TEST Engineering & Management

November-December 2019
ISSN: 0193-4120 Page No. 6489 - 6502

Resolution of Stressed Assets in Indian Banks – Recent Legal Developments

Aishwarya Tripathi, Semanti Choudhury
Symbiosis Law School, Pune, Symbiosis International (Deemed University)

Article Info
Volume 81
Page Number: 6489 - 6502
Publication Issue:
November-December 2019

Abstract:

Indian banks have been plagued with the problem of gigantic accumulation non-performing assets (NPA) over the past few years, thus having a severe impact on the entire economy. An asset is termed as non-performing when it stops generating income for the bank. This paper is concerned with only loans and advances that have become non-performing. As per the definition given by the Reserve Bank of India (RBI), a term loan is declared to be non-performing when the principal amount or the interest payable is overdue for a period of more than 90 days.

Some of the historical events which contributed to the creation of NPAs are bank nationalization in 1969, economic liberalization in 1991 and the sub-prime crisis in 2008. RBI, as the central bank of India is tasked with regulation of banking companies in India. RBI has come up with several steps over the past couple of decades to help banks recover dues in order to reduce the quantum of NPAs in the books of the banks. This paper analyses these various frameworks that RBI has notified from time to time and tries to assess the effectiveness of these measures in curbing the problem of accumulation of NPA.

New laws such as Recovery of Debt Due to Banks and Financial Institutions Act, 1993 and Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 have been enacted in order to facilitate speedy recovery of debts by banks and financial institutions without intervention of the court. The recent addition to this list is the Insolvency and Bankruptcy Code, 2016 which has allowed creditors to take control of the management and assets of the borrower. This paper concludes in regard to whether IBC will be able to achieve what the previous laws failed to do.

Article History
Article Received: *5 March 2019*
Revised: *18 May 2019*
Accepted: *24 September 2019*
Publication: *31 December 2019*

Keywords: *NPA, IBC, RBI, SARFAESI, Stressed assets.*

I. Introduction

Indian banks have been plagued with the problem of gigantic accumulation non-performing assets (NPA) over the past few years' which is having a severe impact on the entire economy. It has been touted as the major contributor to the worst economic recession to hit India in a decade. (Kapoor, 2019). However, it can be safely stated that the root cause is sheer apathy from the government and policy makers to address the issue and the shortsightedness on the part of policy makers.

Meaning of NPA

An asset, including a leased asset, becomes non-performing when it ceases to generate income for the bank. Various types of asset can be classified as non-performing by a bank. For the purposes of this paper, we will be concerning ourselves with any loan or advance which has become non-performing. A term loan is declared to be non-performing when the principal amount or the interest payable is past the due date for a period of more than ninety days. NPAs are supposed to be further categorized into Substandard Assets, Doubtful

November-December 2019
ISSN: 0193-4120 Page No. 6489 - 6502

Assets and Loss Assets based on the parameters for such classification provided by Reserve Bank of India (RBI).

Problem of NPA accumulation

It is redundant to state that the NPA issue did not crop up overnight. Decades of neglect in analyzing policy decisions have led to accumulation of non-performing assets in the books of the banks. External economic factors also contributed significantly. It is necessary to trace the history of evolution of banking industry in India post-independence to throw some light onto the chief causes that contributed to this problem.

Bank nationalization (1969)

The banking reforms initiated by the Iron Lady of Indian politics 50 years ago brought in a tectonic shift in the Indian banking industry. Bank nationalization is often touted as the single most important economic policy decision taken by any government post independence. The reforms were announced after the most troubled decade ripped with wars and political unrest. India had a surmounting debt, devalued currency, ever increasing gap between imports and exports, increasing mouths to feed and a two year long drought. Nationalization of banks led to reallocation of credit in favour of priority sectors (e.g. agriculture, small industries, exports, etc.) since it suited the then functional industrial plan. (Rajadhyaksha, 2019). Albeit, this resulted into State induced domination/financial repression of the banks. *In essence, the State determined the allocation of credit but placed no adequate system for accounting, transparency and prudential norms for the banking sector. As a result, the seeds for potential NPA problem were sown in the economy.*

Economic liberalization (1991)

The forced implementation of economic liberalization in 1991 ensued liberalization, privatization and globalization in the banking industry. Market liberalization allowed foreign players to enter the banking and finance industry and they brought with them new products and new structures. Government was forced to reduce its control over the nationalized banks in order to allow them to survive the tough competition they suddenly faced from the new players in the market. *Liberalization was achieved through deregulation policy by RBI on deposits and interest rates of the banks; privatization was enhanced by welcoming private and foreign banks; and, globalization was induced by RBI on banks through alignment of domestic reporting standards with those of international practice.*

Although, issues of inter- sectoral and inter-regional credit allocation became crucial after 1991, such that, economic activity of a sector or of a state, respectively, became a recognized parameter for credit allocation. *The long-standing complaints of poorer states on credit distribution policy of the Government (that had traditionally failed to promote regional balanced development) were ignored.* Public Sector Banks were treated as extended arms for implementing populist measures of the Government.(Arun Kumar, 2018)

The Sub-prime Crisis (2008)

Most of the loans classified as NPAs today were had its genesis in mid- 2000s. India was experiencing an economic boom at that time, finally reaping the benefits of economic liberalization and a growing consumer base. Large companies were given loans for projects whose success relied on a mere conjecture based on their current growth and performance. Cheap credit allowed corporations to finance through lending rather than promoter equity. However, with the sudden advent of the global financial crisis in 2008, growth slowed down and corporations

November-December 2019
ISSN: 0193-4120 Page No. 6489 - 6502

failed to meet the repayment schedule of the loans they had taken. This led to a vicious cycle of taking loans to pay off existing loans, in a desperate attempt to not classify them as a NPAs. (Paul, 2018). Unrealistic promoter confidence, unreliable capital market projections fund diversion, inadequate end use monitoring of funds, global economy slowdown, inadequacy of collateral security, false representations for credit facility, over-valuation of corporate goodwill and misguiding asset quality reviews have led to adverse lending by the banks.

The figures from the archives of World Bank data imply grave concerns for the Indian economy. *As of 2017, NPAs account for up to 10% of total gross loans given by banks.* From 2008 onwards up till 2015, NPAs accounted for 4.3% of total gross loans given by banks. However, this figure skyrocketed in 2014, rising as high as 9.98% in the year of2017.(The World Bank)

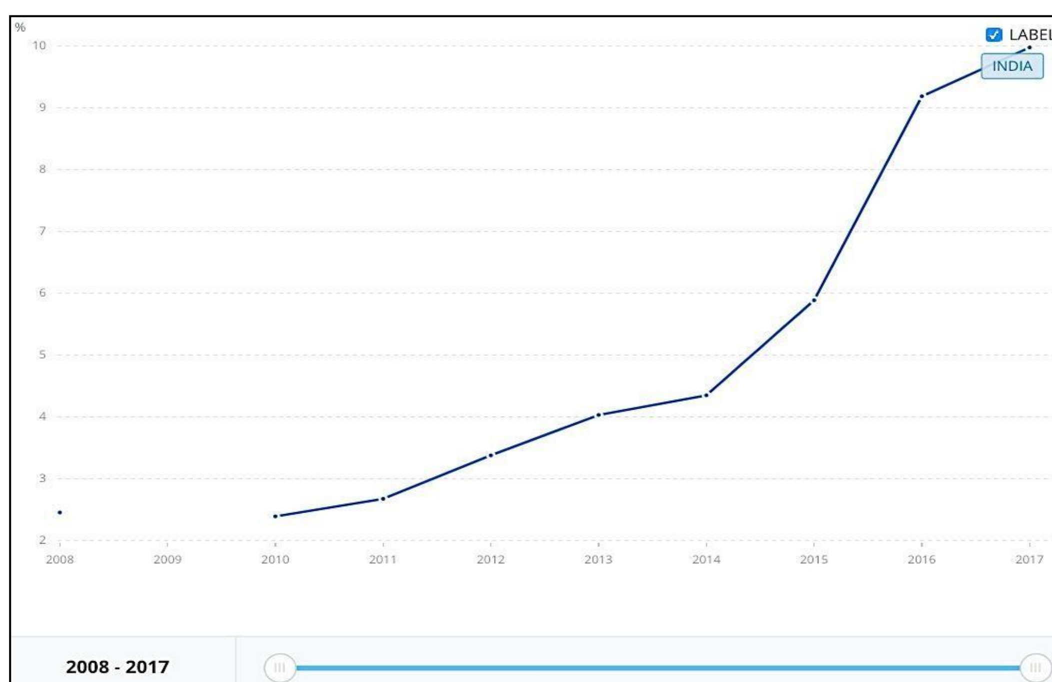

Figure 1Bank nonperforming loans to total gross loans (%)-India

According to the RBI Financial Stability Report, 2019, India's current gross NPAs amount to 9.3%. **(Reserve Bank of India, 2019)**India's NPA is one of the highest amongst all major economies of the globe, second only to Italy. Though China's growth is largely fuelled by borrowings, it has managed to limit its NPA to a mere 1.7%, as per the International Monetary Fund (IMF) Soundness Indicators.**(Abraham, 2017)**. However, it is interesting to note that RBI in its Financial Stability Report in June, 2018 had predicted that gross NPA may rise to 12.2% by March 2019. **(Reserver Bank of India, 2018)**Yet, gross NPA in March, 2019 was only 9.3%. **(Reserve Bank of India, 2019)** . This sudden decline in gross NPA was prompted by credit growth during first quarter of financial year 2018-19, mainly in private sector banks. The asset quality of banks improved leading to a decline of gross NPA from 11.5% in March, 2018 to 10.8% in September, 2018.**(Reserve Bank of India, 2018)**.

That said, India still continues to be one of the highest grosser of stressed assets. This piling of NPAs, especially in public sector banks

TEST Engineering & Management
November-December 2019
ISSN: 0193-4120 Page No. 6489 - 6502

have caused massive liquidity crunch and is threatening to pose a systemic risk to the economy.

Role of RBI in managing stressed assets

Financial regulation and supervision is key in ensuring soundness of financial system. Regular supervision and monitoring of banks by the central bank is key for financial safety as banks are often the epicenter of a systemic risk. Post introduction of liberalization and privatization reforms, financial system was in need of an overhaul. As a result, in August 1991, a high-level Committee chaired by the then RBI Governor, thus called the Narasimham Committee, to assess the functioning of the financial system and provide solutions for reforms. The committee suggested several reforms for the banking sector and capital market (Ahluwalia, 2000). In view of the recommendations of the said Committee, RBI prescribed uniform prudential norms and standards broadly in-line with the Basel Committee on Banking Supervision. Prudential norms, per se, are the guidelines and general norms issued by the regulating bank (in this case, RBI) of the country for proper and accountable functioning of bank and financial institutions. Since then, prudential norms relating to income recognition, asset classification and provisioning have been laid down by RBI from time to time.

RBI is empowered to lay down framework for resolution of strained assets by the virtue of powers conferred to it under Section 35A which deals with the Power of the RBI to give directions to banking companies, Section 35AA which deals with Power of Central Government to authorize RBI for issuing directions to banking companies to initiate insolvency resolution process and Section 35AB dealing with the Power of RBI to issue directions in respect of stressed assets of the Banking Regulation Act, 1949 read with Section 45(L) dealing with Power of Bank to call for information from financial institutions and to give directions of the Reserve Bank of India Act,1934. Section 35AA and 35AB were inserted vide the 2017 amendment to the Banking Regulation Act, 1949 which was brought in-force after the enactment of IBC. RBI from time to time have laid down guidelines for revival of stressed assets.

- *August, 2001- Corporate Debt Restructuring (CDR)*

  CDR is a voluntary non-statuary mechanism. CDR allows banks and other financial institution to jointly reorganize the debt of companies facing financial crisis, in order to provide timely relief to such companies. The CDR mechanism is available to those companies that enjoy credit facilities from multiple lending institutions. This mechanism allows such institution to restructure the debt in a speedy and transparent manner.

- *January 2014- Framework for Revitalizing Distressed Assets*

  The framework is based on the principle of early recognition of financial distress, thereby allowing quick steps for speedy resolution. This ensures fair recovery for the financers. For operationalizing this framework, detailed guidelines on refinancing the project loans, sale of NPAs by banks and credit risk management have been introduced. This framework encourages timely formation of lenders' committee with timelines to concur to a resolution plan and incentivizes prompt agreement to a resolution plan. The framework mandated independent evaluation of large value restructurings in order to ensure viable resolution plans and a fair sharing of losses between promoters and creditors.

- *June 2015- Strategic Debt Restructuring (SDR)*(Reserve Bank of India, 2015)

TEST Engineering & Management
November-December 2019
ISSN: 0193-4120 Page No. 6489 - 6502

Under the SDR, banks that have processed loan to a corporate buyer, acquire the right to *convert full or the part of the loan into equity share of the borrower company.* This initiative can be taken by consortium of lenders or the joint lender forum or the corporate debt restructuring cell. It is mandated that a minimum of 75% creditors by value and 60% creditors by number must approve the decision arriving out of invoking the SDR scheme. Due to conversion provisions, *change in the ownership* of the borrowing company can be brought about by the lenders. The strategic debt restructuring gives bank the powers to manage the company in realization of their debts. Additional options for infusion of equity by promoters, transfer of the promoters' holdings to a security trustee/ escrow account till turnaround of the company, etc., were also permitted under the SDR scheme.

- *June 2016- Scheme for Sustainable Structuring of Stressed Assets*

  This scheme aims at *deep financial restructuring of big debt projects by allowing the vendors to acquire equity of the defaulting borrower.* It is intended to restore the flow of credit to critical sectors, such as, infrastructure. The lending bank must evaluate the sustainability of the debt through an independent agency. A sustainable debt is one where the principal value of all debts owed to the lenders can be repaid if the future cash flows remain the same. The scheme allows banks to reorganize strained loans under the supervision of an external organization.

- *February, 2018- Resolution of Stressed Assets- Revised Framework*

  This RBI framework subsumed the previous restructuring schemes, i.e., corporate debt restructuring, framework for revitalizing distressed assets, joint lender's forum, corrective action plan, strategic debt restructuring and scheme for sustainable structuring of strained assets. Therefore all loans, including those where any of the previous schemes were invoked but not implemented will be governed by the new framework.

This revised framework aims at substituting the previous guidelines with a harmonized and comprehensive framework for resolution of stressed assets in line with the Insolvency and Bankruptcy Code, 2016. Under the new scheme, lenders must report credit information of a SMA account to Central Repository of Information on Large Credits for all borrower entities having an exposure of over Rs.50million.All lenders are required to provide an approved and documented policy for resolution of stressed assets known as the *resolution plan* which may involve actions, such as, regularization of the account by payment of all over-dues by the borrower, sale of exposure to other investors, change in ownership or restructuring. The resolution plan shall be implemented after 180 days from the date of their first default. *If the resolution plan cannot be implemented within the given time, then the lenders must file insolvency petition, either singly or jointly within 15 days from the expiry of 180 days from default.*

The framework prescribes higher provisioning norms and monetary penalty if the lender fails to meet the prescribed timelines or attempts to conceal the status of the account. Borrowers who have committed frauds, malfeasance/willful default are not eligible for such restructuring. Only in cases where the existing promoters have been replaced by the new promoters, delinking such existing promoters from erstwhile management of the company, can such lenders take a view on restructuring scheme.

This guideline was issued by RBI vide Section 35AA of the Banking Regulation Act, 1949 which was introduced by the Banking Regulations (Amendment) Ordinance, 2017. Further, the same ordinance inserted Section 35AB to enable RBI to issue directions or indicate authorities or appoint committees to advise bank on resolution of these assets.

November-December 2019
ISSN: 0193-4120 Page No. 6489 - 6502

- *June, 2019- Prudential Framework for Resolution of Stressed Assets*

The RBI Circular of February 2018 was challenged before the Allahabad High Court by borrowers who were forced to move to NCLT after expiration of the 180 day granted for implementation of resolution plan. Allahabad High Court ruled in favour of RBI and did not grant interim relief to the borrowers many of whom were power producers. The borrowers appealed before the Supreme Court against the Allahabad High Court decision. Supreme Court overturned the Allahabad High Court decision and stated that the February 2018 circular was ultra vires the power granted to RBI under Section 35AA of Banking Regulation Act, 1949. The Court stated the rationale that Section 35A authorized RBI to issue directions only in relation to specific cases of default, but could not give direction in relation to debtors in general. Consequently, the court quashed all proceedings relating to Insolvency and Banking Code initiated under the said RBI circular. **(Sinha, 2019)**.

Pursuant to this decision, RBI substituted its February, 2018 framework with a new framework on June 7, 2019. According to the new guidelines, on a default happening, all lenders are required to put in place a resolution plan within a period of 30 days from day of default. During the 30-day review period, the lenders would make a decision on a resolution strategy which may include sale of loan, legal action for debt recovery, or immediate referral to NCLT or restructuring and change in ownership. Lenders would sign a binding Inter Creditor Agreement (ICA) if the RP is implemented. An agreement signed by lenders representing 75 per cent by value of outstanding or 60 percent of lenders by number would be binding on all lenders. For most large borrowers, the resolution plan will have to be executed within 180 days from the end of the Review Period. RBI has imposed penalizing provisioning norms if the RP is not implemented within 6 months or 1 year of the Review Period. It is expected that high provisioning norms in case resolution fails will prompt banks to refer cases to NCLT though the new framework does not mandate any such reference.(**Moneycontrol, 2019**).

Apart from various directions from the RBI, there are separate statutes which have been enacted to provide additional powers to lenders to recover loans on time or provide speedy redressal of matters involving bad loans. Analyzed below are some key provisions of those statutes.

- <u>The Recovery of Debt Due to Banks and Financial Institutions,1993 (RDDBFI Act):</u>

The genesis of this legislation can be traced back to the recommendations of the Narasimhan Committee which had suggested that setting up of the special tribunals for speedy adjudication of loan recovery matters is important to successful implementation of the financial sector reforms. The Government in 1993 enacted the ultramodern legislation of RDDBFI Act in line with the suggestions of the Narasimhan Committee.

RDDBFI Act established the Debts Recovery Tribunals (DRTs) and Debt Recovery Appellate Tribunals (DRATs) as exclusive forum for recovery of debts due to Banks and Financial Institutions in an expeditious manner. The Act also excluded the application of Civil Courts for recovery of process by banks and financial institutions. The Act also provides procedure for claims filed before the DRTs and DRATs which is aimed at making the process time bound and speedy.

- <u>The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act,2002 (*SARFAESI):*</u>

RDDBFI Act which was enacted to allow debt recovery by banks and financial institutions without the intervention of civil courts which

November-December 2019
ISSN: 0193-4120 Page No. 6489 - 6502

consequently, provisions for lenders interests and protection of vulnerable small borrowers were also injected into the evolving legislation. In an endeavor to cap NPAs and to create confidence amongst lenders/small borrowers,SAFAESIwasadopted.SARFAESIgavemuchneededimpetus to debt recovery mechanism. The Act ushered in renewed poise amongst secured creditors of banks and financial institutions, such as Non- Banking Financial Companies(‘NBFC’).

SARFAESI empowers a secured creditor to take control of their securities and deal with them without the involvement of the court. Alternatively, the secured creditor can also authorize any Asset Reconstruction Company (‘ARC’) to acquire financial assets for the purpose of restructuring of debt. However, the provisions of SARFESI are available only for NPA loans. The Act provides that NPAs should be backed by securities charged to the bank or financial institution through instrumentalities of hypothecation or mortgage or assignment. SARFAESI provides three modes to banks and financial institutions for recovery of debts: securitization (Section 2(z)), asset reconstruction (Section 2(b)) and enforcement of security interest (Section 13).

SARFAESI Act has been amended several times during its lifetime to make it more suitable to achieve the purpose for which it was enacted. In 2004, the definition of NPA was enacted to bring in uniformity in the classification of assets by financial institutions, whether or not they were regulated by the RBI. The amendment also allowed ARCs to transfer assets among themselves and made it easier for borrowers to approach DRT. 2012 amendment to SARFAESI was critical as it amended Section 9 of the Act to allow conversion of existing debt to equity there by opening new avenue of debt restructuring for the banks and financial institution. It also liberalized the kind of assets that banks could accept in partial satisfaction of its debts and allowed borrowers to offer transfer of immovable property to pay off their debts in part. The 2016 amendment prevented secured creditors from taking possession over the collateral unless it is registered with the central registry under Section 26B of SARFAESI. Upon registration of security interest, these creditors will have priority over others in repayment of dues. The 2016 amendment extended RBI’s power to regulated ARCs. RBI could now examine any information of ARCs related to their business or carry out audit and inspection of these companies and also impose penalties if needed. Stamp duty exemption or transfer of financial assets in favour of ARCs was a big boost to the industry.

Despite providing effective ways to recover and restructure bad debt, SARFAESI has not been able to arrest the growth of NPA in the books of the banks and financial institutions. SARFAESI under Section 17 does not provide for a mechanism to dispute the debt itself. SARFAES I presume that all contentions of the lender in terms of debt are indisputable. It provides no remedy for a borrower’s contention to contest the very validity of lender’s debt. SARFAESI allows banks and financial institutions to recover their NPAs by acquiring and disposing collateral security if the outstanding amount crosses Rs. 1,00,000. In reality, *SARFAESI has been used against the small borrowers primarily from Micro, Small and Medium Enterprises (MSMEs).*

- The Insolvency and Bankruptcy Code, 2016 (IBC):

There has been a long standing demand for specific law on bankruptcy and insolvency process in India. Many have argued that the liquidation and winding up provisions under the erstwhile Companies Act, 1956 and even the new Companies Act, 2013 are archaic and

November-December 2019
ISSN: 0193-4120 Page No. 6489 - 6502

inadequate and does not provide an opportunity to the lenders to operationalize the lender to recover their loans. The IBC was enacted as a response to this demand. It repealed the Presidency Towns Insolvency Act, 1909, Provincial Insolvency Act, 1920 and certain provisions of the Sick Industrial Companies (Special Provisions) Act, 1985 (in consonance with its repeal Act of 2002). The code further altered the Companies Act, 2013, such that, the provisions of voluntary winding up of a company were repealed. Previously, insolvency and bankruptcy were governed by multiple legislations in India. IBC primarily consolidated all laws relating to insolvency resolution of individuals as well as entities such as companies, limited liability entities, partnership in single piece legislation.

The IBC has placed a framework for aid of sick companies either through winding p procedure or by engineering a revival plan, such that, the investors can exit the corporation. Voluntary liquidation, previously covered under the Companies Act, 2013, is now under the purview of the IBC. Further Chapter XIX of the new Companies Act which dealt with revival and rehabilitation of sick companies has been omitted and brought under the IBC. Winding up of a company due to inability to pay debts is now extensively covered by the IBC.

The IBC empowers all creditors (secured or unsecured) to initiate insolvency proceedings upon a default of amount equaling Rs. 1 Lakh or more in order to claim their stake in a time bound manner. The time for resolution of the claim has been capped at180days, however an extension of 90 days may be granted by the respective tribunal. It is imperative to note that unsecured lenders had no such rights under the previous legislations. The IBC further provides that Debt Recovery Tribunals will decide individual insolvency cases, whereas, the National Company Law Tribunal shall adjudicate corporate insolvency cases.

The IBC provides that insolvency resolution processes will be conducted (i.e. managed and operated) by licensed insolvency professionals only. The IBC also consists of a notable feature called information utilities. This platform shall serve as the avenue to collect, collate and authenticate financial information of debtors in centralized electronic databases. The IBC has setup Insolvency and Bankruptcy Board of India for regulating the functioning of insolvency professionals.

Upon default, Insolvency Resolution Process (IRP) is triggered by any creditor (financial or operational) or the debtor. This step is followed by appointment of insolvency professional who control the assets of the debtor during the process. The calm period, i.e. the moratorium period provision prescribes that IRP should to be completed within 180 days (extendable to 270 days in certain cases). If the IRP is approved by 75% of the creditors, the revival plan is implemented; otherwise, the company goes into liquidation.

Even during its short span of operations, IBC has been amended quite a few time to iron out the teething problems. The Insolvency and Bankruptcy Code (Amendment) Bill, 2017 disqualifies certain people such as willful defaulter, undischarged solvent or a disqualified director from submitting a resolution plan. The Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018 recognized homebuyers as financial creditors enabling them to invoke IBC provisions against errant developers. It provides them the necessary representation in the Committee of Creditors and provides them the opportunity in the decision making process.

Another major beneficiary of the 2018 Amendment are MSMEs. Knowing the importance of MSME Sector in regard to employment creation economic growth, the Ordinance allows the Government to offer them with certain exemptions under IBC. The

TEST Engineering & Management
November-December 2019
ISSN: 0193-4120 Page No. 6489 - 6502

advantage is that it allows the promoter to bid for his enterprise undergoing IRP except when he is a willful defaulter and is not disqualified for any reasons related to default. Central Government can also provide further exemptions if required in public interest.(Press Information Bureau, Government of India, 2018).

Since its inception, IBC has become fairly popular as more and more lenders are trying to use the law to recover their debt. IBC, along with the 2017 amendment to the Banking Regulation Act, 1949, empowered creditors to deal with distressed financial assets in a transparent time bound manner. IBC is an exemplar change in which creditors are allowed to take control of the assets of defaulting debtors, in contrast to the earlier systems in which assets remained in the possession of the debtors till resolution or liquidation. The following figures will provide an idea regarding popularity of IBC for recovery of debt as against the previously existing modes of debt recovery.

Quarter	No. of CIRPs at the beginning of the Quarter	Admitted	Closure by			No. of Corporates undergoing Resolution at the end of the Quarter
			Appeal/ Review	Approval of Resolution Plan	Commencement of Liquidation	
Jan-Mar, 2017	0	37	1	0	0	36
Apr-Jun, 2017	36	129	8	0	0	157
July-Sept, 2017	157	231	15	2	8	363
Oct-Dec, 2017	363	147	33	8	24	445
Jan-Mar, 2018	445	194	14	13	57	555
Apr-Jun, 2018	555	244	18	11	47	723
Jun-Sept, 2018	723	216	29	18	76	816
Total	--	1,198	118	52	212	816

Source: Insolvency and Bankruptcy Board of India (IBBI) Newsletter.

Figure 2: Corporate Insolvency Resolution Process

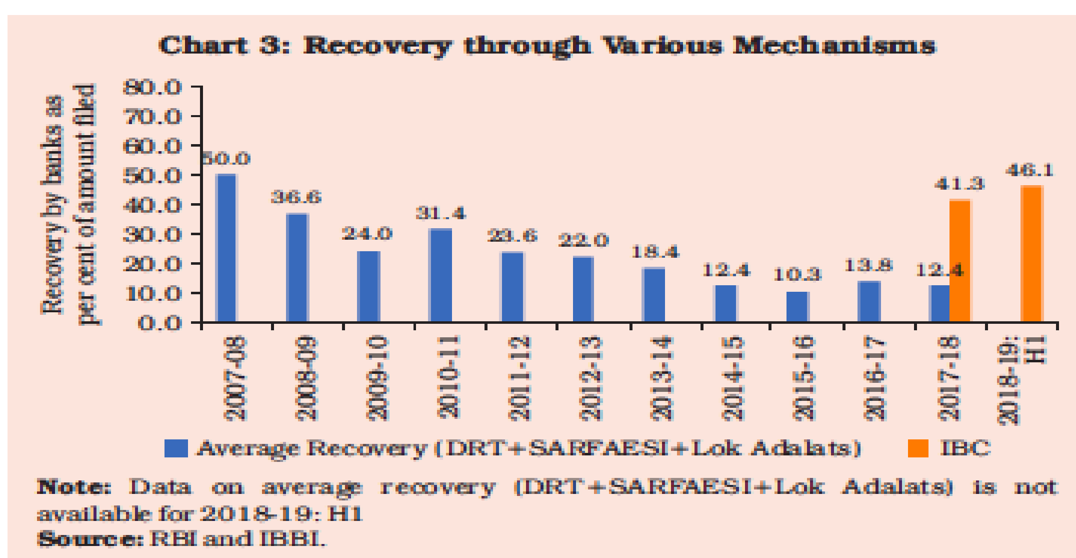

Figure 3: recovery through various mechanism

TEST Engineering & Management

November-December 2019
ISSN: 0193-4120 Page No. 6489 - 6502

(Amount in ₹ billion)

Recovery Channel	2016-17				2017-18 (P)			
	No. of Cases Referred	Amount Involved	Amount Recovered*	Col. (4) as % of Col. (3)	No. of Cases Referred	Amount Involved	Amount Recovered	Col. (8) as % of Col. (7)
1	2	3	4	5	6	7	8	9
i) Lok Adalats	3,555,678	361	23	6.3	3,317,897	457	18*	4.0
ii) DRTs	32,418	1,008	103	10.2	29,551	1,333	72*	5.4
iii) SARFAESI Act	199,352	1,414	259	18.3	91,330	1,067	265*	24.8
iv) IBC	37@	-	-	-	701@	99#	49^	49.6
Total	3,787,485	2,783	385	13.8	3,439,477	2,956	404	13.7

Notes: 1. P: Provisional.
2. *: Refers to amount recovered during the given year, which could be with reference to cases referred during the given year as well as during the earlier years.
3. DRTs - Debt Recovery Tribunals.
4. @: Cases admitted by National Company Law Tribunals (NCLTs).
5. #: Claims admitted of financial creditors (FCs) on 21 companies for which resolution plans were approved.
6. ^: Realisation by FCs from 21 companies for which resolution plans were approved.
Source: RBI and Insolvency and Bankruptcy Board of India.

Figure 4: NPAs of SCBs recovered through Various Channels

Source: RBI, Report on Trend and Progress of Banking in India- 2017-18, December 28, 2018 (p. 33-34)

Though IBC has become immensely popular, it is not free from any problem. Are solution plan under IBC needs to be approved by 75% of the financial creditors. The corporate borrower goes for liquidation if the creditors fail to agree on are solution plan within the period of 180 days (or 270 days if extended). Therefore, IBC vests a lot of power on the lenders. Hence a mere disagreement among the lenders can lead liquidation of the corporate borrower. From previous instances, we have witnessed that creditors and lenders lack willingness to come to a agreement in such cases. The success of IBC is thus reliant on the lenders acting in a time bound manner and implementing a proper plan of turnaround and restoration to the borrower rather than focusing merely on minimizing provisioning. IBC gives a lot of power to the financial creditors who lead the resolution process from the front. This significantly undermines the rights of the operational creditors. An insolvency professional is appointed by the creditors who takes over the operation of the enterprise. Insolvency professional has the expertise and know-how necessary for running the business. Therefore, identifying the correct insolvency professional in essential for success of resolution plan.

IBC has contributed to yielding better recoveries in lesser time when compared with earlier methods of recovery. According to CRISIL Report, "*recovery through the IBC was Rs 70,000 crore in fiscal 2019 – or twice the Rs 35,500 crore recovered through other resolution mechanisms such as the Debt Recovery Tribunal, Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, and Lok Adalat – in fiscal 2018.*"(CRISIL, 2019)

II. Conclusion

Until 2018, the total NPAs stood at Rs 9.6 lakh crore. Approximately 88% of these NPAs were from loans and advances provided by the public sector banks. Out of total NPAs, 22% were from loans provided to priority sectors such as housing, education and agriculture, while remaining 78% were from non-priority sector loans. (Sinha, 2019). Higher NPA ratio

November-December 2019
ISSN: 0193-4120 Page No. 6489 - 6502

shakes the confidence of the investors, depositors and lenders alike. It causes poor recycling of funds which in turn will have deleterious effect on deployment of credit in the country. Non-recovery of loans leads to drying up of credit in the market and affects the financial soundness of the bank/financial institution. Classification of an asset as NPA puts the obligation of provisioning upon the banks. As number of NPAs in the books rise, proportional amount of provisions must be kept aside by the bank. Such circumstances choke the amount of credit flow in the economy; the demands of enterprises in need of capital are not met by the economy. Lack of credit towards entrepreneurial ventures in turn slows down the growth of trade and commerce.

RBI has brought about a revised framework to align its directives with the insolvency and the bankruptcy court. In essence, it is intended to supplement the court and designate an optimal resolution mechanism. A scheme of restructuring under the new framework can only be successful if cent percent of the lenders agree to the same. This is a clear departure from a bank led restructuring to a policy/statutory restructuring. This provision might make approval of resolution plan impracticable, wherein the status quo can only be broken by insolvency resolution process. Although, the new framework applies to an earlier scheme of restructuring which had been invoked but not implemented; further clarity at this point is required fromRBI.Theearlierrestructuringplanscouldbei ndifferentphasesofimplementation of restructuring package, hence, specific guidelines must be issued.

IBC is the latest in a string of efforts undertaken to speed up the debt recovery process for banks and financial institution. However, success of any recovery and resolution process is the intention of all parties involved to recover and repay. IBC has significantly decreased the time of recovery to less than a year compared to an average of 4.3 years earlier. That said, IBC is facing the problem of over-burdening of cases sooner than it hoped for. As on March 31, 2019, there were 1,143 cases outstanding under the IBC of which resolution in 32% of the cases was pending for more than 270 days. Significant delays also trigger liquidation. Also, there are a few big-ticket accounts for which resolution has not been finalised for over 400 days.(CRISIL, 2019).

Though the aim of IBC is to provide for a time-bound mechanism for repayment of loans by corporate borrowers, the creditors also need to be mindful of the fact that the chief purpose of IBC in also to ensure the viability of the borrower. An insolvency process is not very praiseworthy if most of the cases under it leads to liquidation. Therefore, there should be proper processed where the lenders will be obligated to respond to concerns of the shareholders before proceeding onto harsh measures. The lenders must also act towards viability of the company, rather than actively seeking its liquidation to write the loans off their books.

Success of IBC will soon be determined by the number of pending cases or number of companies that were sent for liquidation because resolution could not be affected during the provided time limit. One obvious way to prevent this is to ensure more and better insolvency provisions and more number of NCLT and NCLATs for speedy disposal of cases. This will also mean that the Insolvency and Bankruptcy Board of India (IBBI), the authority created under the IBC for implementation of the Code, has the upper hand in driving insolvency process despite the type of institution involved. This has the

November-December 2019
ISSN: 0193-4120 Page No. 6489 - 6502

potential to overlap with powers and functions of other regulator such as RBI, SEBI, IRDAI, the Finance Ministry, etc. We have already had a glimpse of such power tussle pursuant to the February 12, 2018 framework prescribed by RBI for implementing resolution plan under IBC. It will be necessary to predict such conflicts and may be granting a lead regulator status to any of the regulators involved or to IBBI is a plausible way of nipping such conflict in the bud.

Another approach to reduce the growth of NPA is to prevent creation of more NPAs over the next few years. It has been observed that, it is common for multinational companies to borrow money from a bank forming part of their group to finance their other businesses, frequently in non-financial industries. In order to prevent such incidences, RBI needs to implement a stricter framework for exposure to group companies and identify indicators for more prompt reporting of NPAs. There should a separate class of asset for loans which have been unserviced intermittently but have not been yet classified as NPAs. Provisioning norms for these "probable NPAs" should be made and even a mandate of increasing collateral securities in event of such classification should also be prescribed.

At present, the Indian debt market is majorly within the ambit of sovereign debt. Sensing the risk appetite of the investor, variety of debt funds (including those issued from private players) must be introduced to the market. Primary market debt market witnesses more transactions in debt instruments, than the secondary market. SEBI must place guidelines in this regard, by incentivizing debt security transactions at the secondary market. Banks and other financial institutions should have option to invest provisioning funds in secure debt securities so higher provisioning requirements have a lesser impact on their profit and therefore on credit liquidity in the market as a whole.

Using customer deposits to fund bank's losses is also not a viable method to save the banking industry as was envisioned by the Financial Resolution and Deposit Insurance (FRDI) Bill. The FRDI Bill proposed a 'bail-in' clause for resolution of bank failure. The 'bail-in' clause allowed the banks to issue tradable financial assets in lieu of the deposits by a customer in the event bank fails to meet its obligation to pay back the customer's deposit. It also significantly reduced RBI's power to give directions in case a bank files for bankruptcy and the Resolution Corporation proposed to set up under FRDI would be vested with the overweening power. The Resolution Corporation had majority representation from the Government. Therefore, in effect, the Government would have the last say on how the bank's assets should be used to pay back its creditors.(Abraham, 2017).However, owning to a furore from the public over the uncertainity of the fate of their deposits, the Government has withdrawn the FRDI Bill.(Dhawan, 2018).

The government must think of resolving the root cause of NPA accumulation and not mask the symptoms of a sick banking sector by pumping in more taxpayers money as bail-out every year. There is a limit to how much tax-payers money can be used to support a banking system which is unable to recover its due and make profit. That will only lead to postponing the inevitable to a later date rather than solving the problem. Also, it is obvious that some NPAs will always be created from the priority sectors as they are sectors which are by nature non-profit yielding. Therefore, the only way to actually resolve the NPA issue is to ensure lesser creation of new NPA and fast recovery of the existing NPAs. Creation of new NPAs can be prevented by giving loans to

TEST Engineering & Management
November-December 2019
ISSN: 0193-4120 Page No. 6489 - 6502

genuine borrowers after correct assessment of the value of collaterals and ensuring proper reporting and identification when the loan is unserviced for the first time. After that, such loan accounts should be under constant surveillance in order to identify any signs of the loan turning into a NPA. This should become easier with use of technology and linking of all accounts of a borrower through a common channel like aadhar or income tax portal. Secondly, existing NPAs should be further classified based on borrower profile and industry and if any tax payer money is used to fund banks, it should be directed at borrowers and industries where public has a direct stake or benefit. So while, it is acceptable to use tax payers money to waive off loans of drought ridden farmers or a student who is unable to pay back education loan in full but it is completely unacceptable to use the same money to pay off corporate loans which were given in clear violation of collateral requirements and in collusion with bank employees and promoters of such companies. This brings me to the next best way of preventing growth of NPAs, timely reporting. India definitely is in dire need for stronger enforcement of corporate governance norms which forces independent directors, auditors, accountants and employees to disclose any malpractice within the companies and once they do, law needs to offer them protection and rehabilitation so that it is an incentive to be a whistleblower.

These are some of the suggestions if implemented should lead to lowering of NPA over the next few years. There is no magic formula for implementation of any resolution plan neither is there an quick ready-made solution to stop creation of new NPAs. The problem of NPA was not generated in a day, neither will it be resolved overnight. Success of any remedial plan is in the correct intention in formulating it and the tenacity to stick to it long enough till it starts showing result, similar to a diet plan for healthy eating habits. It remains to be seen whether the regulators and the Government implement measures addressing the root cause or whether the steps are a mere stop-gap solutions only to avert the inevitable till a later day, ensuring the when it finally strikes there is no way out.

References

[1] Kapoor, A. (2019, September 09). *The dynamics of India's growth slowdown.* Retrieved December 2019, from https://economictimes.indiatimes.com/news/economy/indicators/the-dynamics-of-indias-growth-recession/articleshow/71020942.cms?from=mdr

[2] Rajadhyaksha, N. (2019, July 16). *Opinion | The 1969 bank nationalization did India more harm than good.* Retrieved December 2019, from livemint.com: https://www.livemint.com/opinion/columns/opinion-the-1969-bank-nationalization-did-india-more-harm-than-good-1563295097940.html

[3] Abraham, R. (2017, December 9). *All you need to know about India's NPA crisis and the FRDI Bill.* Retrieved December 2019, from thehindu.com: https://www.thehindu.com/business/Economy/all-you-need-to-know-about-indias-npa-crisis-and-the-frdi-bill/article21379531.ece

[4] Ahluwalia, M. S. (2000, July 6). *Reforming India's Financial Sector: An Overview.* Retrieved December 2019, from planningcommission.nic.in: http://planningcommission.nic.in/reports/articles/msalu/index.php?repts=finreform.htm

[5] Arun Kumar, A. K. (2018). *banking Industry and non-performing assets.* New Delhi: New Century Publications.

[6] CRISIL. (2019, May 14). *In three years of IBC, more hits than misses.* Retrieved December 2019, from crisil.com: https://www.crisil.com/en/home/newsroom/press-releases/2019/05/in-three-years-of-ibc-more-hits-than-misses.html

[7] Moneycontrol. (2019, June 10). *Explainer |*

TEST Engineering & Management

November-December 2019
ISSN: 0193-4120 Page No. 6489 - 6502

RBI's new June 7 circular on NPA resolution. Retrieved December 2019, from moneycontrol.com: https://www.moneycontrol.com/news/business/moneycontrol-research/explainer-rbis-new-june-7-circular-on-npa-resolution-4080781.html

[8] Paul, A. (2018, September 13). *Examining the rise of Non-Performing Assets in India.* Retrieved December 2019, from prsindia.org: https://www.prsindia.org/content/examining-rise-non-performing-assets-india

[9] Press Information Bureau, Government of India. (2018, June 6). *President Approves Promulgation of the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018.* Retrieved December 2019, from pib.gov.in: https://pib.gov.in/newsite/PrintRelease.aspx?relid=179805

[10] Reserve Bank of India. (2001, August 23). *Corporate Debt Restructuring.* Retrieved December 2019, from rbi.org.in: https://rbidocs.rbi.org.in/rdocs/notification/PDFs/22752.pdf

[11] Reserve Bank of India. (2014, January 30). *Early Recognition of Financial Distress, Prompt Steps for Resolution and Fair Recovery for Lenders: Framework for Revitalising Distressed Assets in the Economy.* Retrieved December 2019, from rbi.org.in: https://rbidocs.rbi.org.in/rdocs/content/pdfs/NPA300114RFF.pdf

[12] Reserve Bank of India. (2015, July 1). *Master Circular - Prudential norms on Income Recognition, Asset Classification and Provisioning pertaining to Advances.* Retrieved December 2019, from rbi.org.in: https://www.rbi.org.in/scripts/NotificationUser.aspx?Mode=0&Id=9908#2

[13] Reserve Bank of India. (2015, June 8). *Strategic Debt Restructuring Scheme.* Retrieved December 2019, from rbi.org.in: https://rbidocs.rbi.org.in/rdocs/notification/PDFs/SDRS62783F81DA523634E0D8AF43D088360A754.PDF

[14] Reserve Bank of India. (2016, June 13). *Scheme for Sustainable Structuring of Stressed Assets.* Retrieved December 2019, from rbi.org.in: https://rbidocs.rbi.org.in/rdocs/notification/PDFs/NT422B1EE9DF2D4B5484487065B8FB94B5EC9.PDF

[15] Reserve Bank of India. (2018, February 12). *Resolution of Stressed Assets – Revised Framework.* Retrieved December 2019, from rbi.org.in: https://rbidocs.rbi.org.in/rdocs/Notification/PDFs/131DBRCEC9D8FEED1C467C9FC15C74D01745A7.PDF

[16] Reserve Bank of India. (2018). *Financial Stability Report, December 2018.* Mumbai: Reserve Bank of India.

[17] Reserve Bank of India. (2019, June). *Financial Stability Report.* Retrieved December 2019, from rbidocs.rbi.org.in: https://rbidocs.rbi.org.in/rdocs/PublicationReport/Pdfs/0FSR_30061794092D8D036447928A4B45880863B33E.PDF

[18] Reserve Bank of India. (2019). *Financial Stability Report.* Reserve Bank of India, Financial Stability Unit. Mumbai: Reserve Bank of India.

[19] Reserve Bank of India. (n.d.). *Handbook of Statistics on Indian Economy.* Retrieved December 2019, from rbi.org.in: https://rbi.org.in/Scripts/AnnualPublications.aspx?head=Handbook%20of%20Statistics%20on%20Indian%20Econo my,

[20] Reserver Bank of India. (2018). *Financial Stability Report, June 2018.* Reserve Bank of India, Financial Stability Unit. Mumbai: Reserve Bank of India.

[21] Sinha, R. (2019, March 04). *Context to the Supreme Court Order on stressed assets of banks.* Retrieved December 2019, from prsindia.org: https://www.prsindia.org/tags/npas

[22] The World Bank. (n.d.). *Bank nonperforming loans to total gross loans (%)-India.* Retrieved December 2019, from data.worldbank.org: https://data.worldbank.org/indicator/FB.AST.NPER.ZS?locations=IN