

REVISED GUIDELINES AND PROCEDURES FOR SALE OF ASSETS UNDER SECTION 29 OF SFCs ACT.

1. INTRODUCTION- Sale Policy -2005

The Guidelines and procedures for sale of assets under section 29 of SFCs Act was considered and approved by the Board of Directors in its meeting held on 15-09-2001. Based on above a detailed circular No.36/2001-02 dated 12th October, 2001 was issued to all the Regional Managers.

Keeping in view the Udyog Bandhu directives, the Corporation had recently issued certain policy guidelines with regard to taking over of units u/s 29. It has been made mandatory to consult industrial associations prior to taking drastic action against the unit.

In order to streamline the working of the Corporation four Zones have been created in the Head Office with Asstt. General Manager as Zonal Incharge. Incharge Zones would look-after different Regional Offices. In our revised draft OTS Policy we have delegated some powers to Dy. General Manager/General Manager with a view to expedite the decision making. It was, therefore, thought prudent to look into the Sale Policy-2001 a fresh and give certain delegation to operating staff, so that decision making becomes faster.

Certain changes have also been incorporated in Sale Policy-2005 in view the feed back we have been receiving from the field functionaries from time to time .

2. METHODOLOGY OF RECOVERY OF DUES OF THE CORPORATION

There were following two methods being adopted by the Corporation for the recovery from chronic defaulting units:-

- i) Recovery as arrears of land Revenue by issuing RC/PRC against the defaulting units/borrowers. The dues are realized by Revenue Authorities through auction proceedings and then remitted to the Corporation.
- ii) Recovery by way of sale of assets mortgaged to the Corporation u/s 29 of SFCs Act. The dues are realized by the Corporation through sale of mortgaged assets (Prime and/or collateral security). Efforts are made to

realize maximum amount of dues through open sale/bid and negotiations. While transferring the unit to the new management it is also seen whether the party would pay deferred amount by running the unit or through other resources. After the assets are sold, balance dues are realized through PRC etc. These guidelines have been issued for uniformity of system to all Regional Offices.

3. SALE OF ASSETS U/S 29.

The brief procedure for sale of assets u/s 29 would be as under:-

(i) Issue of Notice U/S. 29

After persistent persuasion by way of personal contacts, letters and subsequent reminders, if borrower does not take tangible steps to regularize the account he may be given a final chance by calling him alongwith member of local industrial association as a last attempt. Thereafter notice u/s 29 would be issued by the Regional Manager giving time of 30 days (instead of 15 days earlier proposed) for clearance of overdues of the Corporation. However, in running unit, initially notice u/s 29 may not be sent to the Bank. The copy of the same shall be sent to the Bank for information if party does not respond within the notice period. This has been done so that a running unit does not suffer heavily on this score. As far as possible notice U/s 29 shall be issued after default (of principal and/or interest) of minimum 2 quarters and maximum 3 quarters and the borrowers are reluctant to make the payment and/or accounts slip to NPA. Notice U/s.29 would be issued for prime as well as collateral security. Under exceptional circumstances if there is need to issue notice under section 29 even before default of 2/3 quarters or the account slips to SS categories, the same shall be issued with prior approval of Dy. G.M. In case the RM feels that Notice u/s 29 should not be issued even after default of 3 quarters, then he will record the reasons in the file for not doing so and inform concerned Incharge Zone at the Head Office.

(ii) Power to withdraw Notice U/s. 29.

The power to withdraw notice u/s 29 would be as under:

(Rs. in lac)

As per sale policy-2001		As per proposed sale policy-2005				
Loan amount	Power of withdrawal	Loan amt.	Power of withdrawal			
0-50	RM when entire intt. Overdues are deposited	0-50	RM when entire intt. Overdues are deposited	AGM – -----	DGM/GM full power	MD --
Other category of case	Dy. G.M.	50-100	Entire intt.+ 50% principal is deposited	Entire interest is deposited	Full power	---
--	---	Above 100	Total dues are deposited	Intt. + 50% principal is deposited	Interest is deposited.	Full power

(iii) Release of Advertisement and Publicity

In the revised policy it is proposed that the Regional Manager would release advertisements for the unit under sale upto sanctioned loan amount of Rs.50.00 lac. Advertisements in other cases would be released by the Head Office. Following aspects are kept in mind, while releasing advertisement for sale :-

- i) Total advertisement expenses in a case should not be more than 5% of OSP subject to maximum of Rs.50,000/-
- ii) Normally the units having valuation upto Rs.50.00 lac should not be advertised in Economic Times/Financial Express/Other National level papers to curtail the expenses and to keep them within the aforesaid limit.
- iii) Permission of DGM/MD would be required if expenses on advertisement are crossing the above limit.
- iv) Apart from the details of assets, advertisement will also contain the name of borrowers/promoter/directors/guarantors, date and time of opening the offer, time of negotiation and notice to the borrower to bring the offer or present on the date of negotiation etc.
- v) Negotiations should be conducted within one week of the opening of offers.
- vi) All the offers received by RO shall be negotiated and copy of minutes be invariably sent to concerned Zones.

- vii) RM should select the news papers normally which have largest circulation in the area of prospective buyers. Second advertisement will be released in case no proper response is received against the Ist advertisement. The gap between the two advertisements will be decided by the RM on case to case basis. Normally RM will release atleast 2 advertisements before finalizing a sale if there is no urgency and circumstances so permit.
- viii) If the unit is not to be advertised after 3 months from the date of issuance of notice u/s 29, then RM should record reasons of not doing so.
- ix) Repeated advertisements in expensive newspapers should be avoided in small loan cases. Common prudence should be applied to reduce advertisement cost as far as possible.
- x) Publicity for sale of units/assets may also be done through other methods viz. circulation of information of sale on Notice Board, Factory Gate, Industrial Associations etc. and list of all such cases should be referred to Head Office for posting at web site of the Corporation. It should be updated monthly. Information in this regard should be sent in standard formats.
- xi) The work relating to advertisement of units u/s 29 from the Head Office would be looked after by Incharge Zone-I who is also looking after the work of Public Relation.

(iv) Valuation of Prime and Collateral Security

The valuation of the property will be carried out as per the following delegation:-

As per Sale Policy of 2001			As per Sale Policy of 2005		
Type of security			Type of security		
Prime Security	1. Disbursed amount is upto Rs.25 lac	1. Tech. Officer of the Corporation	Prime security	1. Disbursed amount is upto 50.00 lac	1. Team of officers (Tech +Fin) normally headed by RM
	2. Disbursed amount is more than Rs.25 lac	2. Tech. Officer and Govt. approved valuer.		2. Disbursed amount is more than Rs.50 lac	2. As above. Besides valuation may also be done by Govt. approved valuer.

Collateral Security	1. Value of security is upto Rs.10 lac	1. Tech. Officer of the Corporation.	Collateral Security	1. Collateral amount is upto Rs.50 lac	1. Team of officers normally headed by RM
	2. Value of security is more than Rs.10 lac	2. Tech. Officer and Govt. approved valuer.		2. Collateral amount is more than Rs.50 lac	As above. Besides valuation may also be done by Govt. approved valuer.

NOTE: RRV would be worked out as per valuation guidelines. It will be necessary for the Recovery Incharge and RM to comment on the valuation reports. In case of difference in valuation of Tech. Officer/Govt. approved valuer, average of the two would be considered for RRV.

(v) Methodology of valuation

The valuation of the assets would be carried out as per the valuation guidelines which are placed at Annexure-I . Realistic realizable Value (RRV) of the assets would be worked out as per valuation guidelines. It would be necessary for the Regional Manager to comment on the valuation done by technical officer of the Corporation and Govt. approved valuer. In case there is difference in valuation done by technical officer and Govt. approved valuer the average of two would be considered for arriving at RRV for purpose of sale.

(vi) Receipt of Earnest Money

The offer of the unit should be accompanied with earnest money by way of Demand Draft/pay order. The amount of demand draft/pay order would be as under in different cases:-

As per Sale Policy of 2001		As per Sale Policy of 2005	
Loan Amount (Rs. in lac)	Amt. Of earnest money (Amt. In rupees)	Loan Amount (Rs. in lac)	Amt. Of earnest money (Amt. In rupees)
0 to 2	10,000/-		
2 to 5	25,000/-		
5 to 10	50,000/-	NO CHANGE	
10 to 50	1,00,000/-		
50 to 100	2,50,000/-		
100 and above	5,00,000/-		

At the time of negotiation the full bio-data, financial resources, details of movable and immovable property of the purchaser should be asked alongwith earnest money.

(vii) Refund/Forfeiture of Earnest Money

- a) If the bid is not accepted by the Regional Negotiating authority of cases upto the bid amount of Rs.50.00 lac, the earnest money would be refunded by the Regional Manager within 7 days.
- b) In case the sale of property has been communicated and accepted by the purchaser in writing and thereafter the bidder intends to withdraw the offer, the earnest money or sale money deposited by the purchaser would be forfeited by the Corporation.
- c) For cases above Rs.50.00 lac as bid amount Earnest money would be refunded at Head Office level by Dy. General Manager/General Manager.

(viii) Taking over the possession of the unit

- i) Possession of the unit u/s 29 would be taken only with the prior approval of the Managing Director.
- ii) The possession of the unit would be taken over by the RM after the expiry of notice period. The unit would thereafter be given under the supurdagi of the borrower in case he is willing to do so. Otherwise a existing reputed security agency would be given supurtagi to safe-guard the assets.

(ix) Noting down of inventory at the time of possession of the unit

- a) The Regional Office should inform party, party's banker, Co-financers by Registered Post/Special Messenger/Phone, well in advance asking them to be present at the time of taking over the possession of the unit.
- b) Inventory of all the assets including Machines, Furniture/Fixture, misc. fixed assets, scraps and raw material, valuable trees will be prepared and their value will also be incorporated in the valuation report.
- c) A copy of inventory report will be sent to the Incharge Zones in each case.
- d) For units having disbursed loan of Rs.50.00 lac and above, video filming of inventory at the time of possession should be done.
- e) Efforts should be made that a Public Notary or Magistrate should sign on the list of the inventory of the assets. In case the public notary or Magistrate is not available then inventory of the assets shall be signed by two independent persons.
- f) FIR should be lodged for missing machines and chik report should be obtained as far as possible while sending the sale proposal. Copy of intimation letter to police, chik report and progress thereof must be sent.

(x) Handing over the physical possession of the unit to original borrower

- a) In case the original borrower clears total overdues including expenses of advertisements and security, the Regional Manager will give the possession back to the original borrower.
- b) In case the overdue interest and expenses are being cleared then the case will be decided by the Dy. General Manager/General Manager.
- c) In all other cases , Managing Director is empowered to take decision.

(xi) Negotiation with the Prospective Buyers.

Delegation in this regard would be as under:-

S.No.	Disbursed amount	Name of the Committee	Constitution of the committee	Presiding Officer
1.	Cases where disbursed amount is upto Rs.50.00 lac	Regional Negotiation Committee	Regional Manager, Senior most technical/Finance & law officer, Incharge Recovery and route officer.	RM/Senior Officer/ Incharge Zone of Head Office.
2.	In all other & jt. Financing cases	Head Office Negotiation Committee	G.M./Dy. General Manager/, All I/c Zones, CM(F), CM(P&M)	MD/GM/DGM

NOTE: i) Incharge Zones /other senior officers present may preside over the RNC at RO.

(xii) Delegation of Power for approval of Sale:-

- i) Dy. General Manager upto Rs.25.00 lac (if RRV is covered)
- ii) Managing Director- Cases above Rs.25 lac and upto Rs.1.00 crore (if RRV is covered).
- iii) Settlement Committee- All other cases including Jt. Financing cases.

Note:-

- i) Negotiation Committee which is proposed to be headed by D.G.M. can also be headed by G.M. and M.D.
- ii) The highest negotiated offer should be re-advertised in newspaper by the Regional Office upto Rs.50.00 lac indicating the highest negotiating offer in hand and inviting offer at least 5% above with double the payable earnest

money giving 10 days time. This should be done prior to putting up the proposal before the competent authority for final approval.

- iii) In order to follow best tradition and transparency in operation it is proposed that highest negotiated offer would also be intimated to the borrower under registered post so that the borrower may be aware of the fact as at what value his property is being sold.
- iv) The best offer would be decided not only in terms of amount of money but also taking into account various other factors like down payment, period of payment of deferred instalments, background/financial strength of purchaser etc. All these parameters should be recorded in the case file/minutes.
- v) In case of deferred sale RM/Incharge Zone must ensure the repaying capacity of purchaser by looking into balance sheet/financial statement/ Income tax return of its existing company and their individual net worth.

(xiii) Period of Balance Payment

- i) The purchaser would not be charged any interest for two months from the date of issue of sale letter/possession, whichever is earlier.
- ii) After the gestation period of two months interest @ 13 ½% would be charged from the purchaser, as per the prevailing system.
- iii) The maximum period of two years is given to the purchaser for depositing the balance sale proceeds in equal monthly/quarterly instalments.
- iv) The additional interest of 3 ½% would be charged in case the purchaser defaults in payment of sale proceeds.
- v) In all cases where the possession of the unit is held up due to litigation/IT clearance etc, hindrance matter may be referred to the Head Office for further interest free period. All such matters will be decided by the Managing Director.
- vi) If the initial down payment has not been deposited by the purchaser in time, the sale approval would be withdrawn and earnest money deposited would be forfeited. The power for revival of sale would rest with concerned approving authority.

(xiv) Legal Agreement

- i) After receipt of initial down payment the RO will execute agreement to sell/sale deed among participating institution and the purchaser would be handedover the possession immediately.

4. Sharing of Sale Proceeds with other departments:-

- i) **UPSEB:** No sharing is to be done with UPPCL, in respect of past Electricity dues.
- ii) **D.I.C.** In those cases where DICs have first charge on pari-passu basis with the Corporation, the sale proceeds will be shared on pro-rata basis to principal +expenses,

if any, with principal outstanding of DIC's. In all other cases where DIC has second charge on the assets such as MML etc., it will be dealt with in accordance with norms/rules applicable for second charge holders.

iii) **U.P.S.I.D.C./NOIDA/GREATER NOIDA**

While finalizing the sale u/s 29 of SFCs Act, position of dues of UPSIDC/Noida/Greater Noida will also be obtained. The sale proceeds will be shared on pro-rata basis. R.M. will pursue UPSIDC and ensure that fresh lease deed for lease rent is executed in favour of new purchaser and it is transferred to UPFC at the earliest in case sale is on deferred payment basis.

iv) **PARI-PASSU CHARGE HOLDERS:**

In some cases, specially joint financing cases, other institutions/banks hold pari-passu charge. Therefore, they should be involved in the sale proceedings/negotiations and as far as possible a consent letter/NOC be obtained from them before approving the sale. In such cases the sale consideration shall be shared on pro-rata to the principal outstanding of the respective charge holders. However before sharing the sale proceeds the outstanding expenses would be deducted.

v) **SECOND CHARGE HOLDERS;**

If there are any second charge holders (like Bank, DIC, UPSIDC etc.) then a letter must be sent to them indicating the offer in hand and requesting them to bring higher offers. The letter must be sent their local office and district/regional office. This letter may be sent at the same time when letter to the original borrower, in compliance of the Hon'ble Supreme Court orders, is sent. Any amount will be paid to second charge holders only after the dues of first charge holders are satisfied out of the sale consideration particularly in case of sale of defer payment basis..

5. Refund of Excess money to Borrowers/second charge holders

Surplus sale proceeds will be refunded to the original borrower after satisfying the dues of Ist charge holder and second charge holder

6. Change in name of Purchaser

It has been experienced that some times offers are given in individual names or in the name of firm but after decision of the sale, the purchaser requests for change of constitution or partners etc. The following guidelines will apply for such changes:-

a) **PARTNERSHIP FIRM**

If the purchaser has a major (more than 50%) shareholding in the proposed partnership firm or has paid, in full, the sale consideration then facility of change in the name of constitution will be granted by the approving authority. Similarly, if the assets

are to be transferred in the name of blood relation or husband/wife, then the matter will be decided by the approving authority.

b) **IN CASE OF THE COMPANIES.**

If the offerer (s) is a director(s) of the company having major shareholding (more than 50%) or has paid in full the sale consideration then the transfer can also be done in the name of the company by the approving authority.

d) In case there is complete change in the constitution or person(s) permission can be given only after receipt of 100% down payment. Such cases will be decided by the Managing Director.

e) All other cases shall be referred to the Managing Director for approval.

7. Bifurcation of Sale Consideration

i) If there are two purchasers one for the land and building and other for plant & machinery, two separate letters would be issued by the Regional Manager.

ii) If there is only one buyer for the entire assets i.e. land, building and plant & machinery and the approved sale amount is more or less equal to the valuation of the assets, two separate sale letters are required to be issued for plant & machinery and land & building at the insistence of the borrower. In all such cases the bifurcation of sale amount shall be calculated on pro-rata to valuation of assets considered at the time of sale.
