TALK TO EXPERTS - 23

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For this session, we shall look into the concept of the Special Purpose Vehicle (SPV).

As the name itself suggests, this entity is created for some specific purpose, some special purpose. This concept has got some more names like Special Purpose Entity and Financial Vehicle Corporation which is the name given to it in the European Union jurisdiction.

A SPV is a legal entity generally created by companies to get some specific purpose or some temporary objectives fulfilled by transferring its assets for management. Usually, a SPV is in concept a limited company, that is, a limited liability company. In a limited company, the liability of the stakeholders is restricted to the level of investment; it implies that the personal assets of the stakeholders in the company cannot be seized to pay back the debts of the company. On a similar line, the financial crisis if any of the SPV will not impact on its parent company and vice versa also.

A SPV may be owned by one or more entities and in certain jurisdictions, even percentage of ownership is also specified. Legal implications of a SPV are very complex and we need not go into all those details since our present context does require them. We are examining SPV in the context of corporate debt restructuring.

We have looked into the details of the corporate debt restructuring in connection with some NHAI languishing projects. Some projects remain incomplete because the debt restructuring has been affected in some SPVs.

Corporate Debt Restructuring (CDR) has provision for two categories of debt restructuring. Before studying debt restructuring, we have to grasp the facts of classification of the accounts in the books of the creditors, the banks. There are three classifications of accounts: standard, sub-standard and doubtful. Standard and sub-standard come under First Category of Accounts and the Doubtful comes under the Second Category of Accounts.

Let us see now the basis on which these three classifications are made.

Dues of any kind which remain unpaid for a period of more than 90 days make Non-Performing Asset (NPA).

Standard Loan is less risky; there is greater possibility of loan with the principal and interests being repaid though late by default in payment.

Sub-standard Loan is one which has remained NPA for a period less than or equal to12 months. Here, the bank will suffer some loss because the net worth of the borrower or the guarantor is not adequate enough for the bank to recover the entire amount given based on the market value. In other words, the security charged will not bring enough money to match the loan given by the bank.

Doubtful loan is one which has remained as Sub-standard loan for a period of 12 months. It indicates that the collection of money given will be highly improbable. The bank is sure to suffer loss.

Now, the first two, Standard and Sub-standard come under Category A of CDR and the last one Doubtful comes under Category B of CDR.

What is the difference between Category A and Category B?

For Category B, additional financing is not possible; the existing loans are restructured and the promoter has to make arrangement for additional financing.

For Category A, with the same debt restructuring, additional financing may be possible.

Now, coming back the NHAI languishing projects, many under the management of SPV which have already sought CDR had to be left incomplete on the account that the SPVs under Category B might have sought additional financing but it was not granted as per regulations that govern banking.

Under such circumstances, what is the way out for these projects? With no possibility of additional financing and the SPVs being unable to proceed with their project, will they be allowed to give up the project according to the contract to someone who is financially competent to implement the project? In other words, will the SPVs be allowed to exit from the project? We will take up these issues in our next session.

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