

# **CREDIT GUARANTEE FUND SCHEME FOR NBFCs (CGS-II)**

## **CHAPTER I**

### **INTRODUCTION**

Credit Guarantee Fund Trust for Micro and Small Enterprises (CGTMSE), had framed a Scheme for the purpose of providing guarantees in respect of credit facilities extended by eligible NBFCs to borrowers in Micro and Small Enterprises (MSEs). Details of the scheme are as under:

#### **1. Title and date of commencement**

The Scheme known as the “**Credit Guarantee Fund Scheme for NBFCs (CGS-II)**” was launched w.e.f. January 25, 2017. Subsequently, the same has been modified and shall cover eligible credit facility sanctioned by the lending institutions to eligible borrowers under MSE sector with effect from April 01, 2018 on a portfolio basis. The revised scheme is as under:

#### **2. Definitions**

For the purposes of this Scheme -

- i. "Trust" means the Credit Guarantee Fund Trust for Micro and Small Enterprises set up by Government of India and SIDBI with the purpose of guaranteeing credit facility(ies), extended by the Member Lending Institution to the eligible borrowers.
- ii. "Member Lending institution(s)"(MLIs) means an NBFC registered with RBI under Section 45-IA of the Reserve Bank of India Act, 1934 and meeting the eligibility norms as may be specified by the Trust from time to time, or any other institution(s) as may be directed by the Government of India from time to time. The Trust may, on review of performance, remove any of the lending institution from the list of eligible institution.
- iii. "SIDBI" means Small Industries Development Bank of India, established under Small Industries Development Bank of India Act, 1989 (39 of 1989).
- iv. 'Micro and Small Enterprises'- As per the MSMED Act, 2006, an "enterprise" means an industrial undertaking or a business concern or any other establishment, by whatever name called, engaged in the manufacture or production of goods, in any manner, pertaining to any industry specified in the First Schedule to the Industries (Development and Regulation) Act, 1951 or engaged in providing or rendering of any service or services; and "Micro and Small Enterprises" are defined in 7.1.a.i) and ii) & in 7.1.b.i) and ii) of the said Act.
- v. "Scheme" means the Credit Guarantee Fund Scheme for NBFCs (CGS-II).
- vi. "Guarantee Cover" for individual accounts means maximum guarantee cover available against the amount in default in respect of the credit facility extended by the lending institution.
- vii. "Exposure Limit" means the limit fixed by CGTMSE for a particular NBFC allowed to be covered under CGS-II for a period of one year from the date of sanction of Exposure Limit by CGTMSE. On a review / completion of one year, new Exposure Limit can be fixed as per the requirement / performance of the NBFC.

- viii. "Portfolio" means cumulative built up of eligible quarterly sanctions which are fully disbursed by a Member Lending Institution which are standard and regular (not SMA) as per RBI guidelines in the books of the Member Lending Institution at the time of applying for guarantee cover. Each Portfolio of MLI would get crystallized at the end of each quarter in which the portfolio is built up. Accordingly, fresh portfolio would commence from the beginning of the subsequent quarter. Coverage of loan accounts under one quarter would not be covered in subsequent quarters. The first portfolio would, however, cover the loans sanctioned on or after January 01, 2018.
- ix. "Batch" means a set of eligible accounts submitted by an NBFC for creation of a Portfolio.
- x. "Base Year of the Portfolio" means the year of inception of the portfolio(s). In other words, the year in which the portfolio(s) is/are built up.
- xi. "Date of crystallization of the portfolio" would be at the end of the Quarter in which the portfolio is built up.
- xii. "Credit facility" means any financial assistance by way of Term Loan, etc. extended by the lending institution to the eligible borrower. For the purpose of calculation of guarantee fee, the "credit facility extended" shall mean the amount of outstanding of financial assistance as on the date of coverage.
- xiii. "Eligible borrower" means new or existing Micro and Small Enterprises (MSEs) to which credit facility has been provided by the lending institution.
- xiv. "Effective Interest rate" means the interest rate (inclusive of cost of guarantee cover) charged by that lending institution for the relevant time period / duration for which the credit facility has been extended.
- xv. "Tenure of guarantee cover/Currency of the Portfolio" means the period from Guarantee start date till the date of validity of guarantee for a Portfolio, as mutually agreed between the MLI and CGTMSE.
- xvi. "Primary security" in respect of a credit facility shall mean the assets created out of the credit facility so extended and/or existing unencumbered assets which are directly associated with the project or business for which the credit facility has been extended.
- xvii. "Collateral security" means the security provided in addition to the primary security, in connection with the credit facility extended by a lending institution to a borrower.
- xviii. "Material date" means the date on which the guarantee fee on the amount covered in respect of eligible borrower is paid by MLI to the Trust.
- xix. "Annual Guarantee Fee (AGF)" means Guarantee Fee which would be charged annually till the tenure of the portfolio.
- xx. "Amount in Default" means principal and interest amount outstanding in the account(s) of the borrower in respect of financial assistance as on the date of the account becoming NPA, or the date of lodgment of claim application, whichever is lower or such date as may be specified by CGTMSE for preferring any claim against the guarantee cover subject to a maximum of amount Guaranteed.
- xxi. "Non-Performing Assets" means an asset classified as a non-performing based on the instructions and guidelines issued by the Reserve Bank of India from time to time.
- xxii. "Payout cap" means the maximum amount that would be available for Claim settlement as per the terms stipulated by the Trust.

## CHAPTER II

### SCOPE AND EXTENT OF THE SCHEME

#### 3. Guarantees by the Trust

- i. Subject to the other provisions of the Scheme, the Trust undertakes, in relation to credit facilities extended to an eligible borrower from time to time by an eligible institution which has entered into the necessary agreement for this purpose with the Trust, to provide a guarantee on account of the said credit facilities.
- ii. The Trust reserves the discretion to accept or reject any proposal referred by the lending institution which otherwise satisfies the norms of the Scheme.

#### 4. Credit facilities eligible under the Scheme

The Trust shall cover credit facilities (Fund based and/or Non fund based) extended by Member Lending Institution(s) to a single eligible borrower in the Micro and Small Enterprises sector for credit facility not exceeding Rs.200 lakh by way of Loan on or after entering into an agreement with the Trust, with/without any collateral security or such amount as may be decided by the Trust from time to time. However, in respect of MSE Retail Trade the coverage of credit facility would be upto ₹100 lakh.

Provided further that, as on the material date :

- i. The credit facility(ies) is/are standard and regular (not SMA) as per RBI guidelines in the books of the Member Lending Institution; and / or
- ii. The business or activity of the borrower for which the credit facility was granted has not ceased; and / or
- iii. The credit facility has not wholly or partly been utilised for adjustment of any debts deemed bad or doubtful of recovery, without obtaining a prior consent in this regard from the Trust.

Credit facilities extended by more than one NBFC and/or bank/ financial institution jointly and/or separately to eligible borrower upto a maximum of Rs.200 lakh per borrower subject to ceiling amount of individual MLI or such amount as may be specified by the Trust shall also be eligible for coverage under the scheme.

#### 5. Credit facilities not eligible under the Scheme

The following credit facilities shall not be eligible for being guaranteed under the Scheme:

- i. Any credit facility in respect of which risks are additionally covered under a scheme operated / administered by Deposit Insurance and Credit Guarantee Corporation or the Reserve Bank of India, to the extent they are so covered.
- ii. Any credit facility in respect of which risks are additionally covered by Government or by any general insurer or any other person or association of persons carrying on the business of insurance, guarantee or indemnity, to the extent they are so covered.
- iii. Any credit facility, which does not conform to, or is in any way inconsistent with, the provisions of any law, or with any directives or instructions issued by the Central Government or the Reserve Bank of India, which may, for the time being, be in force.
- iv. Any credit facility granted to any borrower, who has availed himself of any other credit facility covered under this scheme or under the schemes mentioned in

clause (i), (ii) and (iii) above, and where the lending institution has invoked the guarantee provided by the Trust or under the schemes mentioned in clause (i), (ii) and (iii) above, but has not repaid any portion of the amount due to the Trust or under the schemes mentioned in clause (i), (ii) and (iii) above, as the case may be, by reason of any default on the part of the borrower in respect of that credit facility.

- v. Any credit facility which has been sanctioned by the member lending institution with effective interest rate (including the cost of guarantee cover) not fulfilling RBI guidelines or any other rate as prescribed by the Trust from time to time.

## **6. Agreement / Undertaking to be executed by the lending institution**

A lending institution shall not be entitled to a guarantee in respect of any eligible credit facility granted by it unless it has entered into an agreement/undertaking with the Trust in such form as may be required by the Trust for covering by way of guarantee, under the Scheme all the eligible credit facilities granted by the lending institution, for which provision has been made in the Scheme.

## **7. Responsibilities of lending institution under the scheme:**

- i. The lending institution shall evaluate credit applications by using prudent banking judgement and shall use their business discretion / due diligence in selecting commercially viable proposals and conduct the account(s) of the borrowers with normal banking prudence.
- ii. The lending institution shall closely monitor the borrower account.
- iii. The lending institution shall safeguard the securities taken from the borrower in respect of the credit facility in good and enforceable condition.
- iv. The lending institution shall ensure that the guarantee claim in respect of the credit facility and borrower is lodged with the Trust in the form and in the manner and within such time as may be specified by the Trust in this behalf and that there shall not be any delay on its part to notify the default in the borrowers account which shall result in the Trust facing higher guarantee claims.
- v. The payment of guarantee claim by the Trust to the lending institution does not in any way take away the responsibility of the lending institution to recover the entire outstanding amount of the credit from the borrower. The lending institution shall exercise all the necessary precautions and maintain its recourse to the borrower for entire amount of credit facility owed by it and initiate such necessary actions for recovery of the outstanding amount, including such action as may be advised by the Trust.
- vi. The lending institution shall comply with such directions as may be issued by the Trust, from time to time, for facilitating recoveries in the guaranteed account, or safeguarding its interest as a guarantor, as the Trust may deem fit and the lending institution shall be bound to comply with such directions.
- vii. The lending institution shall, in respect of any guaranteed account, exercise the same diligence in recovering the dues, and safeguarding the interest of the Trust in all the ways open to it as it might have exercised in the normal course if no guarantee had been furnished by the Trust. The lending institution shall, in particular, refrain from any act of omission or commission, either before or subsequent to invocation of guarantee, which may adversely affect the interest of the Trust as the guarantor. In particular, the lending institution should intimate the Trust while entering into any compromise or arrangement, which may have effect of discharge or waiver of personal guarantee(s) or security. The lending institution shall also ensure either through a stipulation in an agreement with the borrower or

otherwise, that it shall not create any charge on the security held in the account covered by the guarantee for the benefit of any account not covered by the guarantee, with itself or in favour of any other creditor(s) without intimating the Trust. Further the lending institution shall secure for the Trust or its appointed agency, through a stipulation in an agreement with the borrower or otherwise, the right to list the defaulted borrowers' names and particulars on the Website of the Trust.

### CHAPTER III

#### GUARANTEE FEE

##### 8. Guarantee Fee

- i. Guarantee fee at specified rate on each batch of the Portfolio shall be paid to the Trust by the institution availing of the guarantee within 30 days from the date of submission of each batch or 30 days from the date of Demand Advice (CGDAN) of guarantee fee whichever is earlier or such date as specified by the Trust. However, the guarantee cover would start from the date of realization of such payment.
- ii. Consequent to base year, the annual guarantee fee on the Portfolio at a specified rate on pro-rata basis shall be paid every year by the lending institution within 30 days from the date of Demand Advice (CGDAN) of guarantee fee. The dates of payment of guarantee fee would be mutually agreed between the MLI and CGTMSE.
- iii. In the event of non-payment of annual guarantee fee within the stipulated time, the guarantee under the scheme shall not be available to the lending institution unless the Trust agrees for continuance of guarantee and the lending institution pays penal interest on the guarantee fee due and unpaid for the entire period of delay at eighteen per cent per annum, or at such rates specified by the Trust from time to time.
- iv. The process of collection of guarantee fee could be finalized after discussions with the concerned NBFCs.
  - a. Provided further that in the event of non-payment of guarantee fee within the stipulated time or such extended time that may be agreed to by the Trust on such terms, liability of the Trust to guarantee such credit facility would lapse in respect of those credit facility against which the guarantee fee are due and not paid.
  - b. Provided further that, the Trust may consider renewal/revival of guarantee cover for such of the credit facility upon such terms and conditions as the Trust may decide.
  - c. In the event of any error or discrepancy or shortfall being found in the computation of the amounts or in the calculation of the guarantee fee, such deficiency / shortfall shall be paid by the eligible lending institution to the Trust within 30 days of the demand. In case of delay, the MLI shall pay such deficiency / shortfall together with interest at a rate of 18% p.a, or as may be prescribed by the Trust from time to time.
  - d. In the event of any representation made by the lending institution in this regard, the Trust shall take a decision based on the available information with it and the clarifications received from the lending institution and its decision shall be final and binding on the lending institution.
- v. The amount equivalent to the guarantee fee payable by the eligible lending institution may be recovered by it, at its discretion from the eligible borrower.

- vi. The guarantee fee once paid by the lending institution to the Trust is non-refundable. Guarantee fee shall not be refunded, except under certain circumstances like -
  - a. Excess remittance;
  - b. Remittance made more than once against the same portfolio.

## **CHAPTER IV**

### **GUARANTEES**

#### **9. Extent of the guarantee**

- i. The Trust shall fix a Payout cap for each Exposure Limit. Claims under the Exposure Limit shall be settled within the respective Payout cap subject to maximum guarantee cover of upto 75% (as opted by MLI) of 'Amount in default' of individual accounts covered in the portfolio' (or such other percentage as may be specified by the Trust from time to time).
- ii. The guarantee cover will commence from the date of payment of guarantee fee and shall run through the agreed tenure of guarantee cover / currency of the Portfolio subject to timely payment of the guarantee fee.

All proposals for sanction of guarantee approvals for credit facilities above Rs.50 lakh and upto Rs.200 lakh will have to be rated internally by the MLI and should be of investment grade.

## **CHAPTER V**

### **CLAIMS**

#### **10. (a) Lodgment of claim**

- i. For defaults within a Portfolio, MLI shall forward/lodge Claim requests after the completion of lock-in period of 12 months from the date of crystallisation of the Portfolio. The lending institution may invoke the guarantee in respect of credit facility within a maximum period of three years from date of NPA, if NPA is after lock-in period. However, if an account turns NPA within lock-in period, the MLI may invoke the guarantee within three years from end date of lock-in period.
- ii. Claim against a default in account / portfolio can be lodged by MLI if the following conditions are satisfied:
  - a. The account should have been classified as NPA as per RBI norms.
  - b. Lock-in period of 12 months (from the date of crystallisation of the portfolio) should be completed.
  - c. Action for recovery viz. initiation of recovery (SARFAESI Act, Arbitration Proceedings, Repossession and Sale of Assets etc.), irrevocable demand notice, or any other recovery mode acceptable to the Trust, has been initiated after issuing loan recall notice. In case of SARFAESI, MLI has to ensure possession of the secured assets as per section 13(4) of the Securitization Act.
- iii. The claim should be preferred by the lending institution in such manner and within such time as may be specified by the Trust in this behalf.

- iv. The Guarantee Claim received directly from the branches or offices other than respective operating offices of MLIs will not be entertained.

**(b) Settlement of claim**

- i. The Trust shall pay 75 per cent of the eligible claim amount as per available guarantee cover on preferring of claim by the lending institution, within 30 days, subject to the claim being otherwise found in order and complete in all respects. The balance 25 per cent of the eligible claim amount will be paid on conclusion of recovery proceedings by the lending institution. On a claim being paid, the Trust shall be deemed to have been discharged from all its liabilities on account of the guarantee in force in respect of the borrower concerned.
- ii. The lending Institution will have to share recoveries made after claim settlement on pro-rata basis, after adjusting towards the cost incurred by it for recovery of the amount.
- iii. The lending institution shall be liable to refund the claim released by the Trust together with penal interest at the interest rate 18% p.a (from date of initial release of claim by Fund to the date of refund of the claim), if such a recall is made by the Trust in the event of serious deficiencies having existed in the matter of appraisal / renewal / follow-up / conduct of the credit facility or where lodgment of the claim was more than once or where there existed suppression of any material information on part of the lending institutions for the settlement of claims. The lending institution shall pay such penal interest, when demanded by the Trust, from the date of the initial release of the claim by the Trust to the date of refund of the claim.

**11. Subrogation of rights and recoveries on account of claims paid**

- i. The lending institution shall furnish to the Trust, the details of its efforts for recovery, realisations and such other information as may be demanded or required from time to time. The lending institution will hold lien on assets created out of the credit facility extended to the borrower, on its own behalf and on behalf of the Trust. The Trust shall not exercise any subrogation rights and that the responsibility of the recovery of dues including takeover of assets, sale of assets, etc., shall rest with the lending institution;
- ii. In the event of a borrower owing several distinct and separate debts to the lending institution and making payments towards any one or more of the same, whether the account towards which the payment is made is covered by the guarantee of the Trust or not, such payments shall, for the purpose of this clause, be deemed to have been appropriated by the lending institution to the debt covered by the guarantee and in respect of which a claim has been preferred and paid, irrespective of the manner of appropriation indicated by such borrower or the manner in which such payments are actually appropriated.
- iii. Every amount recovered and due to be paid to the Trust shall be paid without delay, and if any amount due to the Trust remains unpaid beyond a period of 30 days from the date on which it was first recovered, interest shall be payable to the Trust by the lending institution at the rate which is 18% for the period for which payment remains outstanding after the expiry of the said period of 30 days.

## CHAPTER VI

### MISCELLANEOUS

#### **12. Appropriation of amount received from the lending institutions**

The amount received from the lending institutions shall be appropriated in the order in which the guarantee fee, penal interest and other charges have fallen due. If the guarantee fee and the penal interest have fallen due on the same date, then the appropriation shall be made first towards guarantee fee and then towards the penal interest and finally towards any other charges payable in respect of the eligible credit facility.

#### **13. Appropriation of amount realised by the lending institution in respect of a credit facility after the guarantee has been invoked**

Where subsequent to the Trust having released a sum to the lending institution towards the amount in default in accordance with the provisions contained in the Section 10 of this scheme, the lending institution recovers money subsequent to the recovery proceedings initiated by it, the same shall be deposited by the lending institution with the Trust, after adjusting towards the cost incurred by it for recovery of the amount on pro rata basis. The Trust shall appropriate the same first towards the pending guarantee fee, penal interest, and other charges due to the Trust, if any, in respect of the credit facility towards which the amount has been recovered by the lending institution, and the balance, if any, shall be appropriated in such a manner so that losses on account of deficit in recovery of the credit facility between the Trust and the lending institution are in the ratio proportionate to the extent of guarantee coverage.

#### **14. Trust's liability to be terminated in certain cases**

- i. If the liabilities of a borrower to the lending institution on account of any eligible credit facility guaranteed under this Scheme are transferred or assigned to any other borrower and if the conditions as to the eligibility of the borrower and the amount of the facility and any other terms and conditions, if any, subject to which the credit facility can be guaranteed under the Scheme are not satisfied after the said transfer or assignment, the guarantee in respect of the credit facility shall be deemed to be terminated as from the date of the said transfer or assignment.
- ii. Sale of the guaranteed assets (full/partial) will be permitted to another registered MLI of CGTMSE. In such case, the guarantee will have to be transferred to the buyer MLI which will undertake to agree to the terms and conditions as laid down in the scheme. However, such deals would require prior consent of the Trust. In the absence of the prior consent of the Trust for sale/assignment of the Portfolio Asset, the guarantee in respect of the portfolio shall be deemed to be terminated as from the date of the said sale/assignment.
- iii. If a borrower becomes ineligible for being granted any credit facilities under the Scheme, by reason of cessation of his activity or his activity or his undertaking ceasing to come within the definition of a MSE unit, the liability of the Trust in respect of any credit facilities granted to him by a lending institution under the Scheme shall be limited to the liability of the borrower to the lending institution as on the date on which the borrower becomes so ineligible, subject, however, to the limits on the liability of the Trust fixed under this Scheme. However, notwithstanding the death or retirement of a partner where the borrower is a partnership firm or the death of one of the joint borrowers, if the lending institution is entitled to continue the credit facilities to the surviving partner or partners or the



surviving borrower or borrowers, as the case may be and if the credit facilities have not already become non performing asset, the guarantee in respect of such credit facilities shall not to be deemed to be terminated as provided in this paragraph.

#### **15. Returns and Inspections**

- i. The lending institution shall submit such statements and furnish such information as the Trust may require in connection with any credit facility under this Scheme.
- ii. The lending institution shall also furnish to the Trust all such documents, receipts, certificates and other writings as the latter may require and shall be deemed to have affirmed that the contents of such documents, receipts, certificates and other writings are true, provided that no claim shall be rejected and no liability shall attach to the lending institution or any officer thereof for anything done in good faith.
- iii. The Trust shall, in so far as it may be necessary for the purposes of the Scheme, have the right to inspect or call for copies of the books of account and other records (including any book of instructions or manual or circulars covering general instructions regarding conduct of advances) of the lending institution, and of any borrower from the lending institution. Such inspection may be carried out either through the officers of the Trust or of SIDBI (except in case of Institutions other than SIDBI) or any other person appointed by the Trust for the purpose of inspection. Every officer or other employee of the lending institution or the borrower, who is in a position to do so, shall make available to the officers of the Trust or SIDBI or the person appointed for the inspection as the case may be, the books of account and other records and information which are in his/her possession.

#### **16. Conditions imposed under the Scheme to be binding on the lending institution**

- i. Any guarantee given by the Trust shall be governed by the provisions of the Scheme as if the same had been written in the documents evidencing such guarantee.
- ii. The lending institution shall as far as possible ensure that the conditions of any contract relating to an account guaranteed under the Scheme are not in conflict with the provisions of the Scheme but notwithstanding any provision in any other document or contract, the lending institution shall in relation to the Trust be bound by the conditions imposed under the Scheme.

#### **17. Modifications and exemptions**

- i. The Trust reserves to itself the right to modify, cancel or replace the scheme so, however, that the rights or obligations arising out of, or accruing under a guarantee issued under the Scheme up to the date on which such modification, cancellation or replacement comes into effect, shall not be affected.
- ii. Notwithstanding anything herein contained, the Trust shall have a right to alter the terms and conditions of the Scheme in regard to an account in respect of which guarantee has not been invoked as on the date of such alteration.
- iii. In the event of the Scheme being cancelled, no claim shall lie against the Trust in respect of facilities covered by the Scheme, unless the provisions contained in Clause (i) and (ii) of Section 10 of the Scheme are complied with by the lending institution prior to the date on which the cancellation comes into force.

## **18. Interpretation**

If any question arises in regard to the interpretation of any of the provisions of the Scheme or of any directions or instructions or clarifications given in connection therewith, the decision of the Trust shall be final.

## **19. Supplementary and general provisions**

In respect of any matter not specifically provided for in this Scheme, the Trust may make such supplementary or additional provisions or issue such instructions or clarifications as may be necessary for the purpose of the Scheme.

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