



NEED OF COURTS IN RECOVERY OF NPAs

C.SRINIVASA CHAKRAVARTHY, RESEARCH SCHOLAR,
MAHARAJ VINAYAK GLOBAL UNIVERSITY, JAIPUR

Prof. (Dr.) MAHENDRA TIWARI, DEAN AND HEAD, JAIPUR SCHOOL OF LAW,
MAHARAJ VINAYAK GLOBAL UNIVERSITY, JAIPUR

Abstract:-

Indian Banking Sector faced huge challenge with regard to non-performing Assets (NPA's). The Bad Debts caused unhealthy economic imbalances in running of Banks & Financial Institutions. It resulted framing of "The Recovery of Debts due to Banks & Financial Institutions Act, 1993" and establishment of debts recovery tribunals (DRT's) & Debts Recovery Appellate Tribunals (DRAT's). The object was to make adjudication process in simple way and expeditious. However, the results are not fast as assumed SARFAESI ACT, 2002 is brought giving the rights in similar way as can be seen in SFC Act, by giving powers to the lender banks directly to sell the assets of defaulted borrowers. An effort is made to review the functioning of DRT's Lok Adalats, SARFAESI Act and ARC's from legal / operational point of view in resolving NPA's of Financial Institutions and Indian Banks.

Introduction:-

In the growth of economy the Banking Sector is playing most valuable role. In the beginning banks used to file suits before Civil Courts for recovery of loans. The trial method in the courts resulting delay in obtaining decree, filing of execution petitions (EP's) and get the suit schedule property auctioned. The formation of DRT's given fast results than Civil Courts but could not help in reducing NPA's as expected. To overcome NPA problems / recoveries the banks have followed several methods by way of corporate debt restructuring (2001), SARFAESI Act (2002) and Asset reconstruction Companies (ARC'S). The banks followed some more legal methods such as one time settlement schemes and conducting Lok Adalats for on spot settlement. Amongst said recovery methods the SARFAESI Act empowered Banks in recovering dues without the Court involvement.

Objectives of the Study:-

- 1) To examine recovery of NPAs through court route by way of filing suits and original applications at DRTs and direct route with help of SARFAESI Act and ARCs.
- 2) To examine the performance of PSB's through court route and direct route.



3) To examine the trends of NPA's Sector Wise Prior through court route and direct route.

4) To examine some Indian Banks for reviewing effectiveness and functioning of DRT's, Lok Adalats, SARFAESI Act and ARC's in recovering dues from the borrowers.

Hypothesis:

For DRT: Ho: It has no legal and operational issues. H1: It has legal and operational issues. For Lok Adalat: Ho: It has no legal and operational issues. H1: It has legal and operational issues. For SARFAESI Act: Ho: It has no legal and operational issues. H1: It has legal and operational issues. For ARC: Ho: It has no legal and operational issues. H1: It has legal and operational issues.

Research Methodology:-

Review of literature from the articles published in different Journals. The Secondary data sources include reports of different banks & other relative information published in the interest sites and on different Banks.

Literature Review:

Arora, U., Vashisht, B. and Bansal, M. (2009) analyzed and compared the performance of credit schemes of selected banks for the last five years. The study found a positive relationship between total loan disbursement and total non-performing assets outstanding of selected banks.

Bodla, B.S. and Verma-Bajaj, Richa (2010) analyzes the efficiency of 29 private sector banks with the data set ranging from the period 1998-99 to 2005-06. The researchers have thrown the lights on the limitations of ratio analysis technique. Considering the limitations of ratio analysis technique the researchers have used production approach of Data Envelopment Analysis (DEA) to judge the efficiency of private sector banks. In this model, banks are considered as service providers and while interest expenses, non-interest expenses and Non-performing assets ratio, i.e. net NPA to net advances are considered as input variables, deposits, advances and investments are considered as the output variables. The results of this study shows that a majority of private sector banks in India need to take steps to decrease the NPA level and improve their output parameters such as deposits, advances and investments because they have failed to acquire full efficiency in all these years of study.



Chaudhary, Kajal and Sharma, Monika (2011) in their study on “Performance of Indian Public Sector and Private Sector Banks: A Comparative Study” compared the performance of public sector and private sector banks in India. It is observed that most of the changes in the functioning of banks have taken place only after liberalization, globalization and privatization. The result of such changes is visible now. The result is mounting NPAs in these banks. The author has compared the trends of npAs in public and private sector banks using statistical tools. It was concluded that the economic reforms have adversely affected the profitability of banks.

B. Selvarajan and G. Vadivalagan (2012) their study “Cost of Non-Performing Assets in Indian Bank” analyzed the cost and reasons of Non-Performing Assets in Indian Bank. 2000-01 to 2009-10. There is no significance difference between the total advances and Gross NPAs in the last 10 years. From the year 2000 –01, the maintenance cost is reduced from Rs.12.97 crores to Rs.2.52 crores in the year 2008-09. It has almost decreased by an amount of Rs.10.45 crores. But the same time in the year 2009-10 the maintenance cost increased to Rs.2.81 crores. So, the bank should take steps to reduce the maintenance and opportunity cost. The ratio of Net NPA to Total assets has been brought down from 3.57 to 0.14 during the decade of study. The ratio of Gross NPA to Total Advances has been brought down from 25.01 to 0.86 during the period of study. At last concluded that the bank has given more loans to borrowers and takes appropriate steps to recover the loan through proper follow up with the borrower. Pre and post credit appraisals of the borrowers are necessary for the bank. Close monitoring of borrower accounts, site/factory visits, are to be done regularly.

Analysis of Data: The research employed the information or facts which is already available, analyzed them to make a critical evaluation. The analytical part utilized the statistical inputs and verified the research hypotheses put forward in the study. The results of secondary data analysis are verified to provide an insight into “why” such trends are observed. The research utilized both primary data and secondary data in order to achieve the said objectives.



Methods of Sampling: The method used in the proposed study based on Judgment sampling, Multi-stage sampling and Convenience sampling. For Judgment Sampling: 5 selected public sector banks covering 75% of total NPAs data; Multistage Sampling: Selection of Managers, Banks, District and Divisions; Convenience Sampling: This sampling is used from the districts for selection of branches of bank.

Table - Problem of NPAs (Region wise)

| Options | Number/ % of respondents | Regions | | | | Total |
|------------|---------------------------------|------------|-----------------|--------------|------------|-------|
| | | L.B. Nagar | Serilingampally | Secunderabad | Kukatpally | |
| Yes | No. of respondents | 50 | 50 | 50 | 500 | 200 |
| | % of respondents within Regions | 100% | 100% | 100% | 100% | 100% |
| No | No. of respondents | 0 | 0 | 0 | 0 | 0 |
| | % of respondents within Regions | 0% | 0% | 0% | 0% | 0% |

Personally compiled through SPSS

The result of the table exhibited that 100% of the respondents say that Banks of all the regions are facing the problem of NPAs. Therefore, in Hyderabad all the Banks are facing NPA problem. Tables reflecting the type of loan contribute maximum in NPAs (Bank wise and Region wise)

**Table - Type of loans contributed NPAs (Region wise)**

| Region | | | | | | Total |
|------------------|---------------------------------|------------|-----------------|--------------|------------|--------|
| Options | Number/ %of Respondents | L.B. Nagar | Serilingampally | Secunderabad | Kukatpally | |
| House Loan | No. of respondents | 7 | 3 | 10 | 6 | 26 |
| | % of respondents within Regions | 14.0% | 6.1% | 20.0% | 12.0% | 13.1% |
| Vehicle Loan | No. of respondents | 5 | 8 | 6 | 6 | 25 |
| | % of respondents within Regions | 10.0% | 16.3% | 12.0% | 12.0% | 12.6% |
| Educational Loan | No. of respondents | 5 | 7 | 9 | 7 | 28 |
| | % of respondents within Regions | 10.0% | 14.3% | 18.0% | 14.0% | 14.1% |
| Business Loan | No. of respondents | 15 | 17 | 10 | 15 | 57 |
| | % of respondents within Regions | 30.0% | 34.7% | 20.0% | 30.0% | 28.6% |
| Agriculture Loan | No. of respondents | 18 | 14 | 14 | 15 | 61 |
| | % of respondents within Regions | 36.0% | 28.6% | 28.0% | 30.0% | 30.7% |
| Any Other | No. of respondents | 0 | 0 | 1 | 1 | 2 |
| | % of respondents within Regions | .0% | .0% | 2.0% | 2.0% | 1.0% |
| Total | No. of respondents | 50 | 49 | 50 | 50 | 199 |
| | % of respondents within Regions | 100.0% | 100.0% | 100.0% | 100.0% | 100.0% |

Personally compiled through SPSS

The result of the table showed the region wise contribution of loans in the level of NPAs.

In L.B. Nagar region 36% of the respondents say agricultural loan and 30% of the respondents say business loan has maximum contribution in the level of the NPAs. In Serilingampally (34.7%) and Secunderabad (30%) majority of the respondent say business loan and in Kukatpally (28%) majority of the respondents say agricultural loan has maximum contribution in the level of the NPAs. In L.B. Nagar region 14.3% of the respondent says education loan has contribution of



208 in NPAs. The table concluded that business and agricultural loan are maximum contribution in the level of the NPAs. Tables depicting the reasons for NPAs (Bank wise and Region wise)

Table - Analysis of court route better than SARFAESI Act

| | ANOVA | Sum of Squares | df | Mean Square | F | Sig. |
|--------------------|----------------|----------------|-----|-------------|------|------|
| Bank wise | Between Groups | 1.420 | 4 | .355 | .826 | .510 |
| | Within Groups | 83.775 | 195 | .430 | | |
| | Total | 85.195 | 199 | | | |
| Region wise | Between Groups | 1.255 | 3 | .418 | .977 | .405 |
| | Within Groups | 83.940 | 196 | .428 | | |
| | Total | 85.195 | 199 | | | |

Personally compiled through SPSS

*Note: * significant at 5 percent*

The above Table highlighted the bank and region wise analysis of court route is better than the direct under SARFAESI Act 2002. Bank and region wise ANOVA table revealed that the difference between the Mean values is insignificant at 5 percent in both the situation so, null hypothesis is accepted. Majority of the respondents in all the selected banks and Regions say no that court route is not better than the direct under Securitization Act 2002. The result of the table concluded that Securitization Act 2002 play important role in the banks because there is no need to go to the court.

This chapter analyzed the feedback of the banker’s regarding reasons, factors, RBI guidelines and type of loans that contribute to NPAs and bankers perception regarding role played by the Securitization Act 2002 in recovery of the NPAs in public sector Banks (Hyderabad and Ranga Reddy areas of Telangana State). The result of the primary analysis found that now a day’s every banks face the problem of the NPAs due to increase the contribution of NPAs in the business and agricultural loan. Willful default is the main reason for increasing the NPAs in all the selected



banks and region. After the enactment of the Act the position of the NPAs in the banks and regions significantly improved and with the help of enforcement of security interest aspect of the Act Delays in recovery of loans are removed. It creates understanding between lenders and borrowers to find effective solutions for debt servicing and minimize the cost of the funding for borrowers. Majority of the respondents in all the Banks are Agree with the statement that Asset securitization likely to play a major role within the Indian banking industry. Securitization Act is important in Reducing Regulatory Capital Requirement for banks. It also increases the return on asset ratios of the banks. The result of the study found that court route is not better than the direct under Securitization Act 2002.

Legal / Operational problems: In the above research below legal / operational problems are identified:

(a) **DRTs:** It is brought for quick disposal of original applications (OAs) to overcome civil procedure code. However, trial procedure continues in DRT cases therefore final order is taking longtime. Even after disposal of case, defendant has advantage of filing setting aside petition if there is ex-parte order. After petition is allowed again trial procedure continues. Defendant has advantage to prolong application interrupting recovery proceedings. Interim applications are taking very long time to dispose. Unless interim applications are disposed tribunal cannot dispose main case. Mere decree / recovery certificate helping applicant to bring down NPAs because money is not coming quickly. Due to competition banks giving more loans to achieve their targets obviously NPAs will increase. Under such circumstances quick recoveries are wanted to bring down NPAs which is not possible through DRTs. Since appellate provision is given it is not so easy in recovering outstanding in contested cases.

(b) **Lok Adalats:** It helps in giving results same day provided both parties agree. It is helpful in disposing mostly small cases because defaulters with huge outstanding will never come forward to settle the cases. It is an alternative method to reduce NPAs. They are not helpful in reducing NPAs at higher level. However, by conducting Lok Adalats frequently gives excellent results as far as small and unsecured loans are concerned.



(c) **SARFAESI Act:** It is an inspiration of SFC Act. This act is brought to help banks in an easy way to recovery without approaching the court. Like the State Financial Corporation is protected banks are also helped to recovery their dues directly from their borrowers. This act is also helping banks in alerting borrowers in paying installments regularly. The banker can straightaway auction the secured assets without the intervention or approaching any court of law. Even though remedies are given to the borrower since the loan is already recalled and the act is enforced the borrower has no option except to settle the account. The research proves the act will reduce loans with higher value NPAs expeditiously when compared to other measures available to the bank. This act also helps banks as a weapon and a threat to commit default. This act alerts borrowers from making default even single installment. Therefore, one way the act is helping banks in reducing NPAs another way cautioning borrowers in maintaining their account regular.

(d) **ARCs:** It is termed as Asset Reconstruction Company in India however other countries named as but in the global model of dealing with NPAs it is called an Asset Management Company (AMC). For ARCs the problem is funds. Until the auction is completed and dues are recovered the company should keep on spending money. Since lot of money to be spent before property auctioned they cannot compromise to settle at lower price.

Conclusion:

The study found that Sarfaesi Act 2002 is the direct route and it is the better route in recovering the loans secured through residential / industrial / commercial properties consisting of buildings or plots. There is no need to go to courts and obtain a decree and get it auctioned. Time is reduced when direct route is chosen. NPAs can be reduced quickly when this route is taken for recovery. In case of time taking recoveries on the secured loans recovery through ARCs is the best route. By conducting frequent Lok Adalats more recovery is possible in case of unsecured small loans. The recovery through DRTs and Civil Courts is the best method depending on outstanding values when the recovery is not possible under Securitization Act. Utilizing the above recovery measures depending on the circumstances will give quick results in reducing NPAs. For better results the results of the study shall be used by banks and regulatory



authorities. For reducing NPAs with better results this research might help banks to improve recovery process.

References:

1. Arora, U., Vashisht, B. and Bansal, M. (2009) “An analytical study of Growth of Credit Schemes of Selected Banks”, The ICFAI University Journal of Services Marketing, Vol. VII, no.1, March, 2009, pp.51-65.
2. Bodla B.S. and Verma-Bajaj, Richa (2010), ‘An Analysis of the Efficiency of Private Sector Banks in India’, IUP Journal of Bank Management, Vol. IX, no.1,2, February-May, 2010, pp-60-82.
3. Chaudhary, Kajal and Sharma, Monika (2011) “Performance of Indian Public Sector and Private Sector Banks: A comparative Study’ International journal of Innovation, Management and Technology, Vol.2, no.3, June 2011, pp.249-256
4. Selvarajan, Vadivalagan G (2011), “A study on non-performing assets of Indian bank with reference to priority sector advances”, Al-Barkaat Journal of Finance & Management, Vol.3, No.1, pp1-16.
5. RBI “Report on Currency and Finance”. (Various Issues)
6. Government of India, “The Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest”, Ordinance, New Delhi.
7. Websites: www.bankofindia.com
8. www.unionbankofindia.com
9. www.indianbank.in