CORPORATE DEBT RESTRUCTURING: A SOLUTION WITH ITS OWN ISSUES

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Abstract

In some of the occasion the companies find themselves in difficulty due to factors which are beyond their control. Because of which they are unable to pay the debts. For revival of such corporate and for the safety of the money that is invested by investor, the method of corporate debt restructuring was introduced by RBI.

The Corporate Debt Restructuring system covers multiple banking accounts, syndication accounts, where all banks and institution together have an outstanding aggregate exposure of Rs.100 million and above. Even cases filed in Debt Recovery Tribunals/Bureau of Industrial and Financial Reconstruction/and other suit-filed cases are eligible for restructuring. Corporate Debt Restructuring Core group after it get satisfied that the company is unable to pay its debt, grant them the opportunity under Corporate Debt Restructuring.

Even though this mechanism has proved beneficial in much case but at the same time there are many loopholes attach to this mechanism which proves this solution to be a problem in itself.

This Article will deal with the mechanism, what are the loopholes in the present mechanism with the help of examples in India, what are the steps that can be taken to eradicate the issue involved with this mechanism.

Introduction

In the era of globalization, Indian industries are starving to survive because of the competition. Due to which companies are facing financial hardships so to revive these industries it is necessary to restructure their debts corporate debt restructuring is one of such mechanism.

Corporate debt restructuring in which banks, financial companies aid those companies which are facing financial difficulties due to external and internal affairs. Corporate Debt Restructuring is a non statutory mechanism .The real motive behind this mechanism is to provide timely support to a company and revive them so that interest of shareholders, investor, stakeholders and parties who are acting as stake holders can be protected. If the trouble of financial hardship poses high risk of insolvency one can negotiate with lenders and decrease their chance of insolvency. Corporate debt restructuring is used by companies facing such financial hardship

A section of stake holder sees Corporate Debt Restructuring as a solution. But at the same time it is seen corporate debt restructuring mechanism is only able to solve the problems of large companies small companies continue to starve. The Corporate Debt Restructuring Mechanism covers multiple banking accounts, syndication/consortium accounts, where all banks and institutions together have an outstanding aggregate exposure of Rs.100 million or above. It is a mechanism which only come in picture when there is an approval super-majority of 75% creditors (by value) making it binding on the remaining 25% to fall in line with the majority decision.

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Restructuring have existed from late 1970’s when RBI i.e. Reserve bank of India have issued guidelines and instruction for the people who were affected by natural calamities. Since then the instruction are turned into guidelines that have to be followed to restructure the debt of companies facing financial difficulties. After the slowdown of 2008, there has been a spurt in the number of companies going for Corporate Debt Restructuring. The heart of the mechanism, the Corporate Debt Restructuring cell, had 401 cases as on March this 2013, involving a debt of Rs 2,29,000 crore, compared with 292 cases involving Rs 1,50,000 crore up to March 2012, a rise of 50%. This amount was half as on March 2009. While restructuring a loan bank give a borrower longer time loan to repay old loan converting working capital outstanding into terms loan. Corporate Debt Restructuring is beneficial and by number of stake holder it is seen as a solution but there are certain drawback to this mechanism which will be discussed in detail in this article.

**Corporate Debt Restructuring**

Corporate debt restructuring is a process in which banks and financial institution aid those companies, who are facing financial difficulties due to internal and external affairs, to restructure their debts. Corporate Debt Restructuring is a non statutory mechanism. The main objective of Corporate Debt Restructuring is to save company stakeholders, investors, investors and other parties who landed loans from losses that will occurred when a company will become insolvent. Corporate Debt Restructuring gives a company another chance to survive. The banks or financial institution issues fresh loans for a longer duration to these companies, to pay back the old loans.

It is a mechanism which only come in picture when there is an approval super-majority of 75% creditors (by value) making it binding on the remaining 25% to fall in line with the majority decision. Company has to show that it has some asset to initiate the restructuring.

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3 corporate debt restructuring current scenario and Evaluation of times ahead


Corporate Debt Restructuring-give-good accessed on 11-10-2016

This mechanism is formed to save the company from becoming insolvent. Once the company become insolvent it loose its “separate legal entity” status . Corporate Debt Restructuring can be done in a number of ways. Preference shares can be converted into equity shares; overall debts can be converted into shares, a part of debt can be waived by the creditors, Inter-Creditor Agreements can be modified, contingent claims can be revalue and settled, and assets and liabilities can be redistributed. Corporate Debt Restructuring involved various stages like making an agreement between the parties, consideration of the proposals between the parties and providing additional funds to the company at a higher rate of interest by the lenders so that the company can carry on its business activities and do not become insolvent. Corporate Debt Restructuring mechanism has three tiers (I) Corporate Debt Restructuring standing forum (ii) Corporate Debt Restructuring core group (iii) Corporate Debt Restructuring empowered group.

**Historical Background of Corporate Debt Restructuring in India**

Restructuring have existed from late 1970’s when RBI i.e. Reserve bank of India have issued guidelines and instruction for the people who were affected by natural calamities. Since then the instruction are turned into guidelines that have to be followed to restructure the debt of companies facing financial difficulties. In 2001, RBI came up with the certain guidelines that will be followed by banks and other financial institutions. In the guidelines RBI stated that the Corporate Debt Restructuring mechanism is voluntary and if 75% of creditor decide to aid the company rest 25% will have to agree. Corporate Debt Restructuring is also available to only those companies which have taken loan from multiple creditors, the outstanding amount of debt of all the creditors and lenders should be 100 million or above in aggregate. It covers all categories of assets categorized by the RBI in terms of prudential assets classification standards. Cases which are filed with the Debt Recovery Tribunal, The Bureau of Industrial and Financial Reconstruction or any other case are qualified for reconstruction under Corporate Debt Restructuring. A bank or a financial institution can refer for Corporate Debt Restructuring if it has a 20% share in working capital or term loan of the company. Corporate Debt Restructuring group at its meeting held on April 29, 2015 update all the


10 ibid


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guidelines relating to corporate debt restructuring and also all policy decision taken by group. This scheme of strategic debt restructuring (SDR) allows the banks to convert a part of the debt owed to them by corporate into equity and is actively being used to kick the bad loans can down the road. In continuation of these efforts and in order to further strengthen the lenders ability to deal with stressed assets and to put real assets back on track by providing an avenue for reworking the financial structure of entities facing genuine difficulties, the RBI has on 13th June 2016 issued guidelines for a Scheme for Sustainable Structuring of Stressed Assets (S4A).

**Corporate Debt Restructuring Mechanism In India**

Corporate Debt Restructuring mechanism have three tiers

1. Corporate Debt Restructuring Standing forum
2. Corporate Debt Restructuring Empowered group
3. Corporate Debt Restructuring Cell

**Corporate Debt Restructuring Standing Forum**

It is a representative body of banks and financial institution. It is self empowered group which makes policies rules and regulations and guidelines. It also give chance to creditor and borrower to make policies beneficial to everyone. The Corporate Debt Restructuring Standing Forum comprises of Chairman and Managing Director, Industrial Development Bank of India Ltd Chairman, State Bank of India Managing Director and CEO, ICICI Bank Limited Chairman, Indian Banks Association as well as Chairmen and Managing Directors of all banks and financial institutions participating as permanent members in the system.

**Corporate Debt Restructuring Empowered Group**

Individual cases of corporate debt restructuring are decided by this group. This group consists of Executive director level representatives of Industrial Development Bank of India Ltd., ICICI Bank Ltd. and State Bank of India as standing members, in addition to ED level representatives of financial institutions and banks who have an exposure to the concerned company. It is empowered group who check the viability and

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13 Vivek Kauls diary In 2016, banks will continue to kick the bad loans can down the road available at [https://www.equitymaster.com/diary/detail.asp?date=01/07/2016&story=1&title=In-2016-banks-will-continue-to-kick-the-bad-loans-can-down-the-road](https://www.equitymaster.com/diary/detail.asp?date=01/07/2016&story=1&title=In-2016-banks-will-continue-to-kick-the-bad-loans-can-down-the-road) accessed on 06-11-2016


16 ibid
rehabilitation potential of company and approves restructuring package with 90 days, or at maximum 180 days from the date when it receive reference. Decision of empowered group is final and after the decision is made company is put on restructuring mode or if the scheme is rejected than the necessary steps are taken for winding up of company.

Corporate Debt Restructuring Cell

The Corporate Debt Restructuring cell is the one who scrutinize the proposal made by borrower, creditor by calling rehabilitation plan and puts the matter before empowered group to decide within one month. If the proposal is found valid than this group further prepare detailed rehabilitation plan with the help of creditors and borrowers.

Corporate Debt Restructuring In India

After the guidelines were issued by RBI in 2001 within 2001 to 2005 Corporate Debt Restructuring has dealt with 138 cases where total debt was more than 75,000 crore. 75 percent of these cases were successfully completed with the companies able to meet their debt obligations. In 2009 by December the cell received 208 cases where total amount was 90,888 crore. From these cases 29 cases of amount 5018 crore were not accepted with a total amount of 5018 crores. There was an increase in number of cases in 2008-2009 by 300 percent.

Parag Jariwala and Vikesh Mehta of Religaire Institutional Research write in a research note titled Strategic debt restructuring: A band-aid for a bullet wound "Indian banks went on a massive restructuring spree over 2012-2013 and 2013-2014. The corporate debt restructuring (CDR) cell received 530 cases till March 2015 from banks looking to restructure debt aggregating to Rs 4 lakh crore without classifying these accounts as NPAs."

With the increase in number of cases the failure rate to pay back debt also increases, as Jariwala and Mehta point out: "On the whole, the success of Corporate Debt Restructuring in rehabilitating stressed assets remains in question - the failure rate for the above restructured cases has increased to 36% in September 2015 from 24% in September 2013. Out of the 530 cases received, close to 190 cases aggregating to Rs 70,000 crore has exited Corporate Debt Restructuring due to repayment failures." Most of these failures have been with regard to loans where banks had entered into a moratorium of two years with corporate, for repayment of principal amount of the loan from 24% in September 2013 to 36% in September 2015.

The main reason for the failure is the intention not to pay back the loan. Ashish Gupta, Prashant Kumar and Kush Shah of Credit Suisse write in a research note titled Failed Corporate Debt Restructuring now Strategic Debt restructuring: "Strategic Debt restructuring allows banks to convert part of their debt to equity to take

\[18\] ibid
\[19\] ibid
\[20\] ibid
\[21\] ibid

\[22\] Vivek Kaul’s diary, In 2016, banks will continue to kick the bad loans can down the road available at https://www.equitymaster.com/diary/detail.asp?date=01/07/2016&story=1&title=In-2016-banks-will-continue-to-kick-the-bad-loans-can-down-the-road accessed on 06-11-2016

\[23\] ibid
\[24\] ibid
controlling stake (at least 51%) in the stressed company and thereby, banks can effect change in ownership wherever existing management is not performing. This gives banks significant power while dealing with non-performing or non-cooperating promoters.” This turn banks from week lender to a equity shareholder which can be further sell to a new promoter, by the scheme of June2015. These restructured loans are put through strategic debt restructuring (SDR) which allows banks to convert its loan into equity shares. They need not to consider it as bad loan if one does not repay the loan, because of the guidelines they become the owner of equity shares.

**Difference between Corporate debt restructuring and Strategic debt restructuring**

In 2001 RBI issued guidelines for corporate debt restructuring. According to which Banks and financial institute provides loan to the company who find difficulty in repaying the loan. These institution or banks provide loan by decreasing the rate of interest or by increasing the time to repay the loan. Whereas on the other hand Strategic debt restructuring which was introduced on June 8, 2015 allow bank to convert their outstanding debt into equity shares. Mainly strategic debt restructuring come in picture when the company unable to revive the loan taken by them from the bank to repay their previous loan of creditors. Company misused the corporate debt restructuring mechanism that provides a solution to repay their loan because of which Reserve Bank of India introduced the strategic debt restructuring. Bank does not become the owner in corporate debt restructuring whereas in Strategic debt restructuring if the company fail to revive the loan than the bank become the owner by occupying the equity shares of the company. Strategic debt restructuring changes the attitude of the borrower. In Corporate debt restructuring the intension of the borrower became malafide as there is a lack of strict provision but in strategic debt restructuring it does not happen. Corporate debt restructuring has three tiers which include corporate debt restructuring standing forum, Corporate Debt Restructuring Empowered group, Corporate Debt Restructuring Cell. Whereas in strategic debt restructuring the joint lenders forum is formed who have the power to decide the method of conversion of loan into equity shares. The main issue in Corporate debt restructuring is whether the company facing financial difficulty will be provided loan or not whereas in strategic debt restructuring main issue is whether loan can be converted into equity shares or not. Strategic debt restructuring covers the entire asset which has been restructured by corporate debt restructuring or any other restructuring whereas corporate debt restructuring covers all categories of assets in the books of creditors classified in terms of RBI’s prudential asset classification standards.25

**Examples of Corporate Debt Restructuring mechanism in India**

1. **IVRCL Ltd.**

Due to the loss company was not able to repay its debt as a result they opt an option of corporate debt restructuring method to repay their loans. They approached Corporate Debt Restructuring cell in January

25 SDR Scheme of RBI : All you need to Know about Strategic Debt Restructuring
2014. Approval by Corporate Debt Restructuring cell was granted in June 2014 comprising restructuring of loans, working capital loans and fresh financial assistance by the banks. IVRCL fail to revive, banks adopted Strategic Debt restructuring in November 2015 with lenders owing 78 percent of equity shares in the company.

2. **Lanco Infratech Ltd**

Lanco infratech ltd is involved in sectors like power, real estate and reconstruction. They grant an approval on December 2013. Lenders include Allahabad bank, bank of Baroda, Canara bank, Axis Bank, Andhra Bank, ICICI Bank, Oriental Bank of Commerce, Punjab National Bank, among others. They got itself revived debt restructuring package approved by both private and public sectors lenders involving Rs 11,155 crore and conversion of Rs 3024 crore loan into equity. The option of conversion of debt into equity will allow the lenders to gain control with a stake of 65.83% after expansion of their equity base.

3. **Neesa Leisure Ltd**

Neesa leisure is involved in hospitality sector. In 2012, they got the approval for Corporate Debt Restructuring package. The total exposure was 400 crore. The lenders include ICIC Bank, Axis Bank, and small industries development bank. In March 2012, the rating agency ICRA downgraded its term loan servicing ability and also its non convertible debentures were downgraded.

4. **Electrosteel Steels**:

Firm took debt to fund it’s under construction Greenfield integrated steel and ductile iron pipes plant in Jharkhand. In May 2013 firm approached Corporate Debt Restructuring cell after facing financial difficulties

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26 Sunny Verma, Strategic Debt Restructuring scheme: ‘A solution, with its own problems’ available at


access on 16-11-2016

27 ibid

28 By Amrit Subhadarsi, Corporate Debt Restructuring- Strategies under Indian Legal Regime available at


29 ibid

30 ibid

31 ibid
to pay back its loan. In September 2013 they receive the approval. But the company failed to revive because of which Strategic Debt restructuring was adopted in July 2015.

5. **Gammon India Ltd.**

In 2013 Gammon India ltd. which is an engineering and construction company. Corporate Debt Restructuring Package involving Rs. 13,500 crore was approved in 2013. Due to slow economic growth and depreciation of rupee there was an adverse effect on Infrastructure Company. Since these factors were beyond the control of company so Corporate Debt Restructuring package was approved. In Gammon India’s case, banks have a fund based exposure of Rs 3500 crore and leading lenders were ICICI Bank Ltd and Canara Bank Ltd.32

**Loopholes in Corporate Debt Restructuring Mechanism**

Corporate Debt Restructuring mechanism is a helping hand to a company who is on verge of insolvency. This helping hand is only available to the large companies having multiple creditors, the outstanding amount of debt of all the creditors and lenders should be 100 million or above in aggregate according to the guidelines of RBI. The main problem about this mechanism is that many companies in order to repay their old loan took enormous debt the interest on such debt is so high that it becomes impossible for them to repay even if they intend to pay. For example Essar Steel's debt grew by more than Rs 20,000 crore in the past four years to Rs 38,379 crore. Its interest payout ballooned from Rs 737 crore to Rs 4,076 crore, dragging it into the red with a net loss of Rs 805 crore in 2013/14. 33

Even after this condition some companies are even ready to swap their high cost debt to lower cost one but this option is only available to strong balance sheet like “Vedanta” "We are working on refinancing our debt due in 2015/16. The focus of the group is to de-leverage and the debt is largely obtained for refinancing for cost reduction or extending the debt maturity profile," says Tarun Jain, Whole Time Director, Vedanta Resources, whose holding company for India businesses - Sesa Sterlite - has total debt of Rs 80,568 crore.34 Corporate Debt Restructuring mechanism provide an exit route to many companies as other financial institution and banks are ready to purchase these loans. It acts as a preventive measure rather than productive measure. With the increase in number of cases the failure rate to pay back debt also increases as Jariwala and Mehta point out” On the whole, the success of Corporate Debt Restructuring packages in rehabilitating stressed assets remains in question - the failure rate for the above restructured cases has increased to 36% in September 2015 from 24% in September 2013. Out of the 530 cases received, close to 190 cases aggregating to Rs 70,000 crore has exited Corporate Debt Restructuring due to repayment failures." Most of these

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32 ibid


34 ibid
failures have been with regard to loans where banks had entered into a moratorium of two years with corporate, for repayment of principal amount of the loan. The longer delayed period to pay loans or non payments of these loans affect the profitability of banks and financial institution. This system gives thrust to fund flow rather than cash flow. The main reason behind the non payment is the lack of interest and corporation from promoters. Seeing the increase in non payment Corporate Debt Restructuring group at its meeting held on April 29, 2015 update all the guidelines relating to corporate debt restructuring and also all policy decision taken by group. In continuation of these efforts and in order to further strengthen the lenders’ ability to deal with stressed assets and to put real assets back on track by providing an avenue for reworking the financial structure of entities facing genuine difficulties, the RBI has on 13th June 2016 issued guidelines for a scheme for Sustainable Structuring of Stressed Assets (S4A).

This scheme of strategic debt restructuring allows the banks to convert a part of the debt owed to them by corporate into equity and is actively being used to kick the bad loans down the road.

This showed corporate debt restructuring system has not proven to be effective rather than it has enhanced losses and affects the profitability of banks and financial institutions.

Changes that can be introduce

Corporate debt restructuring is a helping hand to a company which are facing financial difficulties in repaying its debt. Banks, financial institute provide loan to these companies for a longer period and help them to save their company stakeholders, investors, investors and other parties who landed loans from the losses that will occurred when a company will become insolvent. But there are certain loophole attach to this mechanism and which in itself proved to be an issue. The loans provided by these financial institute and banks are personally used by the director and promoters. Their malafide intension of not repaying the loan affects the economy. To prevent this situation RBI introduces strategic debt restructuring which allows the...

35 Vivek Kaul’s diary, In 2016, banks will continue to kick the bad loans can down the road available at https://www.equitymaster.com/diary/detail.asp?date=01/07/2016&story=1&title=In-2016-banks-will-continue-to-kick-the-bad-loans-can-down-the-road accessed on 06-11-2016


38 vivek kauls diary In 2016, banks will continue to kick the bad loans can down the road

banks to convert a part of the debt owed to them by corporate into equity shares. This mechanism was used by banks to revive loans from Lanco Infratech Ltd.

System should be made more transparent stakeholders. Investor and other parties who landed loans should be informed about the utilization of loan taken by the company through corporate debt restructuring mechanism. Directors and promoters should be made answerable to the Members and other parties who have an interest in the company about the steps initiated by them to repay the loans. Guidelines should be strictly followed and wherever it is proved the intension of the borrower is malafide strict action should be taken to revive the loan.

**Insolvency and Bankruptcy Code, A new corporate bankruptcy regime for India**

Present laws like corporate debt restructuring, Security and Enforcement, Sick industries act (SICA) proved to be inefficient and week for the present scenario. To tackle the situation government of India planned to bring a new law on bankruptcy that is Insolvency and Bankruptcy code, 2015. It was introduced in the court in the lower house of Parliament on 22nd December 2015. Two objective of the insolvency and bankruptcy code, 2015 are:-

- Fair settlement of legal claims through an equitable distribution of debtor’s asset.
- To give an opportunity to debtor for a fresh start.

Delay in taking decision whether of reorganisation or of selling of asset affects the employees, shareholders, creditors and even the economy of country to prevent the situation A committee headed by former Law Secretary T.K Vishwanathan proposed the following

- Maximum period of 180 days which can be extended to 90 days will be providing to deal with insolvency and bankruptcy case.
- During this period management of business will vest in the hands of Resolution professional who will be expert in dealing such cases. These experts will be supervised by proposed new regulator.
- These people have to work for repayment plan rather than to revive the firm. The code will be applicable on the limited liability partnership, and companies. Insolvency and bankruptcy code of India will setup which will have its agencies and experts. The adjudicating authority for insolvency issues of a Company/LLP is prescribed to be the National Company Law Tribunal (“NCLT”) and National

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40 ibid
Company Law Appellate Tribunal ("NCLAT"), and for individuals and partnership firms, it is the extant Debt Recovery Tribunal ("DRT") and Debt Recovery Appellate Tribunal ("DRAT").

**Procedure of Insolvency and Bankruptcy Code, 2015**

Proceeding will start as soon as there is a default of debt. Financial creditor, operational creditor, corporate itself can start the proceeding.

Financial creditor can file proceeding with the national tribunal along with the proof of default. They should also suggest financial interim resolution to manage the defaulter.

There is prior condition for Operational creditors have to send a 10 day notice to the debtor before taking the action or Defaulting company can itself start proceedings by making a reference to the adjudicating authority.

Within 14 days tribunal or adjudicating authorities have to determine the default. After determining the default application will be admitted. The Adjudicating Authority shall declare the moratorium to protect the assets and allow the company to function. The Interim Resolution Professional shall be appointed within 14 days from the date of admission to run the company. The entire financial creditor will set a committee to draft a resolution which will contain 75% vote. This committee shall confirm the resolution to the interim resolution professional for managing the resolution process. On being satisfied the plan will be approved by the adjudicating authority and shall be binding on all stakeholders. If the resolution plan is not within the specified time, not according to the rules, if debtor company violate the terms of resolution than the committee of creditor request for liquidation than the adjudicating authority can order liquidation.

This code will ensure speedy process it can be winding up or releasing of productive asset to protect the interest of creditors.

**Comparison between corporate debt restructuring Insolvency and Bankruptcy Code**

Corporate debt restructuring come into picture when the company is facing financial difficulty to repay its loan because of the reason which are beyond their control. The interested party come into an arrangement

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42. ibid
43. ibid
44. ibid
45. ibid
46. ibid
47. ibid
like exchanging their debt for number of shares, or interested party fixed a moratorium period.\textsuperscript{48} In corporate debt restructuring company does not lose its separate legal entity.\textsuperscript{49} To enter into corporate debt restructuring company has to show that they have some asset to support their restructuring.\textsuperscript{50}

Due to the inefficiency of the corporate debt restructuring insolvency and bankruptcy code was introduced. In insolvency company lose its separate legal entity. The main motive behind the Insolvency code is to wind up and give another chance to debtor to have a fresh start.

**Conclusion**

If Corporate Debt Restructuring mechanism is judged it can be seen that it is mechanism which helped the companies to come out of financial crisis which can even cause to its winding up. Even though this mechanism was formed as a helping hand but this system is misused by the companies. The Corporate debt restructuring mechanism has since inception till 30\textsuperscript{th} Sept. 2015 approved 530 cases for restructuring out of which 189 cases have failed and 257 cases are at various stages of implementation. Only 87 cases have been successfully implemented.\textsuperscript{51}

Strategic Debt restructuring scheme can prove a right step that is taken by RBI to control the defaulter borrowers. There are certain loopholes in the prevailing system like it is helping hand only for the companies having strong balance sheets or having multiple creditors this barrier should be removed and every company whether small or large should receive benefit of the mechanism. Corporate Debt Restructuring Mechanism should strengthen the lenders ability to deal with stressed assets. Loopholes which are attach to this mechanism and which turn this solution to be an issue should be eradicate. Utility of the loan taken through corporate debt restructuring by the companies should be a factor to judge whether the intension is malafide or not. If it is found that the intension is malafide than strict action should be taken against the directors and promoters of the company. Transparency can be improved by making aware the interested person especially members of the company aware of the steps that should be taken by the promoters, directors to revive back the loan. To check whether the directors and promoters are following the rules meeting should be conducted at a regular interval till the debt is repaid. If all the steps are followed than this mechanism can be a solution which has no issues.

\textsuperscript{48} Pramit Bhattacharya, Corporate Debt Restructuring in India available at http://blog.ipleaders.in/corporate-debt-restructuring-

\textsuperscript{india/} accessed on 20-11-2016

\textsuperscript{49} ibid

\textsuperscript{50}ibid


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