livemint

Banks outside consortium but with charge on assets of stressed firms may scuttle ICA

The inter-creditor agreement needs 66% of all lenders to approve a resolution plan

Last Published: Thu, Aug 09 2018. 11 26 PM IST

Shayan Ghosh

Banks who have lent directly to the firm could decline to release their charge. Photo: Bloomberg

Mumbai: Banks that stay outside a lenders' consortium, but having a 'charge' on the assets of a troubled company, could scuttle the inter-creditor agreement (ICA) designed to quicken the bankruptcy resolution process, multiple people familiar with the matter said.

A charge is a right on the assets of the company, a sort of collateral against which a loan is given. It is part of the loan agreement, and is registered with the Registrar of Companies (RoC).

The ICA needs 66% of all lenders to approve a resolution plan. However, banks who have lent directly to the company, and stayed outside the consortium, could decline to release their charge, holding up the process.

While the ICA lists 85 lenders who could eventually sign it, just more than two dozen have signed it so far. The challenge is to get all 32 foreign lenders on board, since they have a lengthy board approval process.

Karan Kalra, head of financial services at Nishith Desai Associates, said historically, foreign lenders have not been part of consortiums due to varied reasons, including differential pricing and enforcement mechanisms that may require separate processes.

Last year, when a consortium of 39 lenders to Lanco Devihalli Highways planned to sell the asset as part of the resolution plan, a small private sector lender which had a bilateral loan pact with the company with less than 1% share in outstanding loans, declined to give up its charge, stalling the process.

The lender's identity couldn't be ascertained. Lanco did not respond to an email seeking comment.

Two banking experts who did not want to be named said there are instances of foreign and private banks not being part of a consortium and have bilateral loan agreements with the borrower.

"While a single charge is created in favour of the leader of the consortium for a syndicated loan, bilateral loans have their own charges against the company's assets," said one of the person cited above. "More often than not, these assets are the same and the charge is proportional to that lender's exposure. These lenders will also have to release their charges if the asset is to be sold."

P. S. Jayakumar, managing director and chief executive at Bank of Baroda is optimistic that ICA can deal with such problems and said the agreement has built in enough flexibilities for such situations.

"However, the true test of the agreement will be complete once it is used to resolve an account and if we find that it lacks anything, the agreement will be improved," Jayakumar said.

A senior State Bank of India (SBI) executive who declined to be named said that with regard to securities, the same process which was applied earlier is going to be applied now. “Unless the *pari passu* (proportional) charge is given up by all the banks, the sale will not be done. Basically, if 66% do it, automatically other banks will have to oblige since they have signed the agreement,” he said, adding, “it is the intent of the agreement that is most important”.

Signed by more than two dozen lenders last month, the inter-creditor agreement is part of Project Sashakt, a five-pronged strategy to resolve bad loans, proposed by a committee led by Punjab National Bank non-executive chairman Sunil Mehta. The framework authorises the lead bank to implement a resolution plan in a time-bound manner and banks have pinned their hopes on this to resolve a large chunk of the Rs 10 trillion of bad loans. The terms of the resolution plan have to be approved by 66% of the lenders, which will then be final and binding on all others. The agreement also says that the lead bank will submit the resolution plan to the overseeing committee constituted by the Indian Banks’ Association (IBA).

First Published: Thu, Aug 09 2018. 09 45 PM IST