

Chairman's Office

Enclosed please find herewith the Guidelines for preparation of DRS along with check list for adoption by all Benches. This has the approval of Hon. Chairman and all Hon. Members.

(V. Arumugham)

PPS to Hon Chairman

Date :- 30-04-2008

PPS to HM(BS)

PPS to HM(KCV)

PPS to HM(PR)

Consultant (AB), Consultant (KG), Consultant & (WVGVRAB),

BO-II, BO-III, SO(B-I)

DD(MON)

GUIDELINES FOR PREPARATION OF REHABILITATION SCHEME

1.1 The company shall provide detailed, item-wise inventory of all its fixed and current assets with their book values as on the last ABS date and also estimated as on the cut-off-date (COD). It shall also furnish detailed break up of all its liabilities, as on the same dates, under the heads of (i) Secured dues (of banks, institutions and others with break up into Principal, simple/ compound interest and other charges etc.); (ii) Unsecured dues including electricity dues (with break up into pressing creditors and others); (iii) Workers' dues; (iv) Dues towards Government/ statutory/ local bodies/ PF/ ESI: and (v) Contingent liabilities, if any. In case the last balance sheet is yet to be audited, provisional figures may be given. In such a situation, the previous year's ABS figures should be shown. The above information based on ABS/ estimates, as on above dates, should be supplied to BIFR (4 sets), within a period of (4) weeks. This information should be duly certified by the company's Director (Finance)/ statutory auditor. Amounts below Rupees one lakh each could be clubbed together. The details, as on the COD, shall form an Annexure to the revival proposal as also the draft rehabilitation scheme (DRS) to be circulated by the Board, if rehabilitation is feasible. No DRS will be circulated in the absence of this information.

1.2 The company in their proposal shall specify the cut off date (COD) and indicate clearly as to when their net worth will become positive. The period for the rehabilitation scheme (i.e. the period by which accumulative losses will be wiped out) should be minimum possible and in any case not exceed seven years, i.e. the limit fixed by RBI guidelines in this regard.

1.3 In case the company has not undertaken valuation of its assets by any Govt./ Bank approved valuer in the recent past, the company shall get its fixed assets valued by Govt./bank approved valuer, within a period of three (3) weeks time, at its own cost. The valuation Report must be shared with all concerned agencies immediately upon receipt of the same and four (4) copies thereof would also be submitted to BIFR.

1.4 If so ordered specifically by BIFR, prior to formulation of any draft scheme for revival, a detailed Techno-Economics Viability (TEV) study should be carried out by the OA at the company's cost. The appointment of the technical consultants would be finalized in consultation with the company but the OA's decision in this regard would be final. The TEVS and Valuation Reports should be shared with all concerned agencies from whom reliefs and concessions are being envisaged immediately on receipt, and four copies thereof submitted to BIFR. In case the TEVS valuation report is bulky, only a gist thereof may be submitted to BIFR copies.

1.5 While conducting the T.E.V. study the following should be kept in view:-

- a) The current industry profile as well as the perspective for the next 5-6 years, with appropriate demand forecasting and competitive environment.
- b) Desirable cost reduction measures.
- c) Managerial competence of the promoters and the executive level suggesting improvements therein.
- d) Contingent liabilities.

2. The company shall submit a comprehensive and fully tied up proposal, indicating verifiable means of finance, within a period of four (4) weeks, to all concerned from whom it expects reliefs. The proposal should preferably be based on RBI parameters. Failing that, chances for one time settlement (OTS) of secured dues of the company could also be explored.

3. As a certain time-gap between preparation of the draft scheme by the company/MA vis-à-vis its sanction by the BIFR would be inevitable, the company/OA, besides ensuring repayment of the crystallised dues up to the COD, would also ensure that the fund required to meet such liabilities for this intervening period is also provided in the draft scheme to be considered by the Board.

4. The company shall furnish in their proposal the names and addresses of all concerned agencies from whom reliefs/concessions are required u/s 19 of SICA, clearly indicating reliefs & concessions envisaged from each.

5. The scheme should take care of all the known liabilities of the company. Dues of the unsecured creditors should also be given appropriate treatment, which, however, should not be better than the one provided for the secured dues of the company.

6. In respect of Govt./statutory/local bodies, only those reliefs & concessions should be included which have reasonable prospects of being granted. The dues of the pressing creditors such as State Electricity Boards (SEBs) etc. should be covered. If any sacrifices are expected from workers, the same shall be discussed with them and their written consent shall be obtained.

7.1 The Company/ OA would ensure infusion of atleast 30% of the total cost of the revival scheme (excluding the value of reliefs & concessions and other sacrifices, by the promoter(s). The projections in the draft scheme should not exceed the industry's average and the DSCR should not fall below 1.33.

7.2 Any shortfall in cash-flow projections should be met by the promoters by bringing in interest-free fund from sources outside the company. Various measures for strengthening and streamlining the management set-up like appointment of Concurrent Auditor(s); constitution of Management Committee and appointment of nominee Directors shall be suggested. Specific dates should be mentioned for discharging each of the commitments/obligations.

8.1 Working capital needs should be assessed in consultation with Banks with a consensus arrived at on the method of lending, quantification of irregular component and other connected issues, like margin requirement, level of inventory, and level of finance as per latest credit policy of RBI.

8.2 As per loan agreements, the company would be required to route its sale proceeds/ transactions through its financing banks. Banks should allow the sick company to operate its accounts without any tagging unless tagging is permitted by BIFR or agreed to by the company. If the company is permitted by BIFR to maintain accounts with another bank, statement of account from such bank should be given to the financing banks by the company at monthly intervals to enable them to verify the utilization of sale proceeds.

9. The company shall not dispose of, lease out, encumber or alienate any of its fixed or current assets, without specific prior approval of BIFR. However, if the unit is working, the current assets could be utilized for running day-to-day operations, subject to keeping proper records thereof and routing all transactions through the account with the company's financing bank(s) only unless specifically permitted as stipulated under 8.2.

10. The company/promoter(s) can induct strategic investor(s)/ co-promoter(s), but the company/ existing promoter(s) would ensure that such induction of strategic investor(s) / co-promoter(s) does not entail 'change of management' (COM) of the company. The company/ promoter(s) would furnish the details of such strategic investor(s)/ co-promoter(s) along with the copies of MOU(s)/ agreement(s) entered into with them. In case COM of the company is envisaged, by way of introduction of strategic investor(s)/co-promoter(s), the same need to be done through a transparent process and the Company/OA shall obtain specific prior permission of BIFR for COM.

11. The company shall note that protection of Section 22(1) of SICA would not be available to it against withholding of any of the workers' dues, including EPF & ESIC dues (other than damages levied, if any), gratuity, wages for the working period, etc. The company shall not default in the timely payment of any such dues on the ground that its case is pending with the BIFR.

12. The secured and unsecured creditors are not permitted to file/pursue suits already filed at this stage. The Bench, however, would reconsider its decision in this regard, if the directions issued by the Board are not complied with by the company, within the given time frame.

13. In case of change in the Accounting Year beyond 3 months, prior approval for the same may be obtained from the concerned Registrar of Companies.

14. ESIC and EPF authorities shall convey their dues with break-up viz principal, interest, penalties, etc. to the OA within a period of 4 weeks, along with the acceptable mode of payment thereof as per their policy.

15. BIFR may consider change of management (COM) if the company is not able to submit a fully tied up rehabilitation scheme within a reasonable time.

16. The company would allow the OA to have access to all information and allow inspection of the plant and furnish authentic data to them, as required, promptly. Any instance of non-cooperation or delay on the company's part would be viewed seriously. The OA in turn shall ensure that the roles of BIFR's OA and Bank/ Financial institution as the lending organizing are kept distinct. The actual cost to be incurred by the OA shall be borne by the company.

17. Failing availability of any acceptable proposal & other relevant information from the company within the given time frame, the OA may work out a fully tied up scheme of its own under RBI guidelines, if practicable. Such a scheme could be offered to interested parties if change of management becomes necessary in future.

18. The OA, upon receipt of the draft revival proposal (DRP) from the company, would examine/ consider the same in a joint meeting (JM) of the concerned agencies from whom the reliefs & concessions are being envisaged and, in case the said proposal is found to be feasible/ viable and also found to be generally acceptable by the concerned agencies from whom

the reliefs & concessions are being envisaged, the OA would prepare a draft of revival scheme for the company's revival in corporating, inter-alia, therein the outcome of discussions/ decisions in the said JM and submit the same to the Board, along with the minutes of the JM for its further consideration by the Board. The OA would complete this exercise of preparation of draft scheme for the company's revival within a period of six (6) weeks from the date of receipt of the draft revival proposal from the company.

18.2 In case the OA does not receive the draft revival proposal from the company within the stipulated time frame or the OA finds that the company's draft revival proposal is not fully tied-up with the 'means of finance' and/or the said proposal is not feasible/ viable/ acceptable to the concerned agencies, from whom the reliefs & concessions are being envisaged, the OA would inform the Board forthwith, along with their views/recommendations regarding further course of action, based on which the Board would pass further appropriate order(s) according to law, without holding any further hearing.

19. In case, the company wants to submit a rehabilitation scheme u/s 17(2) of SICA, the company should submit the draft scheme complying with the guidelines mentioned above except that there will be no Operating Agency/ Joint Meeting. The company should also submit consent letters from the concerned agencies from whom reliefs are being envisaged. In case, such written consents are received from all concerned along with the draft scheme as aforesaid, BIFR may consider approving the scheme without circulation of the DRS for consent and without holding any hearing.

Check list for preparation of Draft Rehabilitation Scheme

S.No.	Subject	Tick in the appropriate column		
		Yes	No	NA
1.	Background of the company and products manufactured – when declared sick by BIFR-subsequent developments/ orders, if any, and compliance thereof.			
2.1	Cut off date			
2.2	Share holding pattern as on			
2.3	Names of Directors			
3.	Reasons for sickness			
4.	Strategy to overcome the reasons for sickness and for revival- Availability of managerial and technical personnel- raw material-power –water-pollution control issues- marketing etc. if any Techno-Economic Viability study was done, brief details to be given.			
5.1	Details of dues of secured creditors and settlement reached with them indicating the percentage at which they will be settled.			
5.2	Details of dues of unsecured creditors and how they will be settled (indicating percentage at which dues will be settled).			
5.3	Details of dues of workers and whether their written consent obtained for settlement.			
5.4	Details of statutory dues and how they will be settled.			
6.	In case of modified scheme, details of implementation of the scheme so far.			
7.	Financials:			
7.1	Cost of the Scheme and Means of Finance			
7.2	Past performance			
7.3	Whether projected balance sheet and profit and loss A/C attached.			
7.4	Whether projected cash flow statement attached.			
7.5	Whether DSCR worked out (if there are any dues to be repaid- even other than Bank dues- over a period, DSCR should be worked out)			
8.	Capital Restructuring			
8.1	Whether any strategic investor(SI) is being brought in and OA has checked SI's background and found it satisfactory			

8.2	Any derating of equity- if so, details			
8.3	Details of infusion of funds/equity			
8.4	Price at which shares will be issued and present market value of the company's shares.			
8.5	Whether infusion of funds will result in change of management (COM); if so, the process adopted for COM.			
9.	Sale of surplus assets, if any, proposed with details of the assets like machinery and extent of land and location.			
10.1	Details of reliefs sought with name and address of the agency concerned and whether the reliefs sought are within the policy guidelines of the concerned agency/ Govt. (no relief under FEMA, Urban Land Ceiling Act and criminal proceedings should be included)			
10.2	Other terms and conditions			
11.	Viability			
11.1	Date on which net worth will become positive.			
11.2	Date on which accumulated losses will be wiped out (i.e. end of scheme period)			
12.	In case of merger whether resolutions passed by the shareholders meeting for merger. Audited Balance Sheet of the company with whom the sick company will be merged is to be enclosed. Net worth of both the companies to be stated. Basis of share exchange ratio is to be mentioned.			
13.	Date of Joint Meeting and whether minutes enclosed.			
14.	In case of DRS u/s 17(2) whether consent of all agencies from whom relief is sought enclosed.			
15.	Details of Court case, if any, pending.			

Signature of Authorized
Official of the company
Date:

Signature of the OA
Date:

NA- not Applicable