

CMDs/ MDs/ CVOs
All Public Sector Banks

Subject: Invoking personal guarantee in case borrower company defaults

It has been observed that there are a less number of cases where action has been taken for recovery against guarantors for attachment of assets owned by them and sell the same for recovery of defaulted loan.

2. While sanctioning credit facilities to Companies, it is a standard practice to obtain personal guarantees from promoter directors holding controlling shares in the company in addition to any other individual or corporate guarantees. In the event of default in repayment or the loan by the borrower company, all the guarantors are liable to repay the guaranteed loan with interest as the liability of the guarantor is co-extensive with the principal-debtor (borrower). The action can be taken against guarantor even without suing the principal debtor for recovery and even if the decreed amount is covered by mortgaged decree.


3. It is the prevailing practice to obtain full particulars of assets owned by the guarantors to assess to net-worth of the guarantors and such particulars are kept updated while review/renewal of credit facilities of the company.

4. Therefore, it would be prudent to take steps against guarantors immediately when no sign of revival is visible:

- (a) if any guarantor has created security interest over any property / asset owned by him, the steps should be taken under section 13 of the SARFAESI Act, 2002 for enforcement of security against the guarantors;
- (b) if the guarantor has given any pledge of shares held by him, the steps should be taken to sell the pledged shares, under section 176 of the Indian Contract Act, 1872;
- (c) if the guarantor has not created any security interest over his property but owns property and other assets in the application for recovery filed before the Debt Recovery Tribunal, the bank should move application before DRT for attachment and sale of such property under section 19(12) to (18) of the RDDB &FI Act, 1993;
- (d) Usually, as a part of the working capital limits sanctioned by the banks, book debts and receivable of goods and services sold by the borrower, are charged and hypothecated to the bank. Such book debts therefore constitute secured assets which can be enforced under Section 13(4) (d) of SARFAESI Act. The banks should keep a watch on periodical statement of Book-debts and Receivables submitted by the borrowers and the steps should be taken by the bank for attachment and recovery of such book-debts under section 13(4) (d) of the SARFAESI Act wherever necessary.

This issues in consultation with Reserve Bank of India.

Yours faithfully,


(Tirth Ram)

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