected to an evaluation by an Independent Evaluation Committee (IEC) of experts fulfilling certain eligibility conditions. The IEC will look into the viability aspects after ensuring that the terms of restructuring are fair to the lenders. The IEC will be required to give their recommendation in these cases to the Committee within a period of 30 days. Thereafter, considering the views of IEC if the Committee decides to go ahead with the restructuring, the restructuring package including all terms and conditions as mutually agreed upon between the lenders and borrower, would have to be approved by all the lenders and communicated to the borrower within next 15 days for implementation.

9.4 Asset Classification benefit as applicable under the extant guidelines will accrue to such restructured accounts as if they were restructured under EDR mechanism. For this purpose, the asset classification of the account as on the date of formation of Committee will be taken into account.

9.5 The above-mentioned time limits are maximum permitted time periods and the Committee should try to arrive at a restructuring package as soon as possible in cases of simple restructuring.

9.6 Restructuring cases will be taken up by the Committee only in respect of assets reported as Standard, SMA or Sub-Standard by one or more lenders of the Committee. While generally no account classified as doubtful should be considered by the Committee for restructuring, in cases where a small portion of debt is doubtful i.e. the account is standard/sub-standard in the books of majority of creditors (by value), the account may then be considered under Committee for restructuring.

9.7 Willful defaulters will normally not be eligible for restructuring. However, the Committee may review the reasons for classification of the borrower as a willful defaulter and satisfy itself that the borrower is in a position to rectify the willful default. The decision to restructure such cases should however also have the approvals of the board/s of individual bank/s within the Committee who have classified the borrower as willful defaulter.

9.8 The viability of the account should be determined by the Committee based on acceptable viability benchmarks determined by them. Illustratively, the parameters may include the Debt Equity Ratio, Debt Service Coverage Ratio, Liquidity/Current Ratio and the amount of provision required in lieu of the diminution in the fair value of the restructured advance, etc. Further, the Committee may consider the benchmarks for the viability parameters adopted by the EDR mechanism and adopt the same with suitable adjustments taking into account the fact that different sectors of the economy have different performance indicators.

10. Restructuring Referred by the Committee to the EDR Cell

10.1 If the Committee decides to refer the account to EDR Cell after a decision to restructure is taken the following procedure may be followed.

10.2 As the preliminary viability of account has already been decided by the Committee, CDR/EDR Cell should directly prepare the Techno-Economic Viability (TEV) study and restructuring plan in consultation with Committee within 30 days from the date of reference to it by the Committee.

10.3 For accounts with AE of less than Rs.100 million, the above-mentioned restructuring package should be submitted to EDR Empowered Group (EG) for approval. Under extant instructions, EDR EG can approve or suggest modifications but ensure that a final decision is taken within a total period of 90 days, which can be extended up to a maximum of 180 days from the date of reference to EDR Cell. However, the cases referred to EDR Cell by Committee will have to be finally decided by the EDR EG within the next 30 days. If approved by EDR EG, the restructuring package should be approved

by all lenders and conveyed to the borrower within the next 30 (thirty) working days for implementation.

10.4 For accounts with AE of Rs.100 million and above, the TEV study and restructuring package prepared by EDR Cell will have to be subjected to an evaluation by an Independent Evaluation Committee (IEC) of experts. As stated in section 9 (3), composition and other details of the IEC would be communicated separately by IBA to banks. The IEC will look into the viability aspects after ensuring that the terms of restructuring are fair to the lenders. The IEC will be required to give their recommendation in these aspects to the EDR Cell under advice to Committee within a period of 30 days. Thereafter, considering the views of IEC if the Committee decides to go ahead with the restructuring, the same should be communicated to EDR Cell and EDR Cell should submit the restructuring package to EDR EG within a total period of 7 days from receiving the views of IEC. Thereafter, EDR EG should decide on the approval/modification/rejection within the next 30 (thirty) working days. If approved by EDR EG, the restructuring package should be approved by all lenders and conveyed to the borrower within the next 30 (thirty) working days for implementation.

11. Other Issues/Conditions Relating to Restructuring by Committee/EDR Cell

11.1 Both under Committee and EDR mechanism, the restructuring package should also stipulate the timeline during which certain viability milestones (e.g. Improvement in certain financial ratios after a period of time, say, 6 months or 1 year and so on) would be achieved. The Committee must periodically review the account for achievement/non-achievement of milestones and should consider initiating suitable measures including recovery measures as deemed appropriate.

11.2 Restructuring whether under Committee or EDR is to be completed within the specified time periods. The Committee and EDR Cell should optimally utilize the specified time periods so that the aggregate time limit is not breached under any mode of restructuring. If the Committee/EDR takes a shorter time for an activity as against the prescribed limit, then it can have the discretion to utilize the saved time for other activities provided the aggregate time limit is not breached.

11.3 The general principle of restructuring should be that the shareholders bear the first loss rather than the debt holders. With this principle in view and also to ensure more 'skin in the game' of promoters, Committee/EDR may consider the following options when a loan is restructured:

- (a) Possibility of transferring equity of the company by promoters to the lenders to compensate for their sacrifices;
- (b) Promoters infusing more equity into their companies;

- (c) Transfer of the promoters' holdings to a security trustee or an escrow arrangement till turnaround of enterprise. This will enable a change in management control, should lenders favor it.

11.4 In case a borrower has undertaken diversification or expansion of the activities which has resulted in the stress on the core-business of the group, a clause for sale of non-core assets or other assets may be stipulated as a condition for restructuring the account, if under the TEV study the account is likely to become viable on hiving-off of non-core activities and other assets.

11.5 For restructuring of dues in respect of listed companies, lenders may be ab-initio compensated for their loss/sacrifice (diminution in fair value of account in net present value terms) by way of issuance of equities of the company upfront, subject to the extant regulations and statutory requirements. In such cases, the restructuring agreement shall not incorporate any right of recompense clause. However, if the lenders' sacrifice is not fully compensated by way of issuance of equities, the right of recompense clause may be incorporated to the extent of shortfall. For unlisted companies, the Committee will have option of either getting equities issued or incorporate suitable 'right to recompense' clause.

11.6 In order to distinguish the differential security interest available to secured lenders, partially secured lenders and unsecured lenders, the Committee/EDR could consider various options like:

- (a) Prior agreement in the ICA among the above classes of lenders regarding repayments, say, as per an agreed waterfall mechanism;
- (b) A structured agreement stipulating priority of secured creditors;
- (c) Appropriation of repayment proceeds among secured, partially secured and unsecured lenders in certain pre-agreed proportion.

The above is only an illustrative list and the Committee may decide on a mutually agreed option.

11.7 It also needs to be emphasized that while one bank may have a better security interest when it comes to one borrower, the case may be vice versa in the case of another borrower. So, it would be beneficial if lenders appreciate the concerns of fellow lenders and arrive at a mutually agreed option with a view to preserving the economic value of assets. Once an option is agreed upon, the bank having the largest exposure may take the lead in ensuring distribution according to agreed terms once the restructuring package is implemented.

11.8 As regards prudential norms and operational details, RBI's guidelines on EDR Mechanism, including OTS, will be applicable to the extent that they are not inconsistent with these guidelines.

12. Prudential Norms on Asset Classification and Provisioning

While a restructuring proposal is under consideration by the Committee/EDR, the usual asset classification norm would continue to apply. The process of re-classification of an asset should not stop merely because restructuring proposal is under consideration by the Committee/EDR. However, as an incentive for quick implementation of a restructuring package, the special asset classification benefit on restructuring of accounts as per extant instructions would be available for accounts undertaken for restructuring under these guidelines.

13. Willful Defaulters and Non-Cooperative Borrowers

Banks are required to strictly adhere to the guidelines issued by RBI from time to time regarding treatment of Willful Defaulters.

14 Review.

14.1 In case the Committee decides that recovery action is to be initiated against an enterprise, such enterprise may request for a review of the decision by the Committee within a period of fifteen working days from the date of receipt of the decision of the Committee.

14.2 The request for review shall be on the following grounds:

- (a) a mistake or error apparent on the face of the record; or
- (b) discovery of new and relevant fact/information which could not be produced before the Committee earlier despite the exercise of due diligence by the enterprise.

14.3 application filed under this section shall be decided by the Committee within a period of thirty days from the date of filing and if as a consequence of such review, the Committee decides to pursue a fresh corrective action plan for revival of the enterprise shall apply accordingly.

15 Removal of difficulties

Any difficulties experienced during the course of implementation of the above Framework shall be clarified by the Ministry of Micro Small and Medium Enterprise and/or Reserve bank of India as the case may be, through suitable press releases which shall be kept in public domain.