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LAWS ON NPA IN LIGHT OF COVID

ABSTRACT

"The second wave of the COVID-19 pandemic has once again thrown fresh challenges to the financial establishments in the country. Due to the ongoing pandemic, bad loans are projected to see a fresh spike as the rising stress across sectors is beginning to impact the repayment capacity of borrowers.

According to analysts, it is estimated that non-performing assets (NPAs) will jump from a little under 8% in the previous fiscal year helped by restructuring, write-offs, and regulatory relaxations including a loan moratorium to 13-15% in 2021-22."

INTRODUCTION

NPA which stands for Non-Performing Assets refers to a classification for loans or advances that are in default or in arrears. A loan is in arrears when principal or interest payments are late or missed. Default refers to the situation when the lender considers he loan agreement to be broken and debtor is unable to meet his obligations.

When a bank gives out loans, the loans form the bank's assets. When the principal or the interest or both the parts are not being serviced or stop being serviced to the lender, the assets are said to be non- performing assets or NPA's.

The specified period is prescribed to be 90 days in most countries among various banking institutions. However, this is not a concrete and fixed rule and may vary with the terms and conditions agreed upon by the financial institution and the borrower.

An illustration to further the understanding of NPA is.

If Bank BCBCI has lent a loan of Rs120 crores to Alliance Company on which the company has to pay Rs 2,00,000 as interest every month for 5 years. Now, if the borrower defaults on the payment for 3 consecutive months, then the bank must classify the loan as a nonperforming asset in their balance sheet for that financial year.

A simple and concise definition of NPA is "*An asset, including a leased asset, becomes non-performing when it ceases to generate income for the bank."*

TYPES OF NON-PERFORMING ASSETS

"There are different types of non-performing assets depending on how long they remain in the NPA category.

a) Sub-Standard Assets

An asset is classified as a sub-standard asset if it remains as an NPA for a period less than or equal to 12 months.

b) Doubtful Assets

An asset is classified as a doubtful asset if it remained as an NPA for more than 12 months.

c) Loss Assets

An asset is considered as a loss asset when it is "uncollectible" or has such little value that its continuance as a bankable asset is not suggested. However, there may be some recovery value left in it as the asset has not been written off wholly or in parts"

The banking industry in India is seriously affected by the NPA crisis with the rising number of defaulters.

REASONS FOR NPA CRISIS

There are many possible reasons such as.

1. Credit Boom: The Indian economy was booming alongside the world economy in the credit boom of 200-2004. The Indian Firms began borrowing to avail the growth opportunities.
2. Tightened Monitory Policy: the increased repo rate and the reserve repo rate was tightened by the monetary policy by the RBI.
3. Stalled judicial and Legislative Procedures: the court given judgements were usually not in favor of businesses and had an adverse impact on the mining, power and steel sectors.

The other factors which worsened the NPA Crisis.

1. Severe market competition.
2. Natural reasons like flood, drought, earthquake, etc.
3. Maladministration by corporates
4. Slowdown in specific industries.

THE PANDEMIC SITUATION:

The pandemic situation has left many individuals struggling to repay their loans after losing their source of livelihood caused by unemployment due to the economic crisis triggered by the pandemic. The NPA of the banks were expected to rise due to the borrower's inability to repay loans.

However, the Reserve Bank of India's Financial Stability Report presented an assessment of the condition of the Banking sector in the pandemic year which showed that the banks fared much better as the NPA ratio (non-performing assets of banks as a percentage of loans) was broadly under control at the end of March. A series of regulatory forbearance policies and their timely withdrawal along with deleveraging by firms have helped in ensuring that banks' balance sheets were not adversely impacted by the pandemic. For this year, the RBI has projected that the NPA of banks will rise to 9.8 per cent. The deterioration is projected to be much steeper under various stress scenarios. However, the assumptions behind these stress scenarios seem to be conservative. The quality of banks' assets may not deteriorate to the extent projected in the report.

In March 2020, the government planned to suspend laws which classify corporates as non-performing assets (NPA) for six months amid coronavirus outbreak. The companies that defaulted their loans after March 1 and the companies which are currently enjoying a grace period of 90-days to settle dues will not be counted as NPAs, according to government sources.

"The government plans to amend the Insolvency and Bankruptcy Act (IBC) through an ordinance for protecting the loan defaulters, who suffered heavily because of the spread of the virus and lockdown. The officials in finance, corporate affairs and law ministries are consulting the industrialists regarding this," said a senior company executive as per a news report by Business Today.

In 2020,

The performance of companies was badly hit by the lockdown. There's a high likelihood financial and operational creditor will declare insolvency proceedings against many such firms.

To avoid this from happening, Finance Minister Nirmala Sitharaman earlier announced that the government may consider suspending Sections 7, 9 and 10 of the IBC for a period of six months if the current situation continues beyond April 30.

The move would disable the creditors and promoters from initiating insolvency proceedings against companies.

According to the RBI rules, if payment is not made and the accounts are not regularized within 90 days of the date of default, the borrower's account is classified as NPA.

"The Bombay High Court has said the lockdown is to be excluded while computing 90 days for the declaration of NPAs."

This decision came on a petition by Transcon Iconica, which had defaulted its loan from ICICI Bank.[1]by the Bobay High Court.

In August 2020,

The Supreme Court has also ordered waiver of compound interest for all borrowers who availed the loan moratorium announced amid the Covid-19 pandemic. Any amount already charged shall be refunded, credited or adjusted, the top court said. The government in October 2020 had announced a scheme for waiver of compound interest during moratorium for small ticket loans up to Rs 2 crore. This had cost Rs 5,500 crore to the government.

The court observed that there was no rationale in the Centre's policy to limit the benefit of waiver of interest on interest or compound interest only to certain loan categories.

As mentioned in the month of March, the Supreme Court restrained lenders from charging interest on interest/compound interest/penal interest during the six-month loan moratorium period between March 1 to August 31, 2020.

However, an extension was not provided on the grounds that the extension of loan moratorium was an economic policy which was best to be left for policy makers and the RBI and not judges.

In light of the Second wave of the pandemic, the RBI reopened a one- time scheme under which retail borrowers and small businesses were allowed to recast their loans without being downgraded to NPA's. The scheme will be available for borrowers with aggregate outstanding dues of up to Rs 25 crore. Only those accounts which were classified as standard as of March 31, 2021, can be restructured.

[1] Transcon Skycity Private Limited Vs. ICICI Bank (Bombay High Court)
Appeal Number: Writ Petition LD-VC No. 28 of 2020

CONCLUSION

The NPA laws of India have been regularly revamped with respect to the market conditions prevailing at that time. The response of the Government and the RBI with respect to the NPA Rules during COVID was exceptionally slow. Only after repeated complaints and petitions to the courts of India, was action taken. The respected authorities must react in a fast manner so that the losses to the people and the financial institutions are minimized. Considering the fact that the Pandemic and the lockdown were occurrences which were out of human control, adequate safeguards should have been set in place to minimize damage.

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