Non- Performing Assets Resolution -Through Insolvency and Bankruptcy Code - A New Promise, for Transparent Banking System in India.

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Abstract

This paper tries to identify the reasons for bad-loans or NPA which we popular call them, the problem of NPA was traced between the year 2006-2008 itself, but much was not done. Today our economy has reached that stage unless some concrete steps are not taken in the form of stringent law, in the coming days we may have to face the same situation as American had to face in 2008. This paper tries to find out the road map ahead for the Indian economy in the form IBC which tries to revive the stressed assets related to IL&FS companies which have taken huge loans from the Indian Banks. The findings suggest that even though IBC has got a legal nod from all the concerns, still many challenges are yet to face as days to come.

Keywords: **NPA, IBC, RBI, NCLT & IL&FS.**

Introduction

As a serious academician everyone agrees that loan waivers either by centre or by state will eventually reduce the flow of cash into economy and finally one day the repercussion will be very serious. The non-performing loan (NPL) and its impact on the economy will be severe[1]
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Balova, M., Nies, M., and Plekhanov, A (2016), "The Economic Impact of reducing non- performing loans", *European Bank for Reconstruction and Development*, Working Paper No. 193.

The grass route for NPA as all of known is corruption, and also incompetence among the bankers, if the banker were diligent while giving the loans, just like how they give loan for housing and other domestic purpose. The present government is trying hard to come out with various measures to ensure that the banker will deal promptly with their respective NPA and assure that the public will not lose their confidence in the banking system in general. Much spoken about the GDP and also the stability of the currency this depends on the strong banking system. Therefore the government of India in form of Ordinance IBC was introduced in the year 2016 and it has crossed all legal hurdles but still today the top court stays IBC for another 15 days[2]. This paper purely depends on secondary data and it's descriptive in nature.

Review of literature

Maria Balagova, Michel Nies (2016) they speak about non-performing loan and its impact on the economy, they talk about long months overdue or default and the end result, resulting in economic misfortune. It may be the inability of the debtor or unwillingness to pay results burden both lender and also borrower. They have suggested insight into resolution techniques and policies that can effectively encourage banks and corporations to clean their Balance Sheets.

McGowan, Dan Andrews and Valentine Millot (2017) they discuss the insolvency Regime and the technology used to diffuse and its impact on productivity of the economy. Their study was undertaken on OECD countries and the study shows that insolvency regime that lower barriers to corporate restructuring and it was directly associated with multi-factor productivity (MFP) growth. They also suggested that equity financing was also an important driver of technological diffusion according to them.

IBC- Relief for companies as SC stays RBI circular to banks, Business Line 12th September, 2018 page-1

Need for the study

The Insolvency and Bankruptcy Code, 2016 (IBC) of India which seeks to consolidate the existing framework by creating a single law for insolvency and bankruptcy. We had the following legal frameworks in the past with many deficiencies, the present IBC tries to remove all the deficiencies which were present in the past Acts[3]. The following are the past Acts

1. The Presidency Towns Insolvency Act, 1909.
2. The Provincial Insolvency Act, 1920.
3. SARFAESI Act 2002.
4. Recovery of Debts due to Banks and Financial Institutions Act, 1993.
5. Sick Industrial Companies (special provisions) Act, 1985
6. LLP Act, 2008
7. Companies Act 2013.

Problem of the statement

Things are turning from bad to worse for Infrastructure Leasing and Financial Services Ltd, (IL&FS) are the major defaulter when it comes to borrowings from the banks and also from market. IL&FS are already banned from accessing money from market till 2019. The total of NPA in the market is about 1lakh crore, till today the government of India as pumped 68,000 crores into the market to ease the situation. Just not to forget the loan waiver by the Government of Karnataka is a classic example of cascading effect on banking system. And not to forget IL&FS have an aggregate of 14,249 crore.

IBC amendment ACT Ordinance 2018 Ministry of Law and Justice, 6th Government Gazette February 2018

Objective of the study

- To understand the impact of stressed Assets on the economy.
- To understand the role of NCLT related to resolution plans.

Scope of the Study

This study is limited to India, the researcher is trying to find out the procedure involved in IBC to help out the banking sector to realise their dues at the earliest. This study is general in nature it is not related to any specific institutions in particular. This study mainly concentrates on the developments taken place in the field of IBC between the years 2014-18.

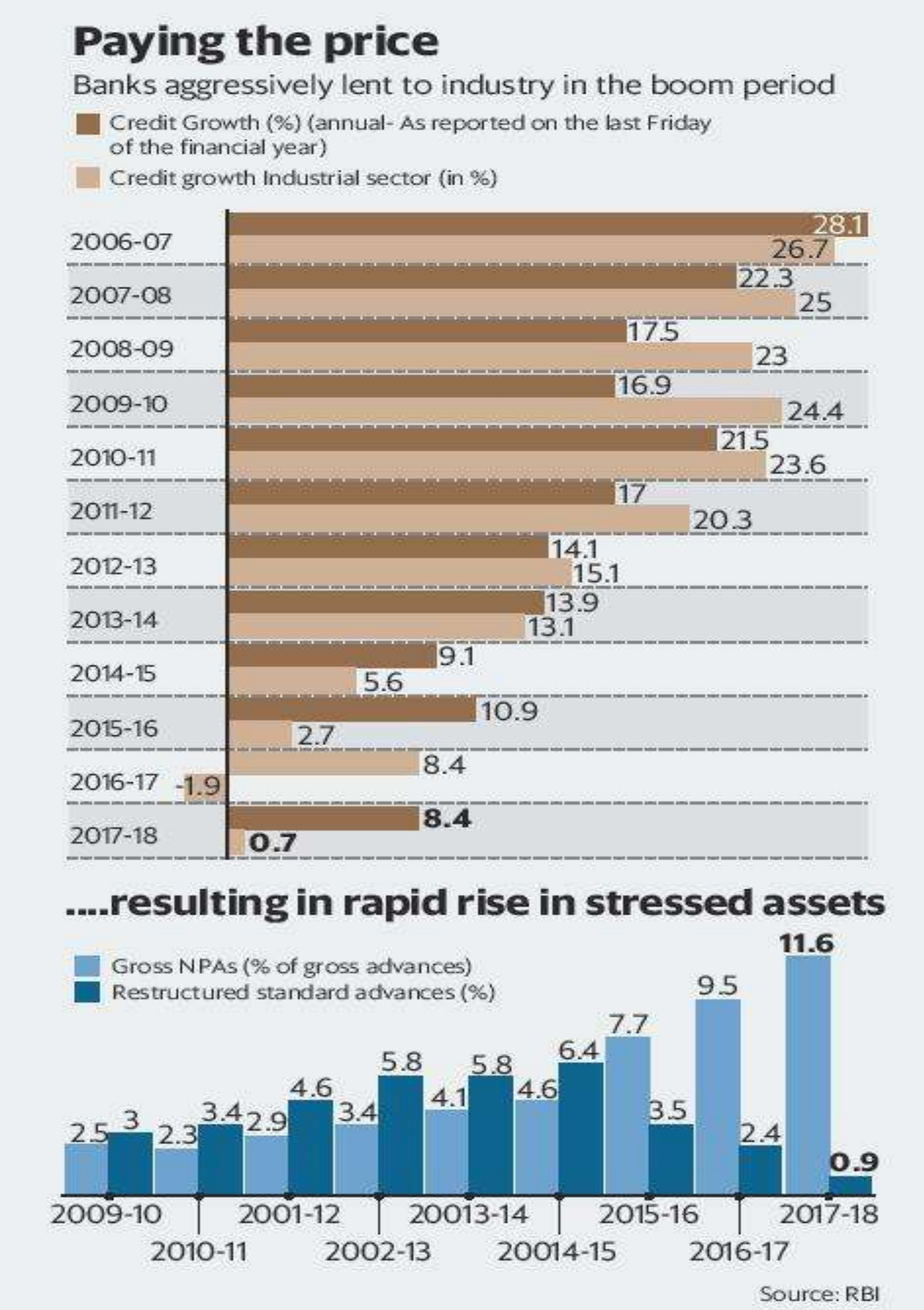
Research Methodology

This research is descriptive in nature. In this study, the researcher has gathered the information from various sources related to IBC. IBC is still in its infancy stage one has to really wait for its implementation, once implemented we can analyse its pros and cons. For analysis the secondary data has been used published by various authorities.

Data and Discussion

India's bad loans crossed Rs 10 lakh crore, or 11.6 percent, of total advances as of March. Outstanding loans to the power sector, including renewables, stood at Rs 5.65 lakh crore as on March 2018, the report said citing RBI data. State-owned banks contributed nearly 80 per cent of it, and a fifth of the exposure is stressed on account of structural factors, the panel said, adding to that gross bad loans in the power sector have risen steadily over the past few quarters.

Table No.1



When we see the above chart the figures are available from 2009 onwards because the Lehman Brothers collapse took place in 2008. We thought that Lehman has nothing to do with Indian banking system because of our fundamentals. But, the exuberance shown by the bankers in aggressive lending to big project in the boom period caught the Indian economy into massive 10 million stockpile of bad debt.

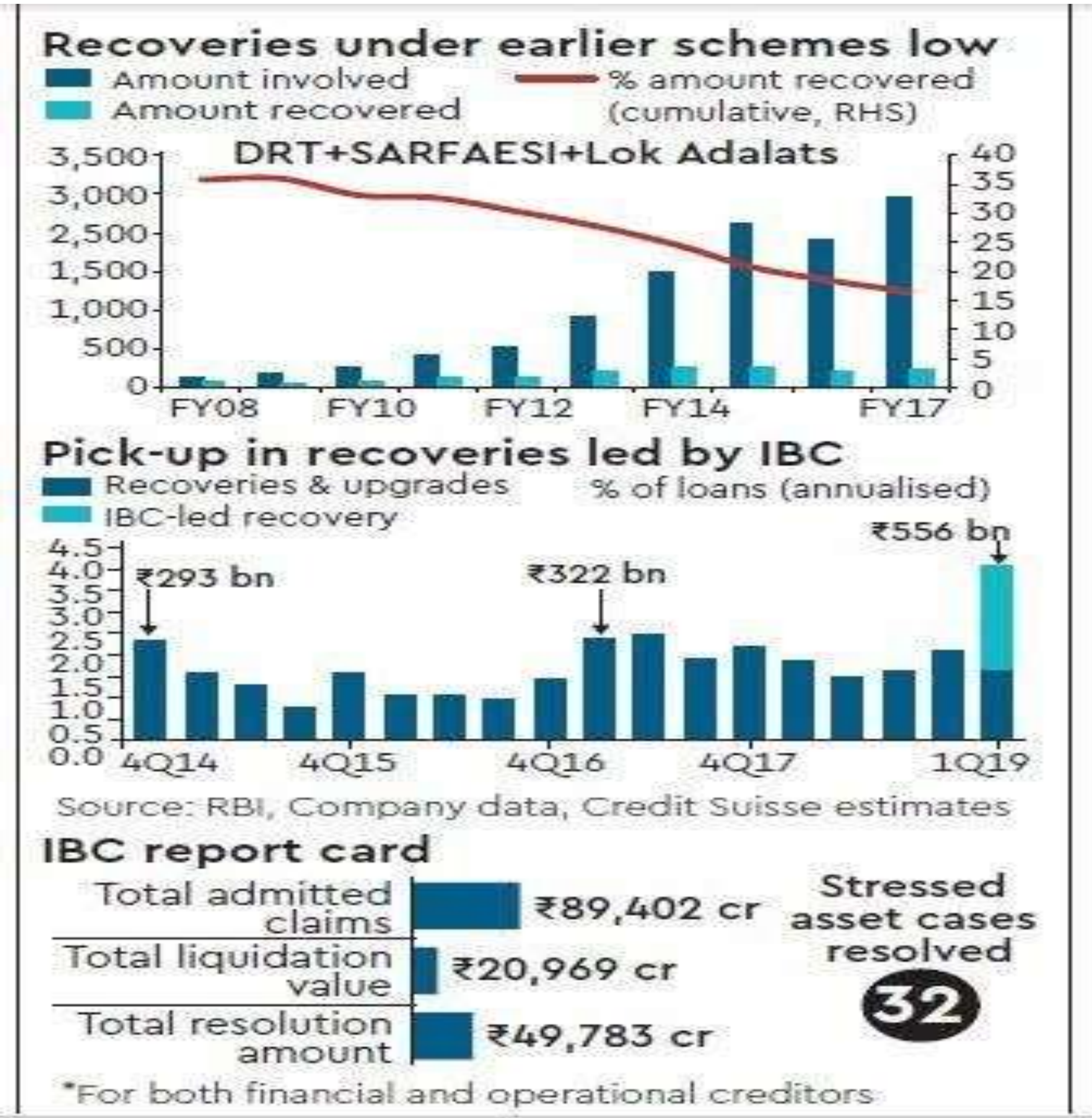
The above chart clearly shows that indiscriminating lending started in 2006 and continued till 2012. In the meantime we were walking along with the world and the global slowdown had its impact on the Indian banking system as well. The respective central banks infused the money to improve the fiscal stimulus of the country. The main reason for the current 10 trillion bad loans is because of lack of diligence of the Indian bankers while lending as discussed earlier. While lending banker could have taken promoters equity, return on investment and also the feasibility of the projects, could have minimised the bad loans.

The chart shows that in the five year period of 2006-2011, credit growth was in excess of 20% on a year and also one should appreciate even the industrial credit growth was higher during this period as provided by the RBI report. However the lending was reduced after 2013-14 onwards, the present government and many reforms were undertaken by the government to strengthen the fascial system. Ex-Chairman of SBI admitted that banks should have followed tighter underwriting norms and anticipated crony capitalism.

There are different arguments from different experts, but the fact was that when the present government come to power the liquidity of banks was strong and things were going well, the standard of underwriting should have been tighter so that the present situation could haven't aroused. In a hurry a lot of importance was given to infrastructure and core sector by the government (IL&FS). The present Indian banking system is not a rosy, the gross NPAs in the Indian banking system were at 11.6% of gross advances as on 31st March 2018. When consider the latest accounting standards the figures will move to 12.5% from 11.6%.

Banker feel that NPAs have peaked up, the RBI expects the non-performing loans for banking system to further worsen to 12.2% by March 2019. The experts fell that its global impact not only India is facing NPAs but also banks worldwide are facing the same problem.

Table NO.2



The above chart shows till today 32 cases have been solved through IBC, while the creditors were owed 89,402 crore, Rs.49,793 crores crore recovered the recovery rate of 56% this shows a positive sign of stressed assets resolutions at a fast manner.

NCTL Role

According to the present IBC code which got the legal node by the president of India in the month of February 2018, the Insolvency Adjudicating Authority is

1. DRT: Debt Recovery tribunal its jurisdiction is limited to individuals and partnerships.
2. DRAT: if the people have any objections against DRT they can knock the doors of Debt Recovery Appellate Tribunal.
3. NCLT: National Company Law Tribunal for Companies come into existence on 1st June 2016. NCLT will hear appeals against the orders
   Passed by regulators in respect of Insolvency Professionals.

Findings

1. Under the present IBC Resolution Plans (RPs) the banks may have a haircuts up to 60% on their stressed debt 0f Rs.50, 000crores under ICE.
2. 260 days of resolution time to tune an amount of RS. 500,000 crores as against 89,400 crores related to major 32 accounts.
3. IL&FS companies are also responsible to some extent for NPA due to the nature of their business.
4. Global financial crisis has also added the impact on the Indian banking system piling up NPAs as discussed earlier.

Suggestions

1. While lending the bankers must be cautious and also must take the project feasibility into account for which they are financing.
2. While lending bankers must take the promoters equity into consideration, not just irrational lending.
3. Every NPA must be attached to a particular person who is responsible for it i.e. the bankers. The fact is that wheatear it is east or west no individual is penalised for wrongdoing while lending.

4. The present IBC doesn't prescribe the norms to strict lending, loan waiver schemes but just talks about fast resolution of claims by the bankers in the form liquidation through legal processes.

Conclusion

Even though the IBC 2016 got its legal nod by the President of India in February 2018 the code has many question to answer as we can see the recent stay for 15 days given by the Supreme Court to the resolution proceedings against few companies. The new experts in the field of resolution are to be trained and the disagreements between them are to be addressed. Insolvency Adjudicating Authorities must be strengthened i.e. DRT &NCLT and also NCLAT.

The NCLT, National Company Law Tribunal which comes under the Ministry of Company Affairs, Government India, must be free from favouritism and nepotism while resolution of stressed assets. Everyone in our country is taking of new India and better India let's wait and watch only time will tell us the truth as the experts are anticipating another financial crisis in China by 2020. Only by going through strong economic fundamentals while lending we may strongly and bravely deal with NPAs in the years to come.

References:

1. Acharya, V.V., T. Eisert, C. Eufinger, and C.W. Hirsch (2016), 'Whatever it takes: The real effects of unconventional monetary policy', Working Paper,

2. Balova, M., Nies, M., and Plekhanov, A (2016), "The Economic Impact of reducing non-performing loans", *European Bank for Reconstruction and Development*, Working Paper No. 193.

3. BIS (2017), "Resolution of non-performing loans – policy options", FSI Insights on policy implements No. 3.

4. McGowan, M. A., Andrews, D., Millot, V. (2017), The Walking Dead? Zombie Firms and Productivity Performance in OECD Countries, *OECD Economics Department Working Paper* No. 1372.

5. Steigum, E. (2010), “The Norwegian Banking Crisis in the 1990s: Effects and Lessons”, Norwegian School of Management, Norway.

6. IBC- Relief for companies as SC stays RBI circular to banks, Business Line 12th September, 2018 page-1.

7. IBC amendment ACT Ordinance 2018 Ministry of Law and Justice, 6th Government Gazette February 2018
New York University Stern School of Business.