IMPACT OF IBC, 2016 ON NON-PERFORMING ASSETS WITH RESPECT TO THE RBI CIRCULAR

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ABSTRACT

The banking and the finance system are the regulatory authority for the effectiveness working of the payment system of the country. From the establishment of the BR Act, 1949 to 2020 of the Act various changes can be observed under this for the supervision and implementation of the same. However, the main issue was that of the non-performing assets which went on to increase over the period of time. Even during this phase of this pandemic, the issue has only added more fuel towards the same. Moreover, to tackle the problem at hand the GOI came up with a very clever plan of the enactment of the IBC,2016 that not provided faster resolution process but also opened its doors for resolving the NPA's or rather stressed Assets Issues of the country. Its main purpose was to recover such loan within the stipulated time without any further damaging the working of the finance system. Around the year 2018 -2019 mostly the total amount of bad loans was resolved and by the end of 2019 most of them sustainable. To study the need of IBC and its impact over the banking system as a whole is very important so that the success of it can be made evident from the same, also it is necessary to know whether its implementation is helping to help the financial institutions or it has been used as a source of relief to this NPA's and others as well. It's the mechanism of specialized resolution to deal with bankruptcy situations in banks, insurance firms and financial sector entities. The code even the around the world have taken time to stabilize. With the right implementation process, it will work wonder for the economics of our country over the time.

Key Words- Stressed Assets, NPA's, IBC 2016, RBI Circulars, BR Act 1949

CHAPTER-I PRELIMINARY

REVIEW OF LITERATURE

The information compiled into this research paper is from various independent internet resources, cases, journal article, circulars from RBI and IBBI as well with laws book itself.

Over various periods of time various circular are enacted for the better of the IBC code in respect of the NPA's such as the recent one provides the COVID-19 regulatory package wherein the period of 90 days for NPA's has been extended up to 180 days. Further one of the independent internet sources suggest that the talks has been going on to permanently fixate it for 120 days. In one of the articles the author has provided with the pre and post

conditions/ impact/ issues pertaining to the NPA's and how it has been helped to resolved as per the IBC, 2016. In one of the journals articles the author has described about the pre-regulations impact of the BR Act, 2017 on tackling the problem of the NPA's. the discussion regarding the Impact of newly enacted RBI circular of 2014 was also discussed therein. There was various reform which were taken before the enactment of IBC such as strategic debt restructuring, debt recovery tribunal, the SARAFESI Act and so on. There are various other sources which provides various different perspectives regarding the resolution and problem of the NPA's which are well enumerated and inculcated under this research project further in detailed as follows.

STATEMENT OF PROBLEM

The present study intended to focus upon the issues of the Non-performing Assets and how it has left the economy of India physically disabled at par as such. With help of this Doctrinal with analytical based method of this project it attempts to examine the various circulars passed over the time by the RBI to steadfastness the NPA's into the performing one as far as the year such as 2020-2021, 2019, 2018 and 2016 is concerned thereof. Besides, this the study also endeavoured to find the Impact of BR Act, 1949 as amended in the year 2017 and 2020 as of now as well. The study has been geared by the key factors that what are NPA's, the negative impact arising from thereof, the previous regime and recent adopted to help the speedy recovery of loan are also discussed herein. Finally, the study also took a critical view of the circular dated June 7th 2019 wherein the NPA's are concerned of.

OBJECTIVE

1. To study the Indian Banking System with the newly enacted BR Act, 1949.
2. To examine the issue pertaining to the NPA's on the banking sector and economy of India and resolutions taken thereof.
3. To study the Impact of IBC,2016 on effective resolving the Stressed Assets
4. To outline the various laws specified and related thereof.
5. To review the RBI master circular of prudential norms- a revised framework for Stressed Assets.
6. To provide few suggestive methods in order for the better functioning of the IBC,2016 for GOI / general public and economic as a whole.

LIMITATION

This research paper is limited to the study of NPA's i.e., Non-performing assets and its effect on the banking sector with regards to the IBC code & its impact as well for attempting to solve the issue pertaining to the subject matter with respect to RBI circulars.

HYPOTHESIS

1. The NPA's has proved to be a difficult area to resolve despite of various resolutions passed over time.
2. The prudential framework of 2019 provides with the initiation of the CIRP within the 30 days of defaults by the lenders with the signing of Inter creditor agreement between all lenders.
3. The impact of IBC,2016 have somewhat positive impact on solving the stressed assets and recover the loan with much speedy recovery than any other previously enacted resolutions.
4. The new Regulatory COVID relief package has provided with an additional 180 days for the NPA's period of classification into such from the 90 days thereof.
5. There is also need for Reforms of more tribunal and judges In the NCLT under the IBC for faster resolution and speedy disposal of cases pertaining to the same.

RESEARCH METHODOLOGY

In respect of objective, doctrinal research design with analytical approach has been adopted. The project will be based from various readings, articles, newspapers clippings, journals and research articles. The information will be collected from primary sources such as statutes, bare Acts etc. and secondary sources such as books, and independent internet resources, websites etc. This research paper is based purely on theoretical aspects and focuses towards the analysis of NPA's issues on the banking sector with IBC Impacts and RBI circular related therewith and also derives the answers for the research problem related thereof.

CHAPTER-II DATA ANALYSIS AND INTERPRETATIONS

BRIEF ON BANKING SYSTEM

HISTORY OF INDIAN BANKING SYSTEM

The very backbone of a country is known through its banking and finance system and sector as it plays a huge amount of significant role for the growth and development of any country economic validity. The Indian banking system has seen a lot of major developments over the past few years since its very beginning of the time. During the 1906 to 19011 the movement of swadeshi inspired various politicians and businessman to establish the banking system one for our country India. The major beneficial year was 1934 when the incorporation of the Reserve Bank of India (RBI) took place and is working since the 1935. Today at present RBI is the central bank operating, managing and regulating the financial system of our country.[1]

RESERVE BANK OF INDIA

From the year 1949 RBI started out as state owned/ controlled central bank of India, a major victory after the independence. Today, the RBI governs and regulates the banks and its various subsidiaries as well, by following various measures as laid down by them in accordance with the Parliament. It issues currency and even detect the fake ones. The main goal is of regulating the monetary policy of our country such as through CRR, SLR & Repo Rate.[2]

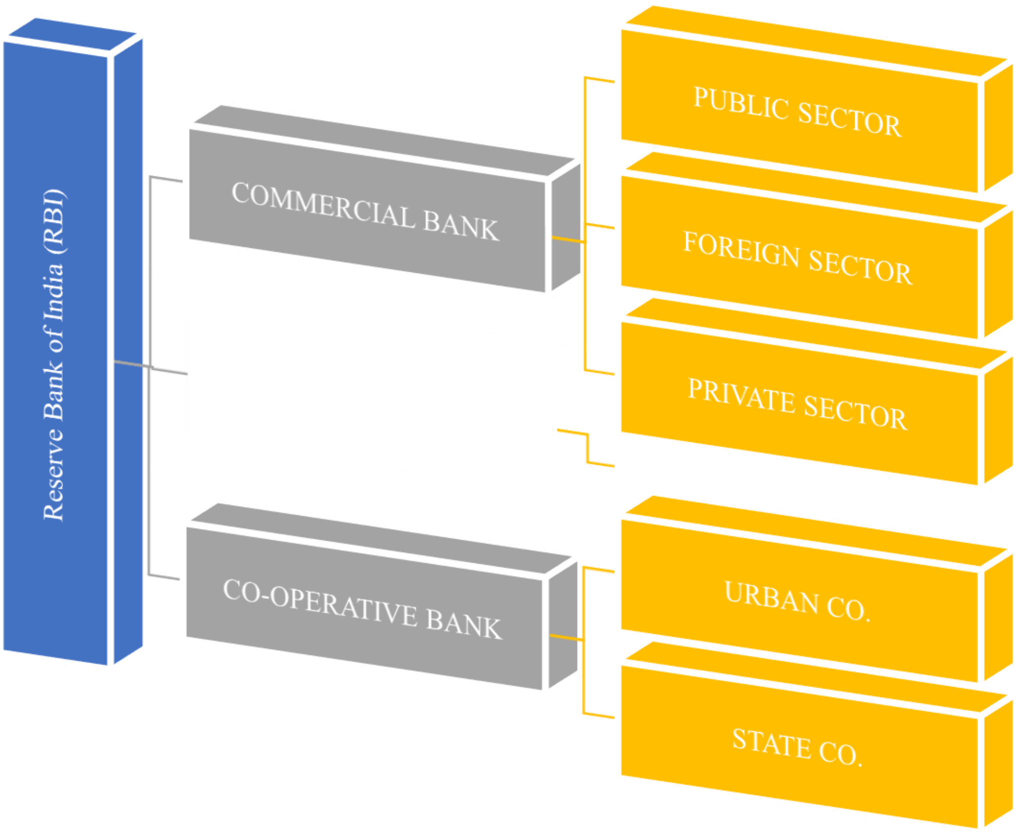
BANKING REGULATION ACT, 2020

After passing the ordinance in 26th June 2020 due to the losses being incorporated by the co-operatives bank so in order to bring them under the Umbrella of BR,1949 for their supervision and effective working The Parliament on Sept 29. 2020 enacted the new BR Act,2020 in the wake of the same. Under this Sec.3, 45, 56 was amended as such that is Acts not to apply to certain co-operative banks, RBI power to apply to C.G in case of suspension/reconstitution and amalgamation of business company, Acts applications to Co-operative societies with certain

[1] THE INSTITUTE OF COMPANY SECRETARIESS OF INDIA, BANKING LAW AND PRACTICE 2 (Aarushi Graphics, 2014)
[2] Id.

modifications and lastly repealed the previous ordinance so passed. Thus, the regulation Act will be applicable to primary co-operative banks but not the agricultural credit society and to, state/central co-operative Banks but not the one whose main business is of agricultural development of long- term finance.[3]

BANKS CLASSIFICATIONS



Under the commercial bank itself there also consist of the banks known as Regional Rural Banks. (RRB) and small finance bank. There is also a new addition to our Indian banking system and are also known as payments Banks. Under this the RBI has made permissible to Receive the deposits which are Restrictive in nature. The following range of amenities includes of the cards such as ATM, Debit while also inferring the net as well as mobile banking system.

[3] Banking Regulation (Amendment) Act,2020, S.3, 45,56, No.39, Acts of Parliament,2020 (India).

Due to the increase use of digitalization and for the ease of comfort of providing services such initiatives were included with the banking system.[4]

BANKING REGULATION ACT, 1949 (as Amended 2017)

After passing various ordinance and master circular in the wake to tackle the situation of NPA's, wherein the banks were ordered for the cataloguing of the assets into 3 particular categories depending upon their feebleness which are further discussed into this research project. However, Parliament later amended the BR Act,1949 in the year 2017 under which certain rights were provided by the RBI to the banks under the Insolvency and Bankruptcy Code ,2016 (IBC,2016) which was also enacted to resolve certain issues pertaining to the same with encouragement and establishing safety measures for boosting business & investment.[5]The law provides for- under the BR, 1949- Sec.35AA and 35AB was inserted among many others wherein under the former one the C.G bestowed the power to the RBI to direct the banks to initiate the IRP under the code when the default so arises and in the later one the RBI has the power to tackle the issue of the S.A for the banking companies with also by appointing authorities or committees to provide regular advice regarding the resolution of S.A. Under the part IIB of the Act Sec.36AD provides with punishments regarding contravening certain activities in regards of the banking company such as obstructing any one from entering into the premises or lawfully carrying his business/ carrying any violent actions under the banking company which would prevent daily regular conducting working of the company whereby the imprisonment is awarded for 6 months or more, with fine that may also extend up to 1000 Rs/- or with both.[6]The law provides for- Part IV of the Act Sec.46 Penalties whereby if anyone contravenes the provisions as so required under therein-

(1) misrepresentation pertaining to the info. Under documents then (3 years or more, extend to 1 crore fine or both).
(2) Failure to produce books of accounts or materials related thereof then (20 lakh fine or more- each offence & extended of 50K with continuances of offence).
(3) Deposits are in contravention of certain Sec of the Acts the (fine twice the amount of deposits received).

[4] Business management ideas, https://www.businessmanagementideas.com/banking/types-of-banks/classification-of-banks-in-india-2-types/5348 , Jan.23rd 2021.
[5] Reserve Bank of India, https://www.rbi.org.in/Scripts/BS_ViewMasCirculardetails.aspx?id=9850, Jan.24rd 2021.
[6] Banking Regulation (Amendment) Act,1949, S.35AA, 35AB,36AD, No.30, Acts of Parliament,1949 (India).

(4) For contravening/ non -compliance/ non obligations of the provisions then (1 crore or more/ twice the amount involved/quantifiable default/and on continuance of such further-extension of 1 lakh or more).

(5) Default by company then (shall be punished according to the guilt).

(6) If committed with consent under the clause 5 then shall be punished with accordingly the guilt.[7]

CHAPTER-III NON-PERFORMING ASSETS (NPA's)

In India our banking system are grossly affected by this NPA's. it is basically a type of loan which has lost its face value. The one who lends loans to the opposite party and in respect of that if the borrowers fail to repay it with interest/principal within the stipulated time then such loans get converted to what are known as are the NPA's. The production of Income /profit under this are Nil to the banks. The stipulated time ranges from 90 days or 180 days.

Under the BR, 1949 as amended by 2017 followed by 2020 The law provides for- Sec.5(b) that defines the term Banks meaning the acceptance of nay of the following kind such as money deposits from public/ fulfilling the purpose of lending & investment which are repayable on demands and also can be withdrawn either by cheque/draft/order etc.[8]

NPA's EXPLAINED

One of the assets of the bank are also considered in the form of loan or advancement which they provide to their borrower i.e., lender-borrower relationship. Hereupon even the interest rate or principal rate is charged with for repaying the loan amount back to the bank and under such circumstances if the borrower fails to do so within a stipulated time frame as prescribed within the agreement than those are known as NPA's. they are the kind of loans which bars on providing any benefits or profits in return to its investors.

For example: if A provides loans to B of 20 crores plus even the market + business situation of B is also running under the favour of B and he is able to repay the loan with interest and say the rate of interest rate of 20% per annum is charged thereunder, however on a sudden given day the forces of business turn's opposite to the B and he fails to pay the loan with interest rate for 90 days or so under such circumstances such loan would equal to be an NPA's.

[7] Banking Regulation (Amendment) Act,1949, S.46, No.30, Acts of Parliament,1949 (India).
[8] Banking Regulation (Amendment) Act,1949, S.5(b), No.30, Acts of Parliament,1949 (India).

The definition as provided by the RBI as per the circular dated July 1 2020, for NPA's goes like the asset/leased asset becomes non- performing when it ceases to deliver any benefit for the bank. On various occasions various different terms has been to for the NPA's by the RBI such as some are follows:

1. In case of term loan if the interest/instalment or in the case of bills purchased /discounted remains undue for over 90 days.
2. Stays out of order in respect of (OD/CC).
3. If it remains overdue for two or one crop seasons for short/long duration crops respectively. In respect of liquidity if its more than 90days.[9]

CLASSIFICATION PERIOD OF NPA's (2021)

Normally as per the guidelines of the RBI if the loan amount is not serviced within the 90 days window then such would amount to NPA's.

COVID-19 RELIEF PACKAGE UPDATE TO NPA's

but however due to the ongoing scenario of the COVID -19 situations the notification pertaining the same was released by the RBI dated April 17th 2020 under the COVID relief package wherein from March to May in respect of moratorium loan availment the 90days period wouldn't be taken into the consideration for any standard bank accounts meaning for the asset classification if the period is overdue for above 90days then such would not be called as bad assets. The Current period for classification of NPA's is 180 days. Even for the NBFC's, they are allowed to grant relaxation in terms of NPA classification for their borrowers but despite this the additional provisions are attached thereof with 10%.[10]

CATEGORIZATIONS OF NPA's

On the basis of period of its classification the NPA's are further categorised into these 3 particular groups.[11]

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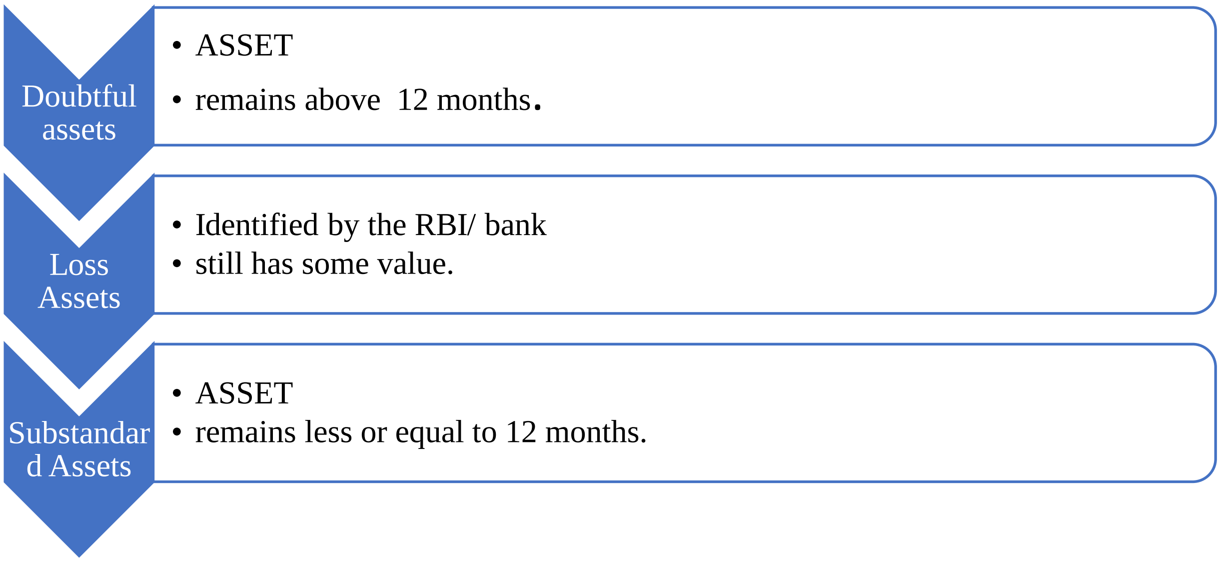
[9] Reserve Bank of India, https://www.rbi.org.in/Scripts/BS_ViewMasCirculardetails.aspx?id=8996, Jan. 23rd 2021.

[10] Reserve Bank of India, https://m.rbi.org.in/scripts/BS_CircularIndexDisplay.aspx?Id=11872, Jan.23rd 2021.

[11] Research Gate https://www.researchgate.net/publication/335658219_A_Study_To_Analyze_Impact_Of_Insolvency_And_Bankruptcy_Code_2016_On_NPA's_Of_Commercial_Banks_With_Reference_To_Iron_And_Steel_Sector, Jan. 23rd 2021



CHAPTER-IV RISE OF THE NPA's AND ITS EFFECT

RISE IN NPA's

Earlier when the business and economy both were on upsurge it was very easier for companies and investors to avail the loan but however in 2008 there happened the financial crisis at a global scale due to which the NPA's started to grow in its road. Most of the factors influencing for its growth were the external because of which even the capacity of these companies and investors failed miserably in respect of repaying the loan amount and thus the stress of finance begun on the NPA's. Other factors which contributed to increase of this rise are as stated below:

1. Frauds by business or companies leads to the fund's divergences.
2. Act of gods such as floods/tsunamis/earthquakes etc.
3. Changes in the governing framework or working environment.
4. Slowdown of the economy recently to due to the COVID-19 scenario.
5. Decaying of the profits and limitations of the company because of crisis on global as well as national scale.
6. Certain due to government arrangements.
7. Unexpected development of the houses of corporates/companies during the boom time as well.
8. Deliberator debtors.
9. In the organization segment the mis-governess of happening.
10. Even if there is a severe competition between some particular sectors.

11. Property procurements postponements.
12. Administration handling is not done properly.
13. Import /export of duped products of domestic companies.
14. Even if the lenders do frauds in lending the loans or poor handling of such can also give rise to the NPA's.
15. Opaque form of lending the loans.[12]

EFFECT BECAUSE OF NPA's

Due to this NPA's various challenges and issues were faced by the banks and the RBI itself, some of them are here listed below:

1. There is excess stress upon the balancing sheet of the finance provider as well as commercial sectors due to which further the carrying of developmental process was proved to be difficult.
2. There was lack of equitable revenues for the investors.
3. Regarding this NPA's issues even the courts were burden with the cases as of such which are till date pending at a large.
4. It proved to be tedious/ difficult because funds from the decent projects were to be directed to the depraved ones.
5. The scale of redundancy became larger due to the investments being stuck because of NPA's.
6. The rate of interest also grew larger in order to maintain the profit margin.
7. There was an inferior return on pre-planned margins.
8. The impact was even felt on the national economy because to funds the other projects there was limited availability of resources and money.
9. The health of the bank started to detoriate as there were less dividend for the Indian government, thus even contributing to the societal as well as party-political losses.[13]

SERIOUSNESS OF THE ISSUES

The NPA's have crossed even more than 8/7 lakh of crores in this year 2019-2020 basically meaning more than 10-12% of loans are never being paid back to the original lender, thus amounting to extensive loss of revenue to the finance/ banking sector. If the restructuring is to be done or for that matter adding of the unrecognised asset then that the limit would even cross the 10-15% of total amount of original stress on loans. The norms which are set for the

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[12]Clearias, https://www.clearias.com/non-performing-assets-npa/ , Jan. 23rd 2021.
[13] Id.

restructuring are even being grossly misused by the borrower as well lenders. The catastrophe is only begun to degrade due to the COVID-19 situations as well. This could even lead to the crashing of banks as it happened in the US during the year 2008.[14]

CHAPTER-V RESOLUTION BEFORE OF IBC,2016

To eradicate this issue/ impact pertaining to NPA's Rise various steps were initiated by the government by passing various circular form RBI as well enacting and reshaping the BR,1949 Act per say and under various other laws and act over time to time. From the year 1993 to 2005 various steps such as DR tribunal was launched, CIB was commissioned, introduction to SARFAESI Act, ARC was done. Then the CDR came in the year 2005, the law provides for- under the Corporate Debt Restructuring Scheme that for the prosperity of every one, a methodically see-through instrument to restructure the corporate debt was to be done under this. From here the story pertaining to the law of moratorium also begun. It is basically based on the borrower-creditor contract. After that various other reforms such as lender's forum, review of quality assets was also taken into consideration as planned as enacted. Then, in the year 2015 came the law provides for- SDR (Strategic Debt Restructuring) and in early 2016 came the SSSA (Sustainable Structuring of Stressed Assets) wherein in the former one the converting from debt to equity was exempted from R3 & R4 of the SEBI (SAST) 2011 and SEBI(ICDR), 2009. Under this the losses have to first bearded by the borrowers and later the lenders. Now under the later one that is SSSA herein lenders were given with the authority to decide upon the matter pertaining to the S.A, therefore via notification the RBI granted such right to the lenders wherein the difference has to be drawn between two different type of S.A i.e., debt which can be serviced and other was the current aggregate outstanding debt. The main goal for this was to aid them recognize the measures to be taken for convalescing such S.A.[15] With the enactment and implementation of such Acts and schemes the graveness to resolve this issue can be seen from therewith, however despite of this its failed to do the magic on the NPA's. the bad assets kept on increasing and the economy went to be degrading. The positive thing out of this was that it gave a new perspective to the government and the banks and they farther went in by implementing new resolves and solutions to the tackles the given problem

[14] Id.
[15] Insolvency and Bankruptcy Board of India, https://ibbi.gov.in/uploads/engagement/WinnerKaivalyaShahILNUAhmedabad.pdf, Jan. 23rd 2021.

as such and thus the Introduction of IBC came into the play which is further discussed in detailed thereof under this Research project.

CHAPTER-VI INSOLVENCY AND BANKRUPTCY CODE AND ITS IMPACT

THE IBC CODE, 2016

As the upsurge in the NPA's went off the chief alarm for the GOI also arose because due to the surge in the rate of interest, issues between the lender -borrower-banks-organization too spiked up. From the year 2000 to 2014 the issue became more worse due to which even the action of prompt correction initiation was taken by the GOI. Various other actions were too taken as discussed above under chapter V of this research project. Thereafter, under the year 2015 the need to frame the IBC code became necessarily on the basis of the reports further carried on thereunder. On 2016 dated May 5th and 28th May IBC was approved / enacted by the houses of parliament as well as the president respectively.[16] The IBC was new complete code in itself with the sole purpose of protecting the interests of small investors such as creditors and debtors by maximation of value of assets. A single law was created for dealing with insolvency and bankruptcy of the corporate person partnership firms/ individuals with a faster resolution process in a time bound manner.

MASTER CIRCULAR BY RBI DATED FEB. 12TH 2018

As law provides for- To transact regarding the NPA's GOI via RBI published a notification dated 12th of Feb. 2018- Resolution of Stressed Assets -revised Framework whereby, new set of instructions and orders were framed and all the previous structures/guidelines regarding the same were pulled down. Here the importance of IBC role came into the play where it became the key regulatory specialist dealing with the S.A because of the insertion of the Sec. under the BR Act,1949 as discussed previously under this paper.[17] However, at the earlier stages the banks were not using the code suitably due to the reason of lack of enticements / corruption regarded retrievals and / deficient Capital because of all this excess of power were provided to the RBI even today for dealing the issue of this. Though there has been a positive impact of it as such for converting the NPA's to performing one or totally making it invisible and nil.[18]

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[16] Dr. Suresha B., A study on the impact if IBC,2016 on Indian Commercial Banks-a pre & post Event Analysis, 6, JETIR, 68, 68-75 (2019)

[17] Reserve Bank of India, https://www.rbi.org.in/SCRIPTS/NotificationUser.aspx?Id=11218 , Jan. 24th 2021.

[18] Supra note 15.

POSTIVE IMPACT OF THE CODE

The gross NPAs of all the banks were amounted to Rs. 8, 40, 958 crores in 2018 led by loans from industry/ then services and then agriculture.[19] Acc. to the GOI foundations it is to be believed that that due to the primer of the code it has various optimistic influences into diminishing the subject-matter of the NPA especially in the P.S because of the following reasons:

1. New resolutions thereunder the code for the reforms.
2. No bidding by the debtor corporations into their own firms.
3. No late payments by most due to the penalty's reforms of the code i.e., Sec.29A.
4. NCLT allowed the Tata to acquire the Bhushan steel (debtor) among various others.
5. The term clearly defined FC/OC along with meaning of debt in respect of financial /operational.
6. Around the year 2018 -2019 mostly the total amount of bad loans was resolved as per recorded by the reputed agency of India. More over by the end of the year 2019 the S.A debt was likely to be become sustainable.[20]
7. Banks / S. Marketable Banks have to obligatorily head under code for easing the S.A.[21]

Under the new COVID-19 relief package even certain other changes were brought under the IBC code such as for initiation of CIRP the requirement is now made 1 crore/ no new proceeding can be initiated and apart from these the debt that fall under the category of default are provided elimination from therewithin. The SC in the recent case even upheld the validity of Sec. 32A of the code whereby any fruitful resolution candidate will be settled with immunity from suit under criminal law which will also bring more relaxation upon the banking system related to the assets which are stressed. The expectation of RBI is such that gross NPAs would rise to 13.5% by sept. 2021. Also, the GNPAs may rise to 15 % of total loans.[22]

CHAPTER-VII RBI CIRCULAR DATED (JUNE 7TH 2019) FOR NPA's

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[19] TFIPOST, https://tfipost.com/2018/05/ibc-npa-non-performing-assets-01/ , Jan. 24th 2021.

[20] Dev P. Bhardwaj, Impact of IBC,2016 on Indian Industries, lawyers club India, June. 12th 2019, https://www.lawyersclubindia.com/articles/Impact-of-Insolvency-and-Bankruptcy-Code-2016-on-Indian-Industries-10234.asp, retrieved Jan. 24th 2021.

[21] Supra note 15.

[22] Dinesh Unnikrishnan, Analysis SC ruling on IBC for bad loans-hit banks, Money Control, Jan. 20th 2021, 2:35pm, https://www.moneycontrol.com/news/business/sc-ruling-on-ibc-augurs-well-for-bad-loans-hit-banks-6370451.html , Jan. 24th 2021.

From the direction of the SC dated 2nd April 2019 via the judgement in the **Dharni Sugar and Chemical Limited V. Union of India AIR 2019 SC 66** whereby it said that the previous circulars and framework regarding the NPA's were in contravenes of the Sec.35AA of the BR, Act1949 as discussed prior in this research project. It also stated that it is necessarily significant to give importance to incentives over IBC against the heavy defaulters. Thus, all the actions taken since that time under Sec. 7 for CIRP of the Code in respect of previous framework would be considered invalid from now on.[23] Hence, then replead by the RBI

The law provides for- After that the **new master circular** was incorporated and published by the **RBI dated 7th June 2019** for the resolution of the S.A under the title-**(Prudential Framework for Resolution of Stressed Assets)** in respect of power given to them by BR,1949 and RBI, 1934 Acts. These are the directions of 2019. The main purpose for which they are enacted is to provide mechanism for the initial recognitions, reporting and resolutions of the S.A i.e., NPA's from time to time and in accordance with the Sec. 32AA of the BR Acts, for CIRP Initiation against particular borrower by lender under the code of 2016.[24]

FEW SAILENT FEATURES OF THE FRAMEWORK

Here are some of the features in respect of solutions of the issues to the NPA's.

APPLIANCES WITH IDENTIFICATIONS & REPORTING OF S.A.

The law provides for-It shall be only applicable to SCB except RRB/ all India term finance institutions/ SFB and Deposits as well non deposits taking NBFC'. It won't be applicable under such situations such as CIRP already initiated / re-structuring under the implementation scheme/ loan to be restructure in cases of Acts of God. In case of identification and reporting it has to be on need- to- know immediate basis upon default and would be called as Special Mention Accounts (SMA) depending upon the period of overdue. They are required to provide and report the information pertaining to the credit to Central Repository.[25]

IMPLEMENTAION / DELAYED IMPLEMENTAION OF RESOLUTION PLAN.

The law provides for-Under this said framework RBI has also provided with Implementation plans with certain conditions specified in respect to subject matter concerned such as for restructuring or change in ownership and for borrowers whereby if exposure is 1 billion of

[23] Dharni Sugar and Chemical Limited V. Union of India AIR 2019 SC 66
[24] Reserve Bank of India, https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=11580 , Jan. 24th 2021.
[25] Id.

lenders then the requirements of ICE have to be fulfilled and in the later one the lenders will only make it applicable under meeting certain specifications as laid therein. Furthermore, it won't be applicable under following conditions such as revival or rehabilitation of Micro/small/ medium enterprises as per the RBI circulars of 2016. The date of the RP also has to be communicated as per the requisite therewithin. The lenders have to strictly comply with this given framework in respect of S.A and have to ignore all the previous one. However due to the COVID-19 situations certain relief has been granted.[26]

RESOLUTION PLAN IMPLEMENTAION WITH CONDITIONS

The law provides for- lenders have to comply with timelines and polices set by the board for RP. They have to investigate/review the default within 30days from the date of its occurrence and then decide upon the plan accordingly by choosing the IBC proceeding for recovery as well. While during the review period an inter-creditor agreement shall also be parallel carried out so as to provide final rules for the RP. 75% of the total Credit facilities + 60% of lenders has to be carried out in agreement and it shall be binding on both the parties. If aggregate exposure is 20 billion/above then it will start immediate after the enactment of this framework and if its 15 billion and above then it will be begun from 1st Jan. 2020. If the accounts are not in default then the commencement would start as per the day of default. The RP has to be implemented with the 180 days. However, they are subject to certain conditions as well which are as follows: If not involving ownership change or restructure then- borrower not in default after the review period (180 days) and after that would be considered as fresh default. If the ownership change or restructure is to be there- borrower not in default but has to complete all documentation process with every new entry being mentioned in the book of accounts. In case of Recovery action- if borrower finished the entire exposure only then. However other additional rules are there to be followed in case of delayed implementation of RP i.e., delayed beyond 180 days then- 20% additional provisioning required and if beyond 365 days then it is of 15%.[27]

PRUDENTIAL NORMS

The law provides for - Under this the following classifications are given therein:

[26] Id.
[27] Id.

Asset

During restructuring the standard assets would denominate to sub-standard asset while the NPA's would remain the same.

Upgrade conditions

Only on the basis if the satisfactory performance criteria are met/ investment grade rating has to be obtained from the CRA's if exposure is of 1 billion /above. In case if its 5 billion or above then the criteria would be somewhat different though grade has to be obtained. / additional provisional of 15% by the lenders have to be made.

Recognition of Income

The newly categorised sub-standard NPA's would fall under the accrual basis and the regular NPA's would fall under the cash basis.

Ownership Change

Under the IBC or this framework would only be implemented- if ownership of the borrower entity gets changed subject to certain conditions then, the credit facilities as standard be continued/ upgraded after such change. The compliance of sec. 29A of IBC is necessary. The new promoter shall not have ties with existing promoter. Further it is stated that such new one would acquire 26% paid-up equity capital with rights of voting of the borrower entity meaning he/she would be the controller of such entity.[28]

EXEMPTIONS UNDER THE PRUDNTIAL NORMS

The law provides for- In the cases of Restructuring the following Exemptions are provided from the RBI as well as SEBI.

Security and Exchange Board of India (SEBI)

Provided under SEBI(ICDR) regulations, 2018- R 158 (6) (a) in case of the price of the equity be lower for the issue under

[28] Id.

- If preceding the reference date, the price of the equity shares on Stock exchange is lower during 26 weeks or 2 weeks and latest book value of balance sheet should not be more than that of 18 months old then, under such circumstances it would be set at Rs.1 per company.
- Reference date is the approval date of restructuring/ securities converted to equity if, then it shall be that date of approval of such conversion.

Reserve Bank of India

If securities are acquired by the conversion of debt then such are exempted from any restrictions. The limit on investment in unlisted non-statutory liquidity would be as per the RBI prescription.

During Restructuring if Debt get converted to equity under such it will also be exempted from restrictions on capital market.

Though they have to reported by the RBI in its annual financial statements with disclosure of the same and under the Sec. 19 (2) of BR Act. compliance would be necessary.[29]

SUBJECT MATTER OF FRAUDS AND WILFUL DEFAULTERS.

The law provides for- In the cases under which the borrowers if and have committed deceptions/ wilful default/ malfeasance then, they won't be eligible for restructuring. But if the old one is replaced by the new (promoters) and borrowers are ties are all cut from such companies then under situations the lenders may consider the same depending upon its creditability without instigating nay criminal proceeding.[30]

CHAPTER-VIII CONCLUSIONS AND SUGGESTIONS

After a thorough analysis from various sources, authors, judgments and RBI circulars pertaining to this research project it can be concluded that the loans turned bad which are the NPA's are draining the morale of the economic structure of the country India. The NPA's can be termed as a kind of loans which bars on providing any benefits or profits in return to its investors. There are 3 varieties of such known as doubtful/loss/ substandard Assets. However, to tackle these situations over the period of time various resolutions and acts were made but only the one powerful ally which came to rescue was the IBC code, 2016. The schemes / plans/

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[29] Reserve Bank of India, https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=11580 , Jan. 24th 2021.
[30] Id.

resolutions within have somehow changed the NPA's to performing one or either have been successful in eradicating the issue to some extent. The amendments made to the banking regulation Act, 2017 have also provided with the opportunity to the lenders for the initiation of the CIRP against the borrower under the code. But in this recent time, it can be seen that the conditions are even worsening due to the ongoing pandemic because of the COVID-19 Virus. The period for classification under the NPA's has however changed in this 2020-2021 which turned from 90 days to 180 days for a specific period of time with the introduction to moratorium as well. the new BR Act, 2020 was enacted wherein to provide relief to the co-operative banks they were included the BR. Specifically, in this year it is expected by the RBI that the gross NPAs would rise to 13.5% by sept. 2021. Also, the GNPAs may rise to 15 % of total loans. The new prudential framework in respect of these NPA's or stressed Assets was launched by the RBI in the year 2019. In this situation of COVID-19 regulatory package has also been released for the relaxations to the borrowers in repaying the same as it was necessary to do so but the same will prove to be difficult to recover in the upcoming future. The issues are same but no doubt the change is new and its positive impact can also be seen from various numbers of cases that were resolved under the 2016 code such as group of Vedanta resources acquiring the electro steels, the case of essar steel limited with the UOI are some of the example for the effectiveness of working of IBC towards the NPA's. For the serious effectiveness of the NCLT under the IBC it is however necessary to establish more judges and infrastructure to dispose of the cases at earliest. There are hurdles at the procedural as well as regulatory level. Until and unless solutions to this problem isn't being brought the issue of resolving the NPA's could only prove to be a tedious job at both economic as well as law level, thus reform is needed under this area as of such.

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