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EDITORIAL

NON PERFORMING ASSETS – NEED FOR PRAGMATIC & PRACTICAL REGULATORY FRAMEWORK

CA Vinod Jain*

The Reserve Bank of India, Indian Banks Association, almost all Public Sector Banks and the Indian businesses are deeply concerned about significant rise in non-performing assets during last one year. The Indian economy has been passing through unprecedented turbulent times. Many important sectors of the economy have been adversely affected. Telecom sector is passing through critical policy issues after 2G scam. Power Sector has been suffering due to lack of coal and fuel linkage. Coal mining has been subjected to serious scrutiny by CBI and Hon'ble Supreme Court. The Iron ore mining has been subjected to a Supreme Court ban. The national highways' development projects in BOT mode have severely suffered due to difficulty in achieving financial closure, policy issues besides political impasse and a complete rethinking about the sanctity of toll collection itself. Similarly heavy industries, steel sector and real estate construction sector have been passing through difficult times during the last 3 years.

Even the financial market is strained by severe liquidity crunch. The capital market has not been able to channelize any fresh resources to business and industry for last many years. In certain sectors including power sector disbursements are not being made by the banks, in spite of full financial closure and loan sanctionsin place due to apprehension in the minds of lenders. Air India and Kingfisher indicate Aviation sector difficulties. Similar analysis can be made about many other crucial and basic sectors.

In the aforesaid backdrop, we also need to consider that as per the regulatory framework in place, the term loan and all other borrowings are treated as non -performing assets on the basis of a very strict rule of 90 days or more delay in repayment or payment of interest to the banks. Also in case of time overrun i.e. delay in implementation of projects, the term loans are categorized as non-performing assets. Once the loans are categorized as non performing in respect of a borrower, no further financial facility or borrowing of any kind is considered by the banking system. The banking system has to mandatorily make a provision for doubtful debtand the interest portion cannot be recognized as revenue. These rules of RBI have worked very well during the economic growth period, but in the current atmosphere several issues have emerged for

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PETROLEUM AND GAS PRICES – CONSUMERS 'FEEL THE PINCH' IN THE ENTANGLED ISSUE

A new debate has emerged in respect of pricing of gas and petroleum products due to heavy increase in the cost permitted by the government. The government should ensure that the entire data and information in respect of actual cost and how the said cost is determined is to be transparently made public. The justification based on international prices of specific products could be manipulative and may not be relevant. It is important to provide adequate and reasonable margin to the industry and business but at the same time the prices have to be regulated based on detailed cost analysis and management and curbing anti- competitive practices. The increase in prices of coal, milk, power and various otherbasic inputs require a close scrutiny by the regulator and the govt.

We welcome our readers to send us detailed information and data available with them or any suggestions in this regard so that Indian trade and industry and more importantly public at large is charged fair price duly regulated in a transparent and effective manner.

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LATEST IN FINANCE

1.0 RBI allows Asset Reconstruction Companies to convert debt into equity

The Reserve Bank of India (RBI) has permitted asset reconstruction companies (ARCs) to convert debt of crisis- ridden companies into equities as part of restructuring process.

Such companies are required to obtain, for the purpose of enforcement of security interest, the consent of secured creditors holding not less than 60 percent of the amount outstanding to a borrower as against 75 percent at present.

2.0 DDA to raise floor area ratio for hotels by up to 66%

The Delhi Development Authority (DDA) has decided to increase the floor area ratio (FAR) or floor space index (FSI) — the ratio of the total floor area of a building to the size of the plot on which it is built — to 3.75 for hotels outside the Lutyens zone that stand on roads with more than 30-metre width, up from existing FAR of 2.25. This means the gross floor area across different floors of such a hotel can be 3.75 times the size of the plot.

In the case of hotels next to roads with width of under 30 meters (again outside the Lutyens zone), FAR is being raised to 3.25, up 44 per cent.

3.0 New NPA, Restructuring, Loan takeover guidelines by RBI

The Reserve Bank of India (RBI) has offered some leeway to banks for early detection and resolution of bad loans. Under the new regime kicking off from April 1, lenders can finance 50 per cent of the outstanding loan value. Earlier, Reserve Bank of India (RBI) had proposed to allow takeover of existing loans by new financiers at 60 per cent or more of the loan value.

The central bank also diluted rules for accelerated provisioning it had proposed for non-performing accounts. Now lenders will make 25 per cent provision for unsecured loans that remain unpaid for six months. Initially, RBI had proposed 30 per cent provisions.

Plus, for loans that have remained unpaid for two years, banks have to set aside 40 per cent, instead of 50 per cent.The new framework calls for early formation of a lenders' committee with the timeline to agree to a plan for resolution. It also offers incentives for lenders to agree collectively and quickly to a restructuring plan. It will give better regulatory treatment of stressed assets if a resolution plan is underway. However, it will attract accelerated provisioning if no agreement can be reached. Seeking improvements in the current debt restructuring process, the framework allows independent evaluation of large value restructuring. This is for purpose of framing viable plans and a fair sharing of losses (and future possible upsides) between promoters and creditors.

4.0 RBI allows NRIs to operate resident bank A/c on 'either or survivor' basis

The Reserve Bank of India (RBI) has allowed non-resident Indians (NRIs) to operate resident bank accounts on "either or survivor" basis. According to RBI, banks may include an NRI close relative in existing/new resident bank accounts as joint holder with the resident account holder on "either or survivor" basis, subject to fulfillment of a few conditions.

CAPITAL MARKET

1.0 SEBI issues norms for registration of FPI with depositories

Ushering in a new regime for overseas investors as FPIs (Foreign Portfolio Investors), Securities and Exchange Board of India (SEBI) issued operating guidelines for depository participants to register these new entities and to ensure that their combined holding in any listed company remains capped at 10 per cent.

2.0 No open offer required for inter-se transfer among foreign companies

Foreign companies acquiring stake in a listed Indian firm from a group entity, which are "inter-se transfer" of shares, are exempted from making an open offer to the existing shareholders**.**

3.0 RBI to Withdraw Pre-2005 Currency Notes

Anybody with currency bundles stashed under the mattress may need to check them. The Reserve Bank of India has said that banknotes issued before 2005 will be completely phased out after March 31 and replaced with new ones.

From July 1 onwards, however, things could get more interesting at bank counters. To exchange

more than 10 pieces of ₹ 500 and ₹ 1,000 notes, non-customers will have to furnish proof of identity and residence to the bank branch in which she/he wants to exchange the notes.

4.0 RBI aligns NBFC loan restructuring rules with banks

The Reserve Bank of India (RBI) said that rules for restructuring loans by non-banking financial companies will be the same as those of banks.

The key provisions include that the relaxation or extension of commencement of projects will not amount to restructuring for infrastructure, non-infrastructure and corporate real estate projects.

The central bank also said a special classification benefit will be provided to corporate debt restructuring cases, including small and medium enterprises, until the end of March 2015.

FEMA

1.0 RBI eases FDI norms, allows 'optionality' clauses

The Reserve Bank of India (RBI) has eased foreign direct investment norms by allowing optionality clauses to facilitate investors to exit from investments in both equity and debentures.

In a notification, the central bank said that henceforth, call and put options can be included in such investments, subject to the minimum lock-in period and without assured return.

A call option allows a holder to buy shares in an entity at an agreed price while a put option allows an investor to sell.

2.0 Firms can convert overseas borrowings into equity

The Reserve Bank of India (RBI) said that companies can convert their overseas borrowings through the ECB route into equity shares at the foreign exchange rate applicable on the date of the swap agreement.

The RBI will have no objection if the borrower company wishes to issue equity shares for a rupee amount less than that arrived at as mentioned above by a mutual agreement with the ECB lender.

It may be noted that the fair value of the equity shares to be issued shall be worked out with reference to the date of conversion only.

3.0 Cos may issue debt to NRIs as bonus: RBI

With a view to rationalising and simplifying the procedures, it has been decided by the Reserve Bank of India (RBI) that an Indian company may issue non-convertible/redeemable preference share or debentures to non-resident shareholders by way of distribution as bonus from its general reserves. So far, RBI was granting permission for such issuances on a case-to-case basis.

4.0 Rajasthan & Delhi says no to retail FDI

Within a month of the Aam Aadmi Party (AAP)-led government in Delhi withdrawing approval to foreign direct investment (FDI) in multi-brand retailing, Bharatiya Janata Party (BJP)-ruled Rajasthan has likewise reversed the state's official position on the matter.

5.0 Jaeger-LeCoultre applies for single brand retail

Swiss luxury watch brand Jaeger-LeCoultre has filed for a 100% single brand application to enter the Indian retail market.

6.0 FDI in the Pharmaceuticals Sector: No 'Non-compete' clause

Present Position:

As per Circular 1 of 2013-Consolidated FDI Policy, effective from April , 2013, the policy relating to the Foreign Direct Investment in the pharmaceuticals sector is as under:

Pharmaceuticals	Limit	Route
Greenfield	100%	Automatic
Brownfield	100%	Government
Note: Government may incorporate appropriate conditions for FDI in brownfield cases, at the time of granting approval.		

Reviewed Position:

The Government of India has reviewed the position in this regard and decided that the existing would continue with the condition that 'non-compete' clause would not be allowed except in special circumstances with the approval of the Foreign Investment Promotion Board

7.0 Interest Rates on FCNR (B) Deposit

Maturity Period	Existing	With effect from March 1, 2014
1 Year to less than 3 years	LIBOR/Swap plus 200 basis points	No Change
3-5 years	LIBOR/Swap plus 400 basis points	LIBOR/SWAP plus 300 basis points

8.0 RBI allows forward contract in all transactions

For more operational flexibility in the external sector, the Reserve Bank of India (RBI) has allowed rebooking and cancellation of forward contracts without restriction in all current and capital account transactions up to one year.

9.0 Deregulation of Interest Rates on Non Resident (External) Rupee (NRE) Deposits

It has been decided to extend the freedom allowed to banks to offer interest rates on incremental NRE deposits with maturity of 3 years and above without any ceiling till February 28, 2014. With effect from March 1, 2014, the interest rate ceiling will revert to the position prior to August 14, 2013, i.e. interest rates offered by banks on NRE deposits cannot b e higher than those offered by them on comparable domestic rupee deposits.

CORPORATE AND ECONOMIC LAWS

1.0 Soften company law blow for private companies

Private companies — in which public interest is non-existent — should not be subjected to mandatory auditor rotation, requirement of a woman director on the Board or be covered under class action suits. A submission to this effect has been made to the Corporate Affairs Ministry, listing at least 20 provisions of the new company law from which “non-public interest private companies” should be exempted.

The exemption should be available for all private companies that are neither subsidiaries of listed companies nor have substantial public borrowings

2.0 Suing directors for loan recovery

The Supreme Court ruled that though a mortgage of assets of a company which failed to return a loan may have come to an end with their sale, the contract of indemnity with regard to the loan would continue. They are independent contracts. The directors who stood guarantee will still be liable to return the full loan.

3.0 SC seeks centre’s reply on plea against new Companies Act

The Supreme Court (SC) has sought the Centre’s response on a petition seeking to declare as ultra vires of the Constitution some of the provisions of the new Companies Act that aims to create the National Company Law Tribunal (NCLT) and the Appellate Tribunal.

4.0 CCI order on trade practices leaves chemist groups divided

CCI has passed several orders against various chemist associations after complaints were lodged with the competition watchdog that these associations were preventing retailers from offering discounts to consumers and boycotting certain pharma companies without justified reasons.

5.0 SC okays revocation clause in Land Acquisition law

The Supreme Court (SC) uphold cancellation where acquisition amount not accepted for 5 years or more, if the dispute was in court all along, with a rider, even for old cases.

The order relates to compensation under Clause 24 or the 'retrospective' clause for land acquired by private parties or the government. The new law — the formal name is Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. If for five years after acquisition the owners of the land refused to accept compensation, the acquisition could be set aside.

DIRECT TAXATION

1.0 STT must for tax breaks on losses

The Mumbai Income-Tax Appellate Tribunal (ITAT) has upheld a penalty on a foreign investing entity that had attempted to pay lower taxes by setting off long-term capital losses based on transactions on which it paid securities transaction tax (STT) against long-term capital gains based on non-STT transactions.

2.0 Tax Regime: Foreign Portfolio Investors to be treated like FIIs

The Government came out with a notification for the new combined category. Foreign Portfolio Investors (FPIs) will get the same tax treatment as FIIs under the Income Tax Act.

The Authorised Dealer will repatriate money for QFIs only when a chartered accountant has certified that all tax dues have been paid**.**

3.0 I-T dept to use information from banks to nail tax evaders

The Income Tax Department is considering seeking information on individuals exchanging high-denomination notes in huge numbers. It will then match banks' information with its own. If there is a mismatch in the income reported by a person and cash exchanged by him, the taxman will go deeper.

But Reserve Bank of India has provided an easy three-month window for exchange of notes. Details of identity and residence will not be required for exchange of notes between April 1 and June 30. The I-T department is concerned that many individuals with black money might take advantage of this.

4.0 CBDT clarifies on TDS on Service Tax

The Central Board of Direct Taxes (CBDT) has made it clear that tax need not be deducted at source on the service tax component on payments made/due to a resident payee.

This will be allowed only in cases where the service tax component comprised in the amount payable to a resident is indicated separately in the contract between the payer and the payee, the CBDT has said in a circular.

In such situation, tax has to be deducted on the amount paid/payable without including the service tax component.

5.0 Safe Harbour Norms to change after poor response from MNCs

Prompted by a dismal response from MNCs with only about 30 applications coming in for adopting safe harbour mechanism for transfer pricing in its first year, the government is likely to appoint a committee for revising profit margins stipulated in the norms.

6.0 Some Latest Judgements

The Chattisgarh High Court has held that where assessee surrendered income during search, explained manner in which it was derived in statement and paid tax as well as interest thereon, it was not necessary to file return before due date to get immunity from penalty for concealment under clause (2) of Explanation 5 to section 271(1)(c)

Commissioner of Income-tax, Bilaspur C.G. vs. Abdul Rashid, [2013] 40 taxmann.com 244

The Pune ITAT bench has held that where premium paid in excess of face value of investments classified under HTM (Held to Maturity) category had been amortized over period till maturity, same was allowable as 'revenue expenditure'

Assistant Commissioner of Income-tax, Circle-1, Nashik vs. Ozer Merchant Co-operative Bank Ltd., [2014] 41 taxmann.com 110

The Mumbai ITAT bench has held that entire expenses incurred on gratuity and other terminal benefits at time of retirement of employee are

arevenue in nature allowable in year of retirement.

Additional Commissioner of Income-tax vs. Nicholas Piramal India Ltd., [2013] 40 taxmann.com 538

The Mumbai ITAT bench has held that VRS payments made to retiring employees are allowable as revenue expenditure

Additional Commissioner of Income-tax vs. Nicholas Piramal India Ltd., [2013] 40 taxmann.com 538

The Mumbai ITAT bench has held that travelling expenses incurred by foreign head office on travelling of its own staff in connection with Indian branches was allowable under section 37(1) and section 44C was not applicable to it

Deputy Director of Income-tax (International Taxation) - 4 (2) vs. Oman International Bank SAOG, [2013] 40 taxmann.com 319

Section 194C, read with section 40(a)(ia): TDS on contracts

The Allahabad High Court has held that in a case of purchase of goods and equipment, provisions of section 194C would not be attracted

Commissioner of Income-tax, Faizabad vs. Krishna Kumar Goel, [2014] 41 taxmann.com 113

Section 194-I, read with section 194C: TDS on contracts and Rent

The Karnataka High Court has held that where assessee entered into an agreement with a contractor for hiring of vehicles and made use of vehicles and equipment and paid hire charges on basis of number of hours of use, section 194-I, and not section 194C, would be attracted.

Three Star Granites (P.) Ltd. Vs. Assistant Commissioner of Income-tax, Circle -1(1), [2014] 41 taxmann.com 91

Section 115JA: Computation of Booked Profit

The Delhi High Court has held that Since computation of minimum alternate tax was cumbersome which was not possible by merely examining return or documents enclosed with return itself as several aspects were required to be examined, prima facie adjustment under section 143(1)(a) could not be made.

Ester Industries Ltd. Vs. Commissioner of Income-tax, Delhi-IV, [2013] 40 taxmann.com 376

Section 24: Deductions from House Property

The Punjab & Haryana High Court has held that interest on interest paid due to default in payment of home loan instalments is not deductible u/s 24

Master Naman Kumar vs. Commissioner of Income-tax, Patiala, [2014] 41 taxmann.com 10

Section 32: Depreciation

The Mumbai ITAT bench has held that even if merged company did not claim depreciation for last few years, depreciation in hands of resultant company was to be allowed on WDV computed without adjustment of earlier depreciation

Additional Commissioner of Income-tax vs. Nicholas Piramal India Ltd., [2013] 40 taxmann.com 538

Section 50C: Special provision for full value of consideration in case of Land & Building

The Jodhpur ITAT bench has held that where assessee sold a property and he had challenged market value adopted by Registrar for stamp duty purposes, provisions of section 50C(1) would not apply for purpose of computing capital gain on sale of property

Income-tax Officer, Ward - 1(4), Udaipur vs. Shiv Kumar Rangwani, [2013] 40 taxmann.com 323

INDIRECT TAXATION

1.0 Section 35B: Appeals to CESTAT

The Bombay High Court has held that Action to recover tax before expiry of statutory period for filing appeal is high-handed & in defiance of law

Tata Teleservices (Maharashtra) Ltd vs. Ministry of Finance (Bombay High Court)

AUDIT

1.0 SEC judge bars 'Big Four' China units for 6 months over audits

Chinese units of the global "Big Four" accounting firms should be suspended from auditing US-listed companies for six months, a judge in the US ruled, in an escalation in a long-running dispute over regulators' access to documents.In a harshly worded 112-page ruling, Securities and Exchange Commission Administrative Law Judge Cameron Elliot censured the Chinese affiliates of KPMG, Deloitte & Touche, Pricewaterhouse Coopers and Ernst and Young.

SPECIAL INCENTIVES FOR EXPORTERS

SERVED FROM INDIA SCHEME (SFIS)

OBJECTIVE:

Objective of SFIS is to accelerate growth in export of services so as to create a powerful and unique 'Served From India' brand, instantly recognized and respected world over.

ELIGIBILITY:

Indian Service Providers, listed in Appendix 41 of Handbook of Procedures Volume 1 (HBPv1)-

a. who have free foreign exchange earning of at least ₹ 10 lakhs in current financial year

b. For Individual Indian Service Providers, minimum exchange earnings of ₹ 5 Lakhs.

LIST OF SERVICES AS PER GATT (eligible and ineligible)

All Indian Service Providers (Appendix 10 of HBPv.1) including professional services, management consulting services, business services & educational services.

DUTY ENTITLEMENT

Duty Credit Scrip equivalent to 10% of free foreign exchange earned during current financial year (w.e.f 1.1.2011).

UTILIZING DUTY SCRIPS FOR THE IMPORTS

1. For import of any capital goods (including spares, office equipment & furniture and consumables) that are otherwise freely importable and / or restricted under ITC (HS).
2. For importing / domestic sourcing of capital goods (including spares) related to the manufacturing sector business of service provider.
3. For import of only those vehicles, which are in the nature of professional equipment.
4. For payment of duty in case of Import/ domestic sourcing of motor cars, SUV's and all purpose vehicles as Professional Equipment by Hotels, Travel agents, Tour operators, etc.
   a. Such vehicles will have to be registered for Tourist purpose only.
   b. Proof of registration will need to be submitted to RA (Revenue Authority) within 6 months.
5. In case of hotels, clubs having residential facility of minimum 30 rooms, golf resorts and stand-alone restaurants having catering facilities, for import of consumables including food items and alcoholic beverages.

UTILIZING DUTY SCRIPS FOR EXCISE DUTY

For payment of excise duty for procurement from domestic sources, in respect of items permitted for imports under SFIS Duty Credit Scrip.

Refer Notification 33/2012 CE

NON TRANSFERABILITY OF GOODS

Entitlement /goods (imported / procured) shall be non transferable (except within group company and managed hotels) and be subject to Actual User condition.

DUTY DRAWBACK

Additional customs duty/excise duty paid in cash or through debit under Duty Credit Scrip shall be adjusted as CENVAT Credit or Duty Drawback as per DoR (Department of Revenue) rules, except under SFIS.

VALIDITY PERIOD AND REVALIDATION

Valid for a period of 18 months. Revalidation of Duty Credit Scrip shall not be permitted unless covered under paragraph 2.13.1 or paragraph 2.13.2 A of HBP v1.

TRANSFER OF EXPORT PERFORMACE

Transfer of export performance from one to another shall not be permitted.

FACILITY OF SPLIT SCRIPS

Available subject to a minimum of Rs 5 Lakh each and multiples thereof

RE-EXPORT OF DEFECTIVE GOODS

ALLOWED

FINANCIAL INDICATORS

	Current Rate* (in %)	Month Ago (in %)	3 Month Ago (in %)	6 Month Ago (in %)
3 Month LIBOR ($)	0.24	0.24	0.24	0.27
3 Month MIBOR (₹)	9.52	9.22	9.19	8.21
SENSEX	20334	20713	20273	19294
NIFTY	6053	6168	6079	5817
CRR	4.00	4.00	4.00	4.00
REPO	8.00	7.75	7.75	7.50
REVERSE REPO	7.00	6.75	6.75	6.25
Gold (per 10 gm)	29881	29033	30143	26103
Silver (per kg)	44585	44824	48373	40174
Crude (USD/bbl)	108.35	107.25	106.40	108.51
Rs. vs USD	62.34	61.94	62.73	60.13
Rs. vs Euro	85.06	84.31	84.06	76.89
Rs. vs 100 Yen	61.03	59.01	63.94	59.76
Rs. vs RMB	10.29	10.16	10.40	9.76
Rs. vs Pound	102.36	102.06	100.92	89.52
MCX Aluminium	103.95	106.25	110.70	105.90
MCX Copper	444.45	452.25	448.15	405.85

**As on 10th Feb. 2014 (Sources: MoneyControl, NSE, BSE, RBI, MCX)*

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NON PERFORMING ASSETS ....

kind consideration of the financial system regulator. RBI is known for a very pragmatic and professional approach and therefore we wish to bring out the following for a public debate and consideration by the regulator for a more pragmatic, dynamic and practical approach :-

- The Reserve Bank of India can consider as to whether a uniform approach of 90 days benchmark is appropriate for all the sectors or it could be differently considered for different sectors of the economy.
- We have seen that US and European governments have provided for special benefits for early recovery of various sectors. RBI has also considered special dispensation for Air India, and certain large infrastructure projects which were specially impacted due to sect oralreasons. RBI may now consider issues and economic situation of each sector and accordingly work out a special financial package so that genuine difficulties and problems of each sector are appropriately considered to enable smooth working of impacted businesses.
- The banks may be allowed to consider all cases which are currently non performing on case by case basis and to provide necessary additional resources and re-phasing all repayments, wherever considered appropriate. The bank boards may be delegated to devise an appropriate policy framework in this regard.
- Wherever the funds are adequately secured, additional lending through specially structured products to meet the needs of the borrower may be permitted.
- The banks may be freely permitted to extend corporate loans, loans for general business purpose and any other borrowings needed to meet the requirements as assessed by the management and the bank, subject to adequate security and / or cash flow.
- Rates of interest should be cut to lower levels to make funding affordable. Special concessional funding to agriculture sector, housing and SME sector is needed to give boost to these sectors.

A new pragmatic and practical policy and regulatory framework is neededat the RBI level as well as at level of the banks. Indian economycurrently needs a special treatment to not only improve the sentiments but also stimulate growth. The current negative sentiment has impacted money circulation and M3 significantly and not only it is necessary to recognize the financial distressat an early stage but also at the same time bold steps and support are needed from the financial sector to meet the needs of the borrower so that on a sustained basis a fair recovery for the loans can be ensured. It is important to add that all kinds of willful defaults with malicious or fraudulent intentions have to be checked strictly. The banking approach has to be developmental and principle based rather than rule based, positive and simple.

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