CORPORATE DEBT RESTRUCTURING: COMPARATIVE ANALYSIS OF THE LAWS OF DIFFERENT COUNTRIES FROM AN INDIAN PERSPECTIVE

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INTRODUCTION

The aim of this paper in undertaking an analysis of the laws of different counties on corporate debt restructuring (CDR), is to understand the mechanism of corporate debt restructuring as it has evolved, from its roots as a supplement to financial restructuring in times of a systemic crisis to becoming a formal procedure for the rescue of distressed companies under insolvency law. The objective of this paper is to propose a critique of the mechanism as a part of formal bankruptcy procedure vis a vis the objectives behind instituting this mechanism and the existing procedures in corporate insolvency law. In the light of this analysis, a review of the mechanism as it exists in India is sought to be undertaken.

WHY CORPORATE DEBT RESTRUCTURING?

Corporate debt restructuring has developed as a mechanism outside the framework of existing insolvency law. A study of the evolution of the mechanism would reveal that it has developed primarily in countries which have undergone a systemic crisis, where the existing bankruptcy law was found to be inadequate.[1]

Insolvency law prescribes for distressed companies primarily two kinds of solutions. The first developed from the common law where the company is liquidated outright.[2] The second, based on the American approach[3], where the stakeholders in the process believe that the company is a viable entity which is capable of recovering from its current crisis and therefore the company goes in for a court approved restructuring i.e. the business is reorganized under a plan negotiated between the parties with the sanction of the court. In both these cases, however, the process is time consuming and tedious since it is a formal procedure where the interests of all the stakeholders have to be given due consideration.[4]

While the existing system itself provides sufficient justification for the development of new kinds of mechanisms to make the system more efficient and viable, the reasons for the development of this particular mechanism lie as much in the weaknesses of insolvency law as outside it.

Most of the countries which adopted corporate debt restructuring did so in situations of acute financial crisis where the entire economy was in a shut-down mode. The crises that were caused were due to serious mishaps in the financial sector, which led to the economy urgently requiring liquid assets. The corporate sector's distress, which was to a large degree, a direct fallout of the financial crises could not, therefore, be resolved through a process where the assets of the company were proposed to be tied down for a very long period of time. Additionally, the need of the hour was for stability in the private sector to promote economic growth and preserve the country's industrial capacity to steer it out of the crisis. Every effort had to be made to keep the companies as going concerns by a process that was efficient and speedy. This meant resorting to informal mechanisms whereby the concerned parties could directly negotiate with each other or under the aegis of a third party usually in the form of the government or some other delegated authority.

It is to satisfy the twin objectives of financial restructuring and providing stability to the private sector that the mechanism of corporate debt restructuring was evolved. It, accordingly, made allowances for the stakeholders in the process which, in normal corporate practice would have been struck down. The justification - that unusual times required unusual remedies.

COMPARATIVE ANALYSIS

Prelude : Financial Crisis and Corporate Debt Restructuring

The intricate link between the evolution of the mechanism of corporate debt restructuring and financial crises requires that any discussion on the evolution of the mechanism has, as a prelude, a brief understanding of the various financial crises as well.

The conception of the CDR mechanism evolved during the British industrial crisis of the 1970s which followed the archetypical first generation model of currency crisis, characterized by evident macroeconomic mismanagement. The second phase of the mechanism's development was in the background of the global financial crisis of the 1990s. The 90s crisis set a unique precedent, attacking countries with seemingly good financial indicators[5] and left in its wake a completely revamped new financial and corporate legal regime. The crisis began in 1992 with the ERM crisis when the British pound and Italian lira were forcibly devalued. This was followed in 1994 by Mexico and other Latin American countries like Argentina[6] (the so-called *Tequila* effect). While the crisis was inexplicable for countries like Britain who had undergone serious reform, others like Mexico and Argentina had been the victims of economic mismanagement though the record for reform in all these countries was successful.[7]

An unexpected series of financial crises soon followed with the Asian crisis , beginning with Thailand in July, 1997 and affected Malaysia, Indonesia and the Philippines in the summer of 1997. The next wave affected Hong Kong, the Republic of Korea and, again, Indonesia. Singapore and Taiwan were affected to lesser extent. The Asian Tigers who enjoyed a reputation of fast growing, macroeconomically balanced and highly competitive economies had advanced considerably to the middle or even higher-middle income group in a single generation. However, there were deep rooted weaknesses in the economy in the financial and corporate sectors. The impact of this crisis was felt externally,[8] particularly in other emerging markets like Russia and Ukraine which were experiencing chronic fiscal imbalances. While they initially resisted speculative attacks in August, 1998, they succumbed to the crisis, in turn affecting other Soviet countries and Latin American economies like Brazil and Argentina in 1999. The impact of this large scale collapse of emerging economies was felt in the developed world as well. Countries like Japan underwent their own financial recession while other like the US were in 1998 teetering at the brink. Though these nations were able to protect themselves, the indicators of a global economic recession such as a substantial drop in prices of oil and other basic commodities could not be avoided. The legacy of the 90s global crisis was that, in one stroke it destroyed the reputation of several emerging economies imposing a huge burden on them to prove themselves yet again before the international community.

The mechanism of CDR evolved through the combined experiences of these countries, where some, like the East Asian economies, absorbed it whole-heartedly, while others like the Soviet economies[9], failed miserably. The model that was uniformly adopted in all these countries was the London Approach which forms the backbone of the legal and policy framework on debt restructuring.

The London Approach[10] : In the mid 1970s, the United Kingdom entered a period of industrial recession with high inflation. Commercial banks had to quickly establish internal policies and mechanisms in order to deal with a rapidly increasing number of bad loans. This was a tough proposition under the existing system. While on the one hand the banks themselves had little experience with 'workouts', the insolvency legislation was outdated and did not provide for such a voluntary restructuring process. No safeguards were provided for the bank such as the protection of new money invested and a system that would limit the ability of a small group of creditors to block a workout settlement between the majority of creditors and the company.

It was under these circumstances that the Bank of England chose to become actively involved in individual company workouts. The Bank's main objectives were:

1. minimize losses to the banks and other parties occurring from unavoidable company failures, through coordinated and well-prepared workouts
2. avoid unnecessary liquidations of viable companies, through their reorganization and the preservation of employment and productive capacity and
3. prevent failure/closure by ensuring the provision of interim financial support to companies.

The Bank was in a unique position to help these companies. On the one hand it enjoyed wide powers, not being subject to banking regulations; on the other, it enjoyed the complete trust of companies as being an impartial, independent, and confidential body. It thus took an active role in the proceedings providing a forum for the participating banks, arranging for one of the major lenders to assume the role of lead banker in cases where there was a failure on the part of the concerned bank to act as such. On behalf of the debtor corporation, it insisted on immediate action such as payment of wages and prevented the premature liquidation of companies as a result of a "renegade bank" calling in it's loans. It also provided the necessary safeguards for the process with agreements on new money, special arrangements for prioritization of debts and even changes in company management. All this was undertaken by the Bank, without committing any of its own funds.

However in the 1980s, the election of a market oriented government, radical changes in the economy, sustained economic growth and changes in the financial sector, with new forms of corporate finance instruments[11] being introduced, the Bank of England began to review its role in the process, wishing to avoid direct contact with the companies. Thus in 1989, when there was another economic downturn, the Bank chose to give the role of developing restructuring strategies to the private sector while it adopted a supervisory role, motivating parties to negotiate with each other.

In the early 1990s, the Bank, after consultation with other banks, refused to codify the rules, fearing a challenge to them by foreign creditors. As a testament to the flexible nature of the process, the Bank sought to develop the process through speeches rather than a formal policy document. The London Approach thus remains as a guiding force whose success depends on the support it receives from the banking community.

The approach had some basic ground rules which were to be followed by the parties to the process. These were :

a. **Among creditors**: Principal creditors must be willing to consider non-judicial settlement over formal insolvency procedures. The company's bankers holding debt should agree to maintain the company's facilities in place. Any new money lent for the purpose of restructuring could be provided by all lenders on a pro rata basis or specific lenders by a priority arrangement or by releasing the proceeds of asset disposal subject to priority considerations. Seniority of claims was to be recognized between the creditors and losses to be shared equally between creditors of a single category. If creditors found the company to be viable, further benefits maybe provided in the form of longer-term financial support including an interest holiday, extension of loan maturities, further lending for working capital and conversion of debt into equity. To facilitate discussions between the creditors, a coordinating or lead bank may be designated and a steering committee of creditors formed.
b. **Between the creditor and debtor** - The creditor could independently review the long term viability of the company drawing on information shared between all the parties to the workout. Drawing on the independent review, the company's main creditors should work together to reach a joint view on whether, and on what terms, a company is worth supporting in the longer term. Changes in the company's longer-term financing need to be conditioned on the implementation of an agreed business plan, which may well involve management changes, sales of assets or divisions, or, even, the takeover of the company.

The London Approach did not guarantee the survival of a company in difficulty and did not apply to insolvent or troubled banks. Despite its non binding nature, it proved to be successful, rescuing distressed companies in the 70s, 80s and 90s and was subsequently adopted by countries across **Europe**[12], ultimately becoming a role model for debt restructuring in counties across the world.[13]

Parallelly, **Latin American** countries were also adopting mechanisms of debt restructuring. Like the London Approach, the evolution of the mechanism can be divided into phases. In the early 80s[14] countries like Mexico[15] and Chile underwent debt restructuring which was rudimentary in nature, catering to a specific domestic crisis and marked by excessive government control[16]. The second phase, the currency crisis of the 1990s was a more successful one with countries like Mexico and Argentina evolving a more refined mechanism of debt restructuring. The latest phase which is now being implemented by countries like Brazil and Argentina has met with mixed results. For this discussion, the Mexican crisis is taken by way of illustration.

The Mexican crisis of 1994 was spurred by a political crisis which spilled over into an economic recession. The nature of restructurings undertaken were different from prior attempts because a larger amount of debt was held as Eurobonds by diverse foreign investors[17], who lacked the power to bargain unlike international banks.[18] The process of restructuring which replaced the government mediated one of the 1980s was *ad hoc* and controlled by Mexican banks, who were riven with conflict of interest, allowing them to gain the advantage over foreign debt holders.[19] The Mexican experience, in its initial phase, had excessive government control with little or no direct interaction between the creditor and the debtor, though the debtor did ultimately benefit with generous incentives being provided to encourage participation. The second phase, however, witnessed domestic creditors taking an upper hand, with the gradual replacement of government control with *ad hoc* mechanisms.

The **East Asian** crisis marked a clear break in the approach hitherto followed by countries across the world, preferring a creditor friendly approach. The policy framework in these countries, though devised by the government, featured banks in a central role. Though the crisis affected all eight South East Asian countries, in terms of the evolution of the mechanism of corporate debt restructuring, four countries played a key role namely Thailand, Korea, Malaysia and Indonesia.

The **Bangkok Approach**[20] was a combination of policy framework and the civil contractual approach. Under the former a *Corporate Debt Restructuring Advisory*

Committee was set up, while the latter was based on debtor creditor and inter-creditor agreements.[21] In **Korea**[22], the majority of the debt was held by the *chaebols*. To restructure them the government had devised a succesful *Capital Structure Improvement Plan*,. Local financial institutions signed a *Corporate Restructuring Agreement (CRA)*, that in the case of small and medium firms, individual workout agreements are negotiated between the debtors and creditors.[23] The *Corporate Restructuring Coordination Committee* (CRCC) set the terms for the restructuring while the *Financial Supervisory Commission* (FSC) ensures creditor banks extend funds and institute debt equity swaps.[24] Korea is also one of the first countries to frame a law on CDR to replace the CRA. The *Corporate Restructuring Promotion Law* extends the application of CDR to all financial institutions and seeks to get rid of the problem of free riding creditors[25] by providing them with an exit option.

Malaysia established the *Corporate Debt Restructuring Committee* under the Bank Negara Malaysia. The guidelines framed by this body are similar to that of the London Approach. The asset reconstruction company *Danharta AMC* plays a central role in the process by buying out recalcitrant creditors. [26] In **Indonesia**[27], CDR has been given a relegated role, with emphasis being primarily placed on the existing bankruptcy procedures. The *Jakarta Initiative Task Force* that was thus set up was primarily a recommendatory body, with the *Indonesian Bank Restructuring Agency* (IBRA)[28] having the powers of enforcement over creditors and debtors. The Indonesian system is however advanced to the extent that the entire process is subject to public scrutiny with the *Corporate Debt Restructuring Advisory Committee*, an expert committee consisting of members from the private sector, reviewing it.[29]

The experiment of the East Asian economies with corporate debt restructuring raises certain interesting issues. Since none of the countries had either the experience or the resources to conduct such restructuring on their own and all of their economies ran a very real risk of collapse, all of them modeled their law on the London Approach instituting rules and guidelines for voluntary restructuring, which were built directly on the Approach. Despite this, a detailed assessment of the frameworks developed in this region showed several divergences from the London Approach. The background of the crisis which affected these countries, the institutional approach to corporate debt restructuring and the supplementary changes that were undertaken in the legal regime, supporting financial structure and the economy as a whole, distinguish the approach to corporate debt restructuring adopted by these countries from the London Approach.

The challenge these economies faced was to make their system more transparent and remove the corruption that had infiltrated their governmental and corporate structure. They underwent a series of structural adjustments particularly in the financial sector, under the guidance of the World Bank and the IMF, which aided the restructuring process. None of these measures were required to address the British crisis. Further, a number of statutory and regulatory reforms and incentives were also introduced which were aimed at facilitating the process of restructuring.[30] Changes promoting corporate reorganization, strengthening of prudential norms of financial institutions and encouraging open competition were often imposed. By contrast, in the United Kingdom, there were pre-existing structures and mechanisms in place to facilitate the implementation of the London Approach. The bankruptcy laws were also modified to make them stricter as a sort of negative incentive for debt restructuring. Lastly, the approach in these countries was different from the London approach, as it made the system of debt restructuring more formal, with rules, guidelines and even laws, to monitor the process. A vast array of *ad hoc* institutions were created to deal with financial and corporate restructuring which were given extensive prerogatives and their power was frequently amplified and supported by government action.

In fact, though the mechanisms in these countries developed at the same time under similar circumstances, they differed widely from each other. Experts attribute the different approaches to the different political[31], cultural[32], legal[33] and economic situations[34] in these countries. The crisis showed how, in each country, the structure was adapted to meet local conditions and needs The relationship between business and government, the nature of corporate debt, the extent to which debt was denominated in foreign currency, how much debt was held domestically - all influenced the particular framework adopted.[35] The experience of the East Asian Crisis richly contributed to the development of the mechanism of CDR and may be termed as marking the second phase of the process. The simultaneous adoption of the mechanism and the different approaches and success enjoyed by them, provide a suitable platform to critique the mechanism and to use them to build a model for the future.

The impact of the East Asian crisis was felt across the world as countries particularly in the Asian region began to rapidly change their legal and policy framework to accommodate this new process. While some like Hong Kong and China adopted a half hearted approach, incorporating the mechanism more in form than in principle[36], others like Japan learnt its lessons well and when it was struck with its own crisis, published an advanced set of guidelines on out of court workouts.[37] This latter document set down defined targets which the creditors would have to make the company meet[38]. In the current set up, countries across the world including Turkey[39] and India have adopted the process.

The mechanism of corporate debt restructuring has today become the new buzzword as more and more creditors in countries are beginning to realize, that with or without the harsh lessons of a financial crisis, it is only in aiding and supporting distressed companies that they stand to gain. No matter how tough the insolvency mechanism, the time consuming and tedious nature of the process, not to mention the high social costs like loss of employment make CDR a better alternative any day. It is in recognizing this that the **International Federation of Insolvency Professionals (INSOL International**) adopted in October 2000 ***The Statement of Principles For a Global Approach to Multi – Creditor Workouts.***[40] The eight principled approach encapsulates the essential principles of the CDR mechanism as it has been applied in countries across the world, encouraging creditors to observe the stand still clause, debtors to provide full, and complete information, compliance with local laws and encouraging greater cooperation between the creditor and debtor to save the company.

CRITIQUE OF THE MECHANISM OF CORPORATE DEBT RESTRUCTURING

The London approach has for long formed the backbone of the framework on CDR. However after nearly three decades of the London approach as the mechanism is poised to become truly global in approach, [41] there is a need to review the existing model and incorporate the lessons learnt from the past. More importantly as seen from the

INSOL principles, the mechanism of CDR today is making a transition from being yet another instrument to help countries combat situations of financial crisis to becoming a full fledged institutional process aiding distressed corporations to help rehabilitate themselves. It is therefore essential to note what are the modifications required to make the transition smooth.

Perhaps the first issue that needs to be addressed in critiquing this mechanism is to understand the relation that the mechanism has with the overall structure of the economy. The primary importance of CDR lies in the fact that it, unlike its alternatives in insolvency law, can provide a speedy and effective remedy to the distressed debtor corporations and a better opportunity to the creditors to recover the loans extended. Being an informal mechanism, it has to rely exclusively on the existing support structures in the local economy. As seen from the experiences of other countries, for the mechanism of CDR to be successful, there needs to be supplementary changes made in related sectors of finance, law, governance etc. These changes could be ones which are essential for the system itself like financial restructuring in distressed economies, introducing principles of corporate governance or making insolvency laws more efficient and stringent. In helping these systems to function better, the CDR process would ultimately benefit. Often these changes may act as a welcome incentive, for example, stringent insolvency laws encourage debtors to go in for CDR. It could also be in the form of direct incentives such as tax concessions and regulatory benefits which are awarded in a number of countries.

In turn, CDR as a mechanism is subject to the interests of the concerned state. Thus as we have seen that, though the basic model followed in all the countries which have adopted CDR has been the same, the process which each country has developed and the success it has enjoyed has been uniquely its own. While some like Gerald E. Meyerman[42] have viewed this adaptation negatively, blaming it on the inability of these economies to develop as evolved a system as the British one, others[43] view it as yet another instance of how a one size fits all Western approach cannot yield results. Like Meyerman himself and other scholars[44] state, the unique socio –legal environment of a country must be factored into the kind of CDR mechanism that is developed. At this juncture, it is important to also mention that, in the light of the experiences of foreign debt holders in Mexico[45], as CDR moves towards a cross border set up, every care must be taken to harmonize the different mechanisms so as to provide a fair, just and equitable process to all parties.

At a broader level, it is important in framing a policy to determine the importance of CDR to a nation's economy. Benjamin M Franklin[46] points to the fact that the process is almost always viewed from the eyes of the debtors and creditors participating in the process for whom, if CDR is successfully implemented, the process must be made accessible for all. States would also often be guided by the logic that a situation which benefits both the creditor and debtor would be a good one for the economy. However, the fact remains that the basis for CDR is a substantial loss caused to the economy - that of the loan which had been initially defaulted. That defaulted loan marks a real resource loss to the economy, as this money could have been used to promote productive growth. In devising a policy, the states must be careful that it is not seen to encourage debtors and creditors to resort to this process and thereby negate the negative legal sanction (i.e. formal procedures under insolvency law) attached with defaulting a loan. Given that the complaint of creditors has been of the dubious financial interests of the debtors, this particular aspect must be seriously considered.[47]

Looking at the working of the mechanism itself, the primary issue that this researcher wishes to address in this paper, is the role of the various stakeholders in the process. This could be done at two levels. The first is the relationship between the creditors and the debtors and the second, the interested third parties who are excluded from the process. The kind of balance of interest achieved by different countries between creditors and debtors has largely depended on whose behalf the process has been initiated. Thus in the initial decades of development in the London and Latin American approaches the focus has been on providing additional incentives to the debtor corporations; in the latter case, these included tax, statutory and regulatory benefits. The East Asian economies adopted the mechanism as a supplement to financial restructuring, and hence, all the incentives provided were for the creditors, who, as mentioned earlier, were effectively in control of the process. Unfortunately it is a scenario which continues even today as in most countries, including India, the process is being initiated on or on behalf of banks and financial institutions. In such situations, the tragedy is that the process becomes one sided. There is no element of voluntary acceptance of the process for the debtor, for whom the alternative is a ruinous insolvency proceeding. For the success of debt restructuring, security of creditor's interests must be provided in the stringency of enforcement rather than a complete handover of the process.

Another area of concern that this researcher finds is the complete exclusion of third parties from the process. The precondition for the mechanism of debt restructuring must be that the concerned bank or financial institutions are the biggest debt holders of the distressed company. In most countries, the kind of debt which is subject to restructuring is generally extremely large and which involves the complete restructuring of the business organization. Under normal circumstances, these companies would have been eligible for court supervised reorganization where, compulsorily, the process would have been reviewed by the court and the interest of all parties to the transaction adequately considered. As mentioned at the beginning of this paper[48], this bypassing of rights was justified in the unusual circumstances of a financial crisis. In countries like India, where the mechanism is being incorporated as an alternative to formal insolvency procedures, such shoddy treatment of third party rights is unacceptable. One of the primary justifications for CDR has been the high social cost that insolvency law incurs, i.e. the cost borne by third parties like labourers, employees and shareholders. To ensure that the same mistake is not repeated in this process as well, it is essential that these parties be given a sufficient opportunity to participate in the proceedings. In this regard the model adopted in the United States for reorganization purposes; that of **pre-packaging[49] contracts** maybe emulated where, after the creditors and debtors have negotiated a settlement, the same would be scrutinized by the court to determine whether the interests of all parties have been considered. Failing this, the mechanism would fail to pass the primary test of satisfaction of natural justice i.e. that no man (in this case the creditors) can be a judge in his own cause, and would thus be struck down.

To conclude, a serious cause for concern, is the most often complete absence of transparency in decision making and in the process in general, a fact witnessed by this researhcer in trying to obtain empirical information on the topic. It is, in fact, quite surprising that when, in most cases, the primary reason for the financial distress of the company is on account of lack of corporate governance and absence of transparency in decision making, the restructuring process of the corporation repeats the same mistakes.[50]

REVIEW OF THE INDIAN CDR PROCESS

The Indian experiment of CDR began on August 23, 2001[51] with the adoption of RBI guidelines. These guidelines were subsequently amended in February 5, 2003 [52]. The reason cited for the adoption of the mechanism of CDR in India was the recession in the Indian economy with core sectors like steel and textiles and infrastructure projects suffering.[53] The mechanism of CDR is a three tier one. At the uppermost level, there is CDR Standing Forum (the general body consisting of all banks) and its Core Group, followed by the CDR Empowered Group and, at the lowest level, the CDR Cell. The legal basis for the CDR system in India is the civil contractual approach supported by the Debtor Creditor Agreement signed at the time of the original loan documentation or at the time of reference to the CDR Cell and the Inter Creditor Agreement, which is signed by all banks at the time of joining the CDR Standing Forum.

The review of the CDR mechanism in India is done in the light of the RBI guidelines aforementioned and a sample CDR report of a "doubtful category" debt restructuring, obtained by the researcher empirically, a modified version of which has been submitted as an annexure to this paper.

From the point of view of creditors there could be certain changes to the existing mechanism, such as:

1. Creditors should be allowed the right to refuse to participate in the process without penal sanction,
2. The process should aim to restructure within a shorter period of time to reduce the loss of profitability to the bank.[54]

However it is the conclusion of this researcher that the mechanism of CDR in India is clearly biased towards creditor interests. CDR was introduced in India at around the same time that another legal process was instituted by the government to enable financial institutions to recover their loans in the form of the **Securitisation and Reconstruction of Assets and Enforcement of Security Interest (SARFAESI) Act of 2002**. Though CDR is preferable to the latter method of recovery, it still suffers from the same bias towards creditors interests. An examination of the guidelines, shows that the entire planning and decision making process lies in the hands of banks and financial institutions. Even the restructuring report that is prepared is done so only by the banks after consulting other parties to the process. Once the plan is submitted to the cell, it is once again a host of creditor institutions that decide the fate of the application, with the decision of the CDR Empowered Group being final. In contrast to the method adopted by most other countries and the objective of CDR, the bank, under the guidelines, only takes up those loans that it believes to be viable. Non performing loans are not taken up unless the BIFR recommends it and the loan is of a very high value. This reflects the clear interest of the bank in securing its loan without conceding any risk on its part. The process does not allow foreign creditors to participate making it the exclusive prerogative of domestic institutions. The greatest injustice is however to the third party rights, particularly of the labour and employee class. The kind of loans subject to restructuring under the Indian law are those which would otherwise have gone under the mechanism for reorganization or for revival of sick companies where the courts have traditionally sought to protect both the debtors and third party interests over and above those of the creditor. Instead, by devising this process, banks have been able to successfully sidestep the law and safeguard their interests.

It is submitted that the mechanism in India is defined by the exclusionary principle – it protects the interests of domestic creditors to the exclusion of all other parties. In doing so, it defeats the very purpose behind Corporate Debt Restructuring and is liable to be struck down as being violative of the principles of natural justice.

CONCLUSION

Summing up, the mechanism of CDR is in need of serious review. In evolving from an ad hoc measure to an institutional process, it has to overcome serious flaws failing which it would defeat its own objective of providing a just, equitable and efficient solution. Some of the reforms that have been suggested by this paper include:

1. Finding the right balance between creditor and debtor interests
2. The process providing for the participation of interested third parties.
3. For arriving at an equitable solution incorporating the interests of all the stakeholders, there should, preferably be the presence of a supervising judicial

authority, following a model similar to the pre-packaging contracts in the United States.

4. Integrating the mechanism of CDR with the larger socio-economic structure by providing adequate support mechanisms for CDR and, in turn, attuning the mechanism to serve the larger social and economic interests.
5. Incorporating principles of corporate governance and transparency in the mechanism.

In the Indian context, it is submitted that there is a need for a serious rethinking of the process. It has to be taken out of the clutches of banks, and become a more equitable and participatory process. The right institution to effect this change would be the government.

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ENDNOTES

[1] The mechanism seems to be largely a product of countries or economic systems which have been the victim of systemic financial crisis. This could perhaps explain why countries like the United States which have very advanced systems of insolvency but have not undergone a systemic financial crisis of the proportion seen by countries say of East Asia, have not adopted the mechanism of corporate debt restructuring at a formal level, with no guidelines or policy framework on it. Debt restructuring is however privately undertaken by companies in association with financial institutions.

[2] The Indian Companies Act of 1956 provides for winding up of a company if "***it is unable to pay its debts***" under Section 433 (e) and Section 434.Under provisions for voluntary winding up if a company is unable to provide a declaration of solvency under Section 438, the winding up becomes a creditor's winding up. The procedure for winding up is provided under Chapter VII of the act, Sections 425 to 560, with Sections 433 to 483 specifically applicable to winding up by a tribunal and Sections 499 to 520 applicable to a creditor's voluntary winding up. The UK Insolvency Act of 1985 follows a similar as the Indian company law, with Part IV of the Act dealing with winding up of registered companies. Chapter IV deals with voluntary creditors winding up, while Chapter VI deals with winding up by court.

[3] While the concept of reorganization was first developed in the 1850s by the railroad companies who underwent financial distress, the procedure was first under judicial supervision and gradually became administrative in nature. The procedure which was first incorporated under the Chandler Act, 1938, was different for the different kinds of companies. However Chapter 11 of the Bankruptcy Code, 1978 which supersedes it, deals with only one standard form of business reorganization. Indian law also has but recently adopted the process of restructuring of distressed companies. While Section 390 – 396A apply to the general restructuring of all companies (whether financially distressed or not), Section 424 deals specifically with the scheme provided for sick industrial companies. In the latter case the method is different from the system adopted under Chapter 11 of the American Code, with greater participation by the court in the process of reconstruction. The United Kingdom follows a more contractual approach, with the appointment of a receiver by the floating charge creditor. The process remains out of court and thus works in a much more efficient manner, acting as good disincentive for debtors to default, as the creditor would be in complete possession of the debtor company's assets. Much of continental Europe also follows the receiver approach, with varying degrees of favour to the creditor or the debtor. Thus for example France gives greater emphasis to the debtor , the primary concern being that the company be viable and that there

be employment, hence the procedure is very administrative. See Patrick Bolton, *Toward a Statutory Approach to Sovereign Debt Restructuring: Lessons from Corporate Bankruptcy Practice Around the World*, IMF Staff Papers, Vol. 50, Special Issue

[4] As in the case of liquidation, where in countries like India the process is inordinately long, under the business reorganization model, the problem is equally acute. While the time taken for reorganization is dependant on factors such as firm size, problems such as holding out by the creditors are common under this system as well. Some studies have even quoted the average time for a company to be restructured as 32 months. See Lynn M. Lopucki, *The Trouble With Chapter 11*, 1993 Wis. L. Rev. 729 presenting the results of the study quoted in Julian R. Franks & Walter N. Torous, *An Empirical Investigation of U.S. Firms in Reorganization*,44J.FIN.747,752(1989).

It has been noted by most authors that the development of corporate debt restructuring in most countries has come as a direct result of the failure of most emerging markets to develop proper bankruptcy procedures. See Benjamin M. Friedman, *National Bureau Of Economic Research (NBER) Working Paper Series : Debt Restructuring*, Working Paper 722 http://www.nber.org/papers/w7722 (visited on 12th July 2005)

[5] Earlier financial crisis were caused by evident macroeconomic mismanagement which theoreticians used as an empirical ground for a construction of the so-called first generation models of currency crises.

[6] Although Argentina managed to defend its currency board, the sudden outflow of capital and banking crisis caused a one-year recession.

[7] The experiences of the European and Latin American crisis led to the development of the second generation models of currency crisis.

[8] The crisis became the subject of much academic debate, spawning a third generation model of currency crisis. This model like its predecessor focuses on multiple equilibria and market expectation.

[9] The Russian model has not been discussed in this analysis on account of the paucity of space. The experience with Soviet economies has been a complete failure, as the mechanism was adopted in a half hearted measure with no parallel changes in the general legal and financial system being made. See Steve Campbell, *Comment: Brother, Can You Spare A Ruble? The Development Of Bankruptcy Legislation In The New Russia*, 10 Bank. Dev. J. 343 (1994). The focus economies like Belarus seemed to be distorted towards rehabilitation mechanism. Despite that the mechanism failed, because of the presence of foreign creditors, who were more interested in selling the assets than going in for a rehabilitation procedure. See Stacey Steele, *The New Law On Bankruptcy In Indonesia: Towards A Modern CorporateBankruptcy Regime?*, 23 Melbourne U. L.R. 144 (1999)

[10] See Gerald E. Meyerman, *The London Approach And Corporate Debt Restructuring In East Asia* at www.efmaefm.org/efma2005/papers/249-suer_paper.pdf (visitied 10th July 2005)

[11] Such as hedging, leveraged mergers and acquisitions, and complex syndications.

[12] Countries like Poland and Hungrary adopted the mechanism of corporate debt restructuring, after the success of the London approach. Poland had a relatively successful record, having followed a concerted

plan of debt restructuring supplementing financial restructuring, incorporating principles of corporate governance and support from the government in the form of subsidies. Conversely countries like Hungrary were unable to replicate the success as they were bogged down by excessive government control. See Mark R Stone, *"Corporate Debt Restructuring – Role Of The Government In Time Of Crisis"* IMF Economic Issues No. 31 (June 2002) http://www.imf.org (visited July 20th 2005)

[13] The Bank has been involved in more than 169 debt restructurings since 1989 directly. There have been many other corporations which have benefited from the approach itself. See Gerald E. Meyerman, *The London Approach And Corporate Debt Restructuring In East Asia at* www.efmaefm.org/efma2005/papers/249-suer_paper.pdf (visitied 10th July 2005)

[14] See Mark R Stone, *"Corporate Debt Restructuring – Role Of The Government In Time Of Crisis"* IMF Economic Issues No. 31 (June 2002) http://www.imf.org (visited July 20th 2005)

[15] During the debt crisis of the 1980's, nearly $ 14 billion (US) of Mexican corporate debt was restructured, nearly all corporate debt restructurings were accomplished out of court. At that time, almost all the foreign debt of Mexican corporations was held by a relatively small number of large international banks. During the restructuring negotiations, these international banks, through advisory committees consisting of both Mexican and US counsel, often acted in concert to secure favorable terms for themselves. See Kimberly D. Krawiec, *The Sixth Annual Ernst C. Stiefel Symposium: Corporate Debt Restructurings In Mexico: For Foreign Creditors, Insolvency Law Is Only Half The Story*, 17 N.Y.L. Sch. J. Int'l & Comp. L. 481 (1997)

[16] In Mexico for example the government had so completely taken over the process, that any direct negotiations between the debtor and creditors was viewed with suspicion by the parties themselves. See Duncan N. Darrow et al, *Symposium--The New Latin American Debt Regime--Restructuring Strategies for Mexican Eurobond Debt*, 16 NW. J. INT'L L. & BUS. 117 (1995)

[17] The foreign Eurobondholders were a diverse and geographically dispersed group that includes off-shore retail investors, insurance companies, pension funds, mutual funds and financial institutions in the U.S. and abroad. See ibid.

[18] Holders of internationally placed debt securities had now replaced international commercial banks as the principal foreign creditors of Mexican corporations. Given the remote possibility of refinancing these bonds as they mature, massive restructurings were undertaken. See ibid.

[19] The author takes a case study of one corporation Groupo Sidek whose Chief Executing Officer was also a board member of the lead bank involved inrestructuring. See ibid. Also see some of the proposed solutions offered to bondholders in Duncan N. Darrow et al, *Symposium--The New Latin American Debt Regime--Restructuring Strategies for Mexican Eurobond Debt*, 16 NW. J. INT'L L. & BUS. 117 (1995)

[20] Tumnong Dasri, *Out-of-Court Corporate Debt Restructuring in Thailand*, Paper prepared for the presentation to the "INTERNATIONAL CONFERENCE ON SYSTEMIC RESOLUTION OF CORPORATE AND BANK DISTRESS IN CRISIS-AFFECTED EAST ASIAN COUNTRIES" held in Tokyo, Japan, January 11-12, 2000 and *Mr. Tumnong Dasri, Informal Work Outs for Corporate Debt Restructuring in Thailand* The SECOND FORUM FOR ASIAN INSOLVENCY REFORM (FAIR) Bangkok, Thailand 16 – 17 December 2002

[21] The CDRAC is composed of representatives of the six leading banking associations. Under the civil contractual approach, there is a simplified debtor creditor and inter creditor agreement for small and medium sector companies. See Tumnong Dasri *Policies and Practices of Corporate Restructuring in East Asia : A Case of Thailand*, Paper presented at the international seminar on "POLICIES AND PRACTICES OF CORPORATE RESTRUCTURING IN EAST ASIA", Seoul, Korea, December 6, 2001

[22] Masahiro Kawai, *The Resolution Of The East Asian Crisis: Financial And Corporate Sector Restructuring*, Journal of Asian Economics 11 (2000) 133–168. See also Soo Chang Kim and Lee & Ko, *Insolvency Law Reforms -Report On Korea* ASIAN DEVELOPMENT BANK Regional Technical Assistance Project NO:5795-REG at http://www.insolvencyasia.com

[23] See Indrajit Mallick, "Economic Analysis of Corporate Bankruptcy Law Reform In India", WB NUJS Working Paper Series No. 7, SEBL, March, 2004

[24] Gerald E. Meyerman, *The London Approach And Corporate Debt Restructuring In East Asia* at www.efmaefm.org/efma2005/papers/249-suer_paper.pdf (visitied 10th July 2005)

[25] creditors who refuse to participate in the CDR process, but would benefit from its successful implementation

[26] See ibid

[27] Michelle Schreiber, *Beyond the Economic Turmoil of the Asian Financial Crisis: Indonesia's Struggle to Cope with Insolvency*, 12 Transnat'l Law. 353 (1999) and Stacey Steele, *The New Law On Bankruptcy In Indonesia: Towards A Modern Corporate Bankruptcy Regime?*, 23 Melbourne U. L.R. 144 (1999)

[28] Gerald E. Meyerman, *The London Approach And Corporate Debt Restructuring In East Asia* at www.efmaefm.org/efma2005/papers/249-suer_paper.pdf (visitied 10th July 2005)

[29] See Michelle Schreiber, *Beyond the Economic Turmoil of the Asian Financial Crisis: Indonesia's Struggle to Cope with Insolvency*, 12 Transnat'l Law. 353 (1999)

[30] Gerald E Meyerman in his article, ibid cites a few examples of the changes in the legal system in Korea to emphasize the point–

1. The Securities Investment Company Law established the Corporate Restructuring Fund, to improve the financial status of small- and medium-size enterprises through equity investment and debt rescheduling.

2. The government revised guidelines on credit management by financial institutions to prohibit them from demanding cross-guarantees. 3. Tax credits disallowed for interest payments on any corporate debt in excess of five times equity capital. 4. Adoption of economic criteria, under law, by courts, to compare the liquidation value of a company with its going-concern value in determining a restructuring application. Related cases were clubbed together in a single process. 5. Conditions for mutual settlement between a corporation and its creditors were restricted by specifying cases in which such a settlement might be undesirable. 5. Finally, foreign ownership of Korean corporations liberalized.

[31] In the context of Indonesian law, analysts have shown how political instability and corruption have been largely responsible for non –implementation. Indonesia was at the time battling a political crisis, which was

not faced by the other South East Asian Economies. See Stacey Steele, *The New Law On Bankruptcy In Indonesia: Towards A Modern Corporate Bankruptcy Regime?*, 23 Melbourne U. L.R. 144 (1999) who comments that for CDR to work there must be an improvement in the poltical situation in Indonesia as "***the economic health of Indonesia is intimately tied with its political health***".

[32] Cultural factors have been widely attributed to have played a major role in the development of the kind of mechanism, as they influence attitudes adopted towards understanding and enforcement of debt measures, leniency toward debtors, business models and practices adopted by these countries etc. See Gerald E. Meyerman, *The London Approach And Corporate Debt Restructuring In East Asia* www.efmaefm.org/efma2005/papers/249-suer_paper.pdf (visitied 10th July 2005) and *Corporate Debt Restructuring in Southeast Asia* (Country Panel IV, Harvard Asia Business Conference,Feb.2-3,2001), available at http://www.fas.harvard.edu/~asiactr/haq/200102/0102a001cp4.htm (visited on 7th July 2005)

[33] For example according to William Mako, Senior Private Sector Development Specialist, World Bank, countries, like South Korea and Malaysia, suffered less damage and recovered faster than others, such as Indonesia and Thailand. Linking it to the difference in legal systems, he states that this was because of the stronger regimes of insolvency that existed in Malaysia, or alternatively in countries like Thailand, the insolvency approach is closer to the civil law model, hence the process could be very time-consuming because of a great deal of court involvement is required. Professor Stuart Guilson of Harvard Business Law School believed it to be the balance achieved in these countries between the two traditional approaches to insolvency. Thus in countries like Indonesia and Thailand which favour liquidation, the process of CDR has not been successful. See *Corporate Debt Restructuring in Southeast Asia* (Country Panel IV,Harvard AsiaBusinessConference,Feb2-3,2001),availableat http://www.fas.harvard.edu/~asiactr/haq/200102/0102a001cp4.htm (visited on 7th July 2005). Other examples cited by panelists at the conference were – Banking structure in these economies -Ownership issues and control exerted by the banking system. While in Indonesia, most banks were taken over by the government after the crisis, most Thai banks have resisted dilution of ownership, and maintained control. A similar point has been stated in the context of Korea and Japan. Explaining the comparatively greater success of the former over the latter, it has been stated that the primary reason for this was that the Korean banks had better control over the situation. They refused to give up any of their rights and formed a powerful lobby against the chaebols. On the other hand in Japan at the time of implementation of the CDR mechanism, the Japanese banking system was in a state of disarrat, and was slowly losing the powerful clout it once enjoyed. See Sang-young Rhyu, *Unravelling the Big Bang: A Comparative Analysis of Banking and Financial Restructuring in Japan and Korea* at http://www.isanet.org/noarchive/rhyu.html (visited on 20th June 2005).

[34] This hardly requires much explanation given that the roots of the process lay in the systemic economic crisis that each of these countries were faced with. The extent of foreign debt holding, the state of the

economy, the progress of the parallel process of restructuring, all had a large role to play in determining the success of the crisis. See infra.

[35] Gerald E. Meyerman, *The London Approach And Corporate Debt Restructuring In East* www.efmaefm.org/efma2005/papers/249-suer_paper.pdf (visitied 10th July 2005)

[36] The mechanism in Hong Kong, the *Approach to Corporate Difficulties* largely follows the London Approach. The People's Republic of China has different approaches to debt restructuring, all of which are equally shrouded in secrecy.. However like Russia it seems unwilling to make the necessary changes in the system required to make the process a success. See *International Insolvency: Corporate/Debt Restructuring: Japan, The Hong Kong Sar & The People's Republic Of China: A Roundtable Discussion*, 10 Am. Bankr. Inst. L. Rev. 1 (2002)

[37] "The Guidelines For Out of Court Workouts" were published in September 2001. The new guidelines are part of an already existing system of laws and mechanisms targeted at heling companies reorganize themselves, such as the corporate reorganization reform law, 2002 and various finds established to fund and facilitate the process of debt restructuring. See Indrajit Mallick, "ECONOMIC ANALYSIS OF CORPORATE BANKRUPTCY LAW REFORM IN INDIA", Section 2: History of Bankruptcy Law Reform In India, WB NUJS Working Paper Series No. 7, SEBL, March, 2004

[38] For example creditors are required to convert the net income loss into a profit within three years.

[39] The approach in Turkey popularly known as the Istanbul approach has also been modeled on the London Approach, and remains inaccessible because of the secrecy surrounding the procedure. It is conducted under the firm supervision of the government. See Ömür Süer, *The Consequences Of Overborrowing In Foreign Currency: Istanbul Approach*

[40] The statement of principles maybe obtained from http://www.insol.org/pdf/Lenders.pdf

[41] The global approach evolved is evident from the INSOL principles. See Esteban C. Buljevich, "*The Workout Decalogue: The New Global Approach To Debt Restructurings"*, Cross-Border Debt Restructurings: Innovative Approaches for Creditors, Corporates and Sovereigns, Chapter 1,International Finance Corporation, www.euromoneybooks.com. This global approach in debt restructuring has in fact been used by many authors to be replicated in cases of sovereign debts. See Steven L. Schwarcz, *Global Decentralization And The Subnational Debt Problem*, 51 Duke L.J. 1179 (2002)

[42] Gerald E. Meyerman, *The London Approach And Corporate Debt Restructuring In East Asia* at www.efmaefm.org/efma2005/papers/249-suer_paper.pdf (visitied 10th July 2005)

[43] See Stacey Steele, *The New Law On Bankruptcy In Indonesia: Towards A Modern Corporate Bankruptcy Regime?*, 23 Melbourne U. L.R. 144 (1999)

[44] See *Corporate Debt Restructuring in Southeast Asia* (Country Panel IV, Harvard Asia Business Conference,Feb.2-3,2001), available at http://www.fas.harvard.edu/~asiactr/haq/200102/0102a001cp4.htm (visited on 7th July 2005)

[45] See discussion on Mexican crisis supra. See also Duncan N. Darrow et al, *Symposium--The New Latin American Debt Regime--Restructuring Strategies for Mexican Eurobond Debt*, 16 NW. J. INT'L L. & BUS. 117 (1995)

[46] Benjamin M. Friedman, *National Bureau Of Economic Research (NBER) Working Paper Series : Debt Restructuring*, Working Paper 722 http://www.nber.org/papers/w7722 (visited on 12th July 2005)

[47] This has been the standard complaint of banks and financial institutions, which the student has interviewed. This is also the finding of Indrajit Mallick, in "Economic Analysis of Corporate Bankruptcy Law Reform In India", Section 5 – Empirical Scholarship on bankruptcy law, WB NUJS Working Paper Series No. 7, SEBL, March, 2004

[48] See supra "Why Corporate Debt Restructuring?", pg 2

[49] Such a view has been taken in the case of the Indonesian crisis. See Courtney C. Carter, *Saving Face In Southeast Asia: The Implementation Of Prepackaged Plans Of Reorganization In Thailand, Malaysia, And Indonesia*, 17 Bank. Dev. J. 295 (2002)

[50] Magdi Iskander, Gerald Meyerman, Dale F. Gray, and Sean Hagan, *Corporate Restructuring and Governance in East Asia*

[51] Guidelines were issued vide circular DBOD No. BP.BC. 15/21.04.114/2000-01

[52] vide circular DBOD. No. BP.BC.68 /21.04.132/2002-03

[53] See Smt. Ranjana Kumar, *Restructuring of Debts – The Best Bet for Bankers and the Borrowers*, Indian Banking : Managing Transformation, Proceedings of the Bank Economists Conference 2002, Corporation Bank, Mangalore, March 2003.

[54] See O. N. Singh, *Corporate Debt Restructuring — Mechanism That Needs A Relook*, Hindu Business Line, 2002 Hindu Business Line, www.hindubusinessline.com . Mr Singh is the CMD of Allahabad Bank

ANNEXURE

Model Corporate Debt Restructuring Report Filed By the CDR Cell

(Modeled on the Duncan's CDR Report)

Date of Report - April 01, 2003

Structure of Report - The report is structured into the following parts –

A Rights and liabilities of banks

B Rights and liabilities of financial institutions

C Debtor companies obligations. Here the status of the company is that of a category II or doubtful asset status

D Other terms applicable to restructuring

E Annexure - Information to be furnished by Lead Bank on approval by the CDR Empowered Group.

CDR applies to banks or financial institutions having a debt greater than Rs 599.28 crores.

A Banks

a. Exposure in fertilizer development – Rs 202.13 crores (excluding FITL position)
Rs 48.8 crores secured by existing stocks of store and space and current assets. Remaining Rs 141.53 crores as converted WCTL . Rs11.8 crores as being interest for 2002 -03 funded by way of conversion into preference shares in the following manner -

As of 31.03.2003

	O/S	Preference Shares	Rs in Crore	
			CC	WCTL
SBI	56.99	1.27	14.29	41.43

CBI	46	5.34	10.43	30.23
SBT	19.10	0.94	4.66	13.50
UCO Bank	22.99	1.24	5.58	16.17
PNB	16.16	1.16	3.85	11.15
SBP	18.21	0.91	4.44	12.86
BOB	22.68	0.94	5.57	16.17
Total	202.13	11.8	48.80	141.53

b. Existing non-fund based units (LC&BG) to continue as per current assessed limits.

c. The borrower will not be able to meet the stipulated margin for working capital during the period of restructuring. Build of margin will be in the following gradual manner (after recommencement of fertilizer operation)

Years	WCTL
1-3	Nil
4-6	5%
7-8	10%
9-12	15%
13 onwards	25%

d. Term loans (including FITL and WCTL of all banks and TL of PNB and UCO) and debentures (of Central Bank and IDBI bank) – will be repaid with a moratorium of upto 3 years (from restart of fertilizer unit) in semi-annual installments over 12 years from 31st March 2008 till 2018-19 as per the following schedule –

Year	Repayment (%)	Year	Repayment (%)
2007 -08	2.5	2008 -09	2.5
2009 -10	5	2010-11	7
20011-12	7	20012-13	7

20013 -14	8	20014 -15	9
20015 -16	11	20016-17	13
20017 -18	13	20018-19	15

During the moratorium period the divestment proceeds of Rs 136 crores will be utilized as under –

i. the Rs 31 crores each in 2005 -06 and 2006 -07 (total Rs 62 crores) out of which the divestment of secured assets will be used exclusively for the repayment of WCTL of the banks who are providing additional fund for recommencement of operation at Fertilizer unit. Till such payments are made as per the said schedule, the shares of ACL will be exclusively pledged to those providing additional working capital of Rs 62 crores in the event, the divestment proceeds of Andhra Cement Ltd. (ACL) is received prior to repayment of Rs 62 crore is becoming due as per the repayment programme envisaged in the package, the amount so received will be kept aside in a separate account. After the repayment of Rs 62 crore as per schedule, amount kept in reserve will be released to the borrower for repayment of other debts shown in the projected cash flows.

ii. Out of the balance Rs 74 crores, Rs 40 crore being sale proceed of the landed property exclusively charged to ICICI Bank will be utilized for repayment of its dues and the remaining amount of Rs 34 crores will be utilized for the prompt repayment of term loans, FITL, WCTL's and debentures of secured lenders. For sharing of this amount ICICI 's share will be based on the reduced outstanding to the extent of the value of the asset (Rs 40 crores) or realizable value whichever is lower, exclusively charged to them.

e. Interest on term loans, FITL, WCTL and debetures to be stepped up as per the following schedule to result in an average yield of 8.25% over the restructuring period.

Year	Interest	Year	Interest
2003 -04	5	2004 -05	5
2005-06	5	2006 -07	5
2007- 08	5	2008 -09	6

2009 -10	11	20010 -11	13
20011-12	14	20012 -13	14
20013 -14	15	20014 -15	15
20015 -16	15	20016 -17	15
20017 -18	15	20018 -19	15

f. Interest during restructuring period on fertilizer group capital facilities will be at 9%per annum with monthly rests and on working capital facilities at 9% per annum with quarterly rests as per the extant guidelines. Out of the interest of 9%, 0.75% to be converted into equity /zero coupon instruments at the option of the respective lenders.

g. Funding of Simple Interest proposed as follows

i. to be converted into FITL on interest overdue upto March 31,2002 on term loan, FITL, WCTL and debentures.

ii. To be converted into 0.001% Cumulative Redeemable Preference Shares (CRPS) redeemable in five installments from 2019 -20.

- unserviced interest for year 2002 -03 on term loans, FITL, WCTL and debentures and cash credit on tea and feryilizers.
- On all term loans, FITL, WCTL, and debentures , and fertilizers or tea cash credit for 2003-04, 2004-05 and 2005-06.

However 5% of terminal interest (at the applicable rate proposed for the package) for the period from the recommencement of fertilizer plant till 31st March 2003 will be paid in March 2005 and 10% of the interest for the year 2005 -06 to be paid in the March 2006.

h. All penal and additional interest CI and LD till implementation of the package to be waived.

B. Institutions

a. Term loans and debentures (including FITL – Principal moratorium of 3 years from restart of fertilizer unit) till September 30, 2007, repayment in semi-annual installments over 12 years from 31st March 2008 to 2018-19 as per the following schedule.

Year	Repayment	Year	Repayment
2007 -08	2.5	2008 -09	2.5
2009 -10	5	2010 -11	7
2011-12	7	2012 -13	7
2013 -14	8	2014 -15	9
2015 -16	11	2016 -17	13
20017 -18	13	2018 – 19	15

b. Interest on term loan, FITL and debenture to be stepped up as per the following schedule to result in an average yield of 8.25% over the restructuring period.

Year	Interest	Year	Interest
2003 -04	5	2005 -06	5
2005 -06	5	2007 -08	5
2007 -08	5	2009 -10	6
2009 -10	11	2011 -12	13
2011 -12	14	2013 -14	14
2013 -14	15	2014 -15	15
2015 -16	15	2016 -17	15
2017 -18	15	2018 -19	15

c. Interest on foreign currency loans to be at LIBOR w.e.f. 01.04.2003

d. Finding of Simple Interest proposed as follows:

i. To be converted into FITL – interest overdue upto 31.03.2002 on term loan, FITL, and debentures with interest and repayment program as applicable to Term Loan, FITL and debentures.

ii. To be converted into 0.001% CRPS redeemable in small investments from 2019-20.

Unsecured interest for the year 2002 -03 on term loan, FITL and debentures on all term loans, FITL and debentures for 2003 -04 , 2004 -05 and 2005 -06.

However 5% of the total interest (at the applicable rate proposed in the package) for the period from the recommencement of fertilizer plant til 31.03.2005 will be paid in March 2005 and 10% of interest from 2005 -06 will be paid in March 2006.

e. All penal and additional interest on CI & LD till implementation of the package to be waived.

f. Dividend on existing preference shares (held by FI and others) to be reduced to 8.25% w.e.f. 01.03.2003 with redemption of preference shares in 12 annual installments from 31.03.2008

Aggregate Debt (Rs 60.02 crores) of HDFC, WBIDC, PICUP and SICOM proposed to be restructured in the same line as CDR debt.

Other debt (Rs 352.39 crore)

a. repayment as per schedule

	2003-04	2004-05	2005-06	2006-07	2007-08	2008-09	2009-10	Total
15% NCDs (IAF Fund)		5						5
15% PCDs		3						3
Public Deposits *	-8	7	39	35	25	6	6	110

Other Deposits *	-4	6	19	6	6	24	4	61
Others		0.07						0.07
15% OCDs			7					7
15% NCDs			2					2
FCCBs			22	22				44
Total	-12	21.07	89	63	31	30	10	232
								7

*Amount of Interest on Public and other Deposits proposed to be funded and paid in subsequent years

** However repayment on account of Foreign currency convertible bonds (FCCB) at 70% discounts of principal resulting in a savings of around Rs 102 crore and interest waiver of around Rs 12 crores thereon. However payment of Rs 7 crores is also resulting from retrospective reduction in rates of interest on other deposit as mentioned in d. below

b. FCCB's are proposed to be bought back at a discount of 70% in 2005 -06 and 2006 -07. Overdue interst (Interest rate to be reduced to LIBOR w.e.f. 1.04.03) till dta eof buyback is assumed to be waived.

c. Interest on Public Deposits at 8.25% w.e.f. 1.04.03. Accrued till March 31, 2005 to be converted into funded interest term loan. The funded interest term loan (FITL) will carry the same interest as the deposit, i.e. 8.25% per annum and will be repayable in 5 equal installments from 2005 -06 to 2009-10.

d. Accrued interest on other deposits be recalculated @ 10% per annum retrospectively (as against existing average rate above 20%) till 31.03.2003 and @ 8.255 thereafter. Accrued interest till March 31,2005 to be funded and the funded interest will carry any interest and will be repayable in equal installments from 2005 -06 to 2009 -10.

e. Interest on 15% OCDs and 15% NCDs shall be reduced to 8.25% w.e.f. 1.04.03

f. All penal and additional interest and CI & LD to be waived.

The **borrower** has been classified under **category II** and accordingly the standard terms and conditions applicable for such category will be adopted.

C Terms and Conditions for Category II:

i. The promoters contribution of Rs 15 crores will be brought in upfront
ii. The borrower shall escrow all receivables (including government subsidy) into a trust and retention account (TRA) from which payments will be made strictly as per the cash flow / budget to be submitted by the company on a quarterly basis
iii. An asset sale committee will be constituted to monitor the sale and development of assets or shares proposed in the restructuring package.
iv. An asset sale committee will be constituted to monitor the sale and development of assets or shares proposed in the restructuring package.
v. Promoters should pledge their shareholdings in the company to the banks and financial institutions
vi. As an additional security the company should pledge its shareholding in Andhra Cement Ltd (ACL) to the extent of 51% of the share capital of ACL in favour of banks providing additional funds of Rs 62 crores for reopening of the fertilizer unit, till the repayment of the WCTL of these banks to the extent of Rs 62 crores. A valuation of ACL’s shares will be conducted and it will be ensured that the additional exposure of banks envisaged in the restructuring proposal is adequately covered by the value of ACL’s share pledged in their favour.
vii. The lenders shall appoint concurrent auditors, inter alia to oversee the implementation of the restructuring package including the cash flow monitoring mechanism. The concurrent auditors will report directly on quarterly basis. The terms of reference and the duration of verdict will be determined by the Monitoring Committee

viii. In case of improved profitability, cash flows, financial institutions or banks retain the right to review the package and accelerate the payment of the loan as well as revise the rate of interest.

ix. In case of any shortfall in cash flows in the market, the projected cash outflows during the restructuring period, suitable infusion of funds should be arranged by the company or promoters to meet such shortfall and an undertaking to that effect will be submitted by the borrower.

x. The borrower shall agree to vest in institutions or banks the right of recompensation in respect of the sacrifices undertaken by them.

xi. The borrower shall not declare any dividend including profit dividend without prior written approval from creditors.

xii. The borrower shall not escrow its future cash flows or create any charge or lien or interest thereon of whatsoever nature except without the prior approval of the lenders.

xiii. The lenders shall retain the right to revoke the package in case the borrower does not meet its commitments as stipulated in the package.

xiv. The borrower shall not issue any capital expenditure without prior application from Monitoring Committee

xv. The borrower shall not sell its fixed assets or investments without the prior approval from the Monitoring Committee

xvi. The lenders shall have the right to reset the fixed interest rate after every three years and the Monitoring Committee/ CDR Executive Group will examine and decide the matter

xvii. The Monitoring Committee/ CDR EG shall have the right to appoint nominee director on behalf of the lenders.

xviii. The lenders shall have the right to convert 20% of the outstanding (as on the date of conversion) after seven years from the date of CDR approval.

xix. The lenders shall have the right to exercize the option for conversion of the entire or part of the loan in the event of default in equities

xx. The lenders shall have the right to convert the sacrifices undertaken by them in terms of the restructuring package into equity.

xxi. The borrower shall not create any lien on its property, shares, etc. during the restructuring period.

xxii. The lenders shall have the right to disclose the name of the borrowers and its directors to the RBI/CIBIL or publish in the press in the event of default in its part.

xxiii. The borrower shall explore the possibility of inducing strategic investors / co-promoters in the business.

xxiv. The borrower will endeavour to bring back the funds invested in its associate group companies

Other Terms and Conditions for Restructuring

1. The additional Working Capital Limit of Rs 62 crore is to be fully tied up before the restructuring proposal is implemented. Also promoters should be encouraged to tie up the gap of Working Capital finance created by the Central Bank, SBOT and SBOP (not acquiring for additional Working Capital finance).
2. The borrower shall create a valid pledge of the shares of ACL in favour of the banks providing additional Working Capital limit before release of the limit for its use.
3. There will be pooling of securities and all debts including existing and proposed Working Capital borrowings/ Working Capital Term Loans/Fixed Interest Term Loans of banks and financial institutions will be seconded by pari passu first charge on all the fixed and current assets of the company. However Punjab National Bank would retain the exclusive charge on the property of Terai project land charged to Punjab National Bank.
4. The divestment proceed of Rs 236 crores will inter alia include Rs 40 crore by sale of one land belonging to one of its group companies. This land belonging to one of DIL's group companies have been mortgaged by the borrower in favour of ICICI for securing some loan. The sale proceed of this asset will be exclusively

utilized for repayment of ICICI's dues. The other divestment / sale proceeds will be utilized as provided in the restructuring package. However for sharing of the balance divestment/ sale proceed ICICI's share will be based on its reduced outstanding lower by Rs 40 crores or realizable value whichever is lower for pari passu charge.

5. A writ petition was filed before the Allahabad Bank in regard to outstanding government receivables of Rs 359.01 crores. An order has since been passed against the writ petition and the company has moved an application against the order at the Supreme Court. If the amount of outstanding Government receivables of Rs 359 crores or any part thereof is received earlier to receipts of proceeds of divestment of shares or sale of tea gardens envisaged in the package, an amount of Rs 62 crore in WCTL i.e. the equivalent amount of additional exposure of Working Capital banks will get priority repayment out of such proceeds and the remaining privatization of such receipts will be utilized for proper repayment of secured debts of banks or financial institutions. ICICI's share will be based on the reduced outstanding lower by Rs 40 crores or realizable whichever is lower for pari passu charge.
6. The present outstanding under the Working Capital limit will be partly converted to WCTL partly into preference shares being interest for 2002 -03 and the remaining amount which will be covered by stocks will be used by the borrower as regular working capital limit. A stock audit of the fertilizer division will be conducted before converting this portion into regular Working Capital limit.
7. The borrower will not be able to meet the stipulated margin for the Working Capital during R 9 period. The build of margin will be in the following gradual manner

Year	% of Margin	Year	% of Margin
1-3	Nil	4-6	5
7-8	10	9-12	15
13 onwards	25		

8. The Monitoring Committee of Banks and Financial Institutions will be composed of – IDBI, SBI, UCO Bank, ICICI, PNB and CDR Cell. The Monitoring Committee will oversee implementation of therestructuring package of the company.
9. The borrower will submit to the lender latest audited financials within three months form the date of recommencement of fertilizer operations.
10. The borrower shall not without prior written approval of lenders make any investment in or grant loans or advances to group or subsidiary companies or other undertakings any commencement which might result in fixed obligations to the company.
11. The borrower shall obtain all statutory and regulatory approvals as may be required for sale of assets, bringing in additional equity, etc. as envisaged in the proposal.
12. The borrower shall arrange filing of consent decree in respect of suit filed for recovery by SBDP.
13. Any action for recovery would be initiated by giving 30 days notice after 3 consecutive defaults not exceeding 90 days.
14. All the terms and conditions stipulated for the existing areas of the company will apply mutatis mutandis to the restructured loan.

D Annexure - Information to be furnished by the lead bank on implementation of restructuring scheme as approved by the CDR Empowered Group.

1. Name of Company
2. Date of sanction of scheme by CDR Empowered Group.
3. Details of the proposal (to be limited to institutions or banks furnishing information)

Name of the institution or bank which referred the case or participating lenders	Date of approval of the scheme by the empowered group	Details of the package approved.

4. Progress of implementation

Date of reference to the delegated authority seeking approval	Date of approval by the delegated authority	Date of effectiveness of the package in the books of institutions or banks.	Date of communication to the assisted unit	Reasons for the delay in effecting the package if any

5. Payment of record of the company

Name of the bank	Aggregate payments made by the company to date	Aggregate payments as envisaged in the restructuring package	Outstanding as on date	Comments

6. Observations or comments if any on payment record of the company
7. Status of approval or implementation of restructuring scheme by non –member banks or financial institutions or unsecured lenders.
8. Fulfillment of the companies or promoters obligation as envisaged in the scheme.

9. Difficulties faced in the operation of the lead bank, in implementation of the scheme.
10. Status on quality of asset

Name of bank	Certification of asset when in CDR	Present classification of accounts

11. A brief note on the present status of company operations describing actual profitability and liquidity position vis a vis projected levels. Company product positioning in the market at present status of change in market, if any etc.
12. Specific observations or comments if any.

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