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EDITORIAL

Banking Sector – Under scanner



CA Vinod Jain*

Convener National Economic Forum, Former Chairman BoS and Member Central Council Institute of Chartered Accountants of India

The Reserve Bank of India had recently directed to Public Sector Banks as well as Private Sector Banks to downgrade the asset classification of more than 150 borrower accounts, based upon Asset Quality review, to Non- Performing Assets (NPAs). The exposure of banking sector to such borrower accounts was in the range of ₹ 1,50,000 Crores to ₹ 2,00,000 Crores.

Primarily RBI had recently issued advisory to downgrade specific

large 150 identified accounts in following categories to Non- performing assets:

- Accounts to be downgraded to NPA categories, with retrospective effect (in some cases going back to F.Y. 2012), although these were classified as Standard accounts till 31st March 2015.
- Diverges observed in case of existing NPAs
- Non achievement of DCCO (Date of Commencement of Commercial Operations)
- CDR-restructured accounts - Non fulfillment of conditions - Additional provision recommended in March 2016 Quarter and thereafter every quarter in FY 2017.

Even beyond the current exercise, there are number of stressed cases, which are in the process of being identified by the Statutory Auditors and RBI inspection teams. The total additional provisioning requirement is estimated to be ₹ 40,000 cr till March 2016.

The quarterly results for most of the banks have been announced, showing significant losses or steep reduction in profitability, resulting into erosion of the Banks' market capitalization by 10% to 20%. The capital market in general has also been subject to blood bath, with widespread losses across sectors, in the range of about ₹ 3 lakh crores. While the government and RBI is active in limiting the damage to

the financial market, the entire economic sector and society is deeply concerned about the matter and is deliberating on the following major issues:

- How such a grave situation has piled up over the years?
- Why the banks management, Reserve Bank of India and other regulators ignored the matter during last couple of years?
- Whether such loans have genuinely become bad or there was deliberate diversion of funds, willful defaults or improper or reckless financial management?
- How such large exposures have suddenly grown leaps and bounds to certain specified groups, without corresponding promoter's contribution and adequate safeguards?
- Multiple banks are involved in almost all large cases. How and why almost all the bank did not wake up to the call in time?
- The country need to identify, the real conspiracy as to whether and where crucial resources of the country have been diverted?
- Who are the real culprits? -whether corruption or gross negligence or poor regulatory supervision at the level of banks as well as at the level of Reserve bank of India?
- Is there anything fundamentally improper in the management structure of the banks and the latest changing scenario?
- Even significant variation in valuation for restructuring or transfer of assets from one group to another or within the group via related/unrelated Parties need microscopic preview?

It is important to undertake a detailed enquiry in all cases of Non - Performing Assets' classification where exposure is more than ₹ 50 Cr - ₹ 100 Cr or more. In certain cases the exposure to single group is thousands of Crores. It is important that willful defaulters are identified and also cases

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LATEST IN FINANCE

1.0 New power tariff policy supports low rates, smart tech

The Union Cabinet approved amendments to the power tariff policy that aims to tighten regulations for setting rates and promote clean energy.

- Aims to ensure uninterrupted power supply to all by 2021-22
- New rules for setting rates and to promote clean energy
- Microgrids for remote villages and small power plants near coal washeries
- Allows sale of un-requisitioned power in the spot market
- Mandatory minimum purchase for clean energy
- Allows cost pass-through for use of imported and e-auctioned coal
- All new inter-state transmission projects through competitive bidding
- Smart meters compulsory for consumption over 200 units

2.0 Shipyards now included in infrastructure category

The government has recommended inclusion of shipyards undertaking shipbuilding and repair under the infrastructure category.

3.0 Banks told to frame policy for non-fund-based facility

The RBI said banks can grant non-fund-based facilities, including Partial Credit Enhancement (PCE), to those customers, who do not avail any fund-based facility from any bank in India, subject to conditions.

The central bank said banks should formulate a comprehensive Board-approved loan policy for grant of non-fund-based facility to such borrowers.

Banks should undertake the same level of credit appraisal as has been laid down for fund-based facilities.

The banks should ensure that the borrower has not availed any fund-based facility from any bank operating in India.

However, at the time of granting non-fund-based facilities, banks have to obtain declaration from

the customer about the non-fund-based credit facilities already enjoyed by them from other banks.

4.0 Security Interest (Central Registry)

Particulars of creation, modification or satisfaction of security interest in immovable property by mortgage by way of deposit of title deeds, movable assets, intangible assets, under construction property shall be filed in Form I or Form II and shall be authenticated by a person specified in the Form for such purpose by use of a valid digital signature

The following forms are to be filed with central registry:

Form No. I

- Particulars of creation or modification of security interest by way of mortgage by deposit of title deeds.
- Particulars of creation or modification of security interest by way of mortgage of immovable property other than by deposit of title deeds
- Particulars of creation or modification of security interest in hypothecation of plant and machinery, stocks, debt including book debt or receivables, whether existing or future.
- Particulars of creation or modification of security interest in intangible assets, being know-how, patent, copyright, trade mark, licence, franchise or any other business or commercial right of similar nature
- Particulars of creation or modification of security interest in any under construction residential or commercial building or a part thereof by an agreement or instrument other than by mortgage.

Form No. II

- Particulars of satisfaction of charge for security interest filed under sub-rule (2) and (2A) to (2D) of rule 4

Form No. III

- Particulars of securitisation or reconstruction of financial assets

Form No. IV

- Particulars of satisfaction of securitisation or reconstruction transactions

<Notification No. GSR 102(E) Dated 22-1-2016>



EDITORIAL

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Banking Sector – Under scanner

of the regulatory failures, issues of managements' weaknesses and need for a thorough overhaul of the Banking System can be identified and addressed. The enquiry has to be completely and very strictly confidential so that morale of genuine businessmen and more importantly, the market sentiments do not get affected adversely and backwards.

The scope, coverage and the reporting requirements by the Statutory Auditors as well as Internal Auditors are also required to be strengthened by the council of Institute of Chartered Accountants of India. The Audit has to be deep and thorough at National level

as well as at Branch and Regional / Zonal level. The profession need not wait for the Reserve Bank of India or the Government action in the matter and should issue regulatory direction, guideline in respect of scope, coverage and reporting requirements, to be mandatory followed by the banking sector, with full support of Reserve Bank of India, Securities & Exchange Board of India, and the government. It is also important to comprehensively upgrade the competence, credibility, integrity and professional caliber and competence of Bank management.

The Reserve Bank has been one of the top most and successful regulators and a Central Bank of the highest order. A positively aggressive approach, with an Indian mindset would be crucial for acceptability of regulatory and financial control framework.

5.0 RBI operationalizes central fraud registry

The RBI said a central fraud registry, along with the existing early detection mechanisms for frauds, has been operationalized with effect from January 20. Frauds of ₹ 1 lakh and above will be monitored by the respective regional office of RBI under whose jurisdiction the head office of the bank falls, but frauds of ₹5 crore and above will be monitored by the Central Fraud Monitoring Cell of RBI at Bengaluru.

6.0 Govt tightens consultants' hiring process

In a major overhaul of its recruitment process, the government has introduced a centralised system for appointing consultants in all ministries, and in the NITI Aayog.

It has also capped the tenure of such consultants at one year, which can be extended to a maximum of three.

CAPITAL MARKET**1.0 Sebi tightens debt investing norms for mutual funds**

The maximum a debt scheme can invest in the securities of a company has been reduced from 15 per cent to 10 per cent of the corpus. Single sector exposure for a scheme has been reduced from 30 per cent to 25 per cent. The exposure to housing finance companies within the finance sector has been reduced to five per cent from the earlier 10 per cent. Assets under management of debt mutual fund schemes are nearly ₹ 8 lakh crore.

2.0 IFSC banking units can open foreign currency current a/cs

Banking units operating in International Financial Service Centres (IFSCs) can now open foreign currency current accounts of units operating in IFSCs and of non-resident institutional investors to facilitate their investment transactions, according to Reserve Bank of India. Hitherto, the IBUs (IFSC banking units) were not allowed to open any current or savings accounts. The RBI, in its notification, also clarified that the IBUs cannot raise liabilities from retail customers including High Net Worth individuals (HNIs). Also, no cheque facility will be available for holders of current accounts in the IBUs. All transactions through these accounts must be undertaken via bank transfers.

Further, the RBI has prescribed exposure ceiling limits for IBUs. The exposure ceiling of IBUs has been pegged at 5 per cent of the parent bank's Tier-I capital in case of a single borrower and 10 per cent in the case of a borrower group.

According to the RBI, any financial institution or branch of a financial institution set up in the IFSC and permitted/recognised as such by the Government of India or a Regulatory Authority will be treated as a person resident outside India. A financial institution or branch of a financial institution can conduct such business in such foreign currency and with such persons, whether resident or otherwise, as the concerned Regulatory Authority may determine.



3.0 Sebi ups banks' exposure limit to currency derivatives

Capital markets regulator SEBI allowed bank stock brokers to have a greater exposure in the currency derivatives market, as compared to the limits permitted for the non-bank stock brokers.

The gross open position limit for all brokers currently stands at up to 15 per cent of the total open interest or \$100 million, whichever is higher.

"However, for bank stock brokers, as authorised by RBI, the gross open position across all contracts shall not exceed 15 per cent of the total open interest or \$1 billion, whichever is higher," SEBI said in a circular.

CORPORATE LAWS

1.0 Directors cannot compete with company

The High Court of Delhi held that Director's grievance against company / co-director does not justify violation of his/her fiduciary duties under section 166 of the Companies Act, 2013 by carrying on a business competing with that of

the company. If he/she had any grievances, he/she can avail the remedy but there is hardly any justification to start parallel/similar to the business of the company.

Rajeev Saumitra v. Neetu Singh [2016] 66 taxmann.com 18 (Delhi)

2.0 HUF cannot be a partner in LLP

It is hereby clarified that a HUF or its Karta cannot become partner or designated partner in LLP.

General Circular No. 2/2016

3.0 SARFAESI provisions override BIFR

The Supreme Court of India held that SARFAESI Act, 2002 prevails over the Sick Industrial Companies (Special Provisions) Act, 1985 to the extent of inconsistency therewith. Section 15(1) proviso 3 of the Sick Industrial Companies (Special Provisions) Act, 1985. Covers all references pending before the BIFR, no matter whether such reference is at the inquiry stage, scheme stage, or winding up stage.

Madras Petrochem Ltd. v. BIFR [2016] 66 taxmann.com 17 (SC)

FAQ ON CORPORATE SOCIAL RESPONSIBILITIES

♦ Can the CSR expenditure be spent on the activities beyond Schedule VII?

General Circular No. 21/2014 dated June 18, 2014 of MCA has clarified that the statutory provision and provisions of CSR Rules, 2014, is to ensure that while activities undertaken in pursuance of the CSR policy must be relatable to Schedule VII of the Companies Act 2013. However, the entries in the said Schedule VII must be interpreted liberally so as to capture the essence of the subjects enumerated in the said Schedule. The items enlisted in the Schedule VII of the Act, are broad-based and

♦ Which activities would not qualify as CSR Expenditure?

- The CSR projects or programs or activities that benefit only the employees of the company and their families
- One-off events such as marathons/ awards/ charitable contribution/ advertisement/ sponsorships of TV programmes etc.
- Expenses incurred by companies for the fulfillment of any Act/ Statute of regulations
- Contribution of any amount directly or indirectly to any political party
- Activities undertaken by the company in pursuance of its normal course of business.
- The project or programmes or activities undertaken outside India.

♦ Can donation of money to a trust by a company be treated as CSR expenditure of the company?

General Circular No. 21/2014 of MCA dated June 18, 2014 clarifies that Contribution to Corpus of a Trust/ Society/ Section 8 companies etc. will qualify as CSR expenditure as long as :

- (a) the Trust/ Society/ Section 8 company etc. is created exclusively for undertaking CSR activities or
- (b) where the corpus is created exclusively for a purpose directly relatable to a subject covered in Schedule VII of the Act

♦ If a company spends in excess of 2% of its average net profit of three preceding years on CSR in a particular year, can the excess amount spent be carried forward to the next year and be offset against the required 2% CSR expenditure of the next year?

Any excess amount spent (i.e. more than 2% as specified in Section 135 of CA 2013) cannot be carried forward to the subsequent years and adjusted against that year's CSR expenditure.

♦ Can the unspent amount from out of the minimum required CSR expenditure be carried forward to the next year?

The Board is free to decide whether any unspent amount from out of the minimum required CSR expenditure is to be carried forward to the next year.

General Circular No. 01/2016 dtd. 12 January, 2016



FEMA

1.0 RBI makes online filing of FDI forms a must from Feb 8

The Reserve Bank of India (RBI) has mandated Authorised Dealers (AD) category – I banks to file Advanced Remittance Form (ARF), Foreign Collaboration General Permission Route (FC-GPR) and Foreign Collaboration Transfer of Shares (FC-TRS) only through the online mode on e-biz portal starting from February 8. Physical filing of these forms will be discontinued.

2.0 SC approves trade in lapsed LIC policies

The Supreme Court has ruled that Life Insurance Corporation cannot object to transfer or assignment of policies, which is a global practice.

3.0 EPFO nixes 5-day grace period for PF contribution by employers

Retirement fund body EPFO has removed the grace period of five days given to employers to deposit the Provident Fund (PF) contribution.

Earlier, employers paid the PF contributions and administrative charges within 15 days of close of every month and had a grace period of five days.

thorough internal audit and place the report before audit committee of the board of the respective banks and to forward the summary of findings to RBI, the central bank said.

3.0 Manner of Certification by CA

On a consideration of the matter, the Council, with a view to bring uniformity in the manner of signing of certificates, has decided to require the members of the ICAI to include (in addition to any other requirements in this regard prescribed by the relevant law or regulation under which the certificate is being issued) the following details in their "Signatures" on the certificates issued by them:

1. Name of the CA firm*
2. Firm Registration Number (FRN)*
3. Name of the member
4. Designation (Partner/Proprietor)
5. Membership Number

349th meeting held on 17th and 18th January, 2016

BANKING

1.0 RBI targets truant borrowers, extra provisions for NPAs to hit bank profit in Q3, Q4

The December and March quarter earnings of state-run banks may turn out to be the worst in years as they have been mandated to set aside funds not only on loans that aren't being repaid on time, but also on those that have shown signs of weakness on the books of other lenders.

"Senior Reserve Bank of India officials have met top managements of banks directing them to make additional provisions on corporate loans in order to bring about uniformity in treatment of Non-Performing Assets (NPAs) and (stop) promoters that are gaming the system," said one of them.

2.0 RBI raises provisions for 'yet to fail' CDR accounts

Probably concerned at the rising number of loan recasts going wrong, the Reserve Bank of India (RBI) has asked lenders to increase provisioning for accounts that may not have yet failed Corporate Debt Restructuring (CDR) but do not meet conditions stipulated in the master restructuring agreement.

The Central Bank had sent them a list of such accounts for which more capital needed to be set aside. They added that the tighter norms would

ACCOUNTING / AUDIT

1.0 Banks, insurers to align with global accounting rules from April 1, 2018

The Centre has announced the much-awaited roadmap for implementing the Indian Accounting Standards (Ind AS) by Banks, Insurers and Non-Banking Finance Companies (NBFCs) for accounting periods beginning April 1, 2018. This would have to be done with comparatives ending March 31, 2018 or thereafter. The roadmap would also apply to all-India term-lending refinancing institutions, such as Exim Bank, NACAS, NHB and SIDBI.

2.0 Banks told to conduct internal audit

All public sector and private banks have been asked by the RBI to conduct a "thorough internal audit" and put the report before their respective Audit Committees, as part of the central bank's efforts to check fraudulent foreign exchange transactions.

A circular has been issued to all scheduled commercial banks, advising them to conduct a



apply to accounts recast outside the purview of the CDR cell.

- RBI worried about errant borrowers in CDR cell and other recast windows
- Wants more provisions for accounts with CDR but do not meet rules in master agreement
- The new list follows RBI's earlier list of 150 truant borrowers
- These exposures were not treated uniformly by lenders
- Provisioning to start from April 2016

DIRECT TAXATION

1.0 MFs under SEBI scanner on dividend stripping

Mutual Fund houses adopting 'Dividend Stripping' plan have come under the scanner of capital markets regulator SEBI for possible tax evasion. The dividend stripping typically involves an investor buying a dividend plan of a mutual fund scheme, book a loss on it and then set it off against capital gains from other sources.

2.0 No MAT on Foreign company as it doesn't have PE in India; AAR follows Government's stand

Where a Mauritian Company, a 100 per cent subsidiary of parent company, proposed to transfer shares held by it in Indian company in favour of a company proposed to be incorporated in Singapore with an object of group re-organization, the transaction having begun almost 20 years back, it could not be said that it was for tax avoidance and, therefore profit arising from such transaction won't be subjected to tax in India in terms of Article 13 of DTAA between India and Mauritius. Further, applicant would not be liable to pay Minimum Alternate Tax under provisions of section 115JB in absence of a PE in India. It was also held by the AAR that there will be no question of the applicability of section 92 to 92F and section 195 and since, proposed transfer of shares was not taxable in India, applicant was not required to file any return of income under section 139

3.0 Initiatives for reducing litigation

The significant steps taken by CBDT include issue of a circular revising the monetary limits for filing of appeals by the Department with the objective of reducing litigation as a part of its initiatives to reduce grievances of the taxpayers including

withdrawal of appeals filed by the Department in cases involving tax effect above the revised monetary limit from the High Courts in cases where, no question of law is involved, the issue is considered settled by the Department, or the appeal is no longer relevant in view of subsequent amendment.

Besides this, the CBDT has issued a number of Circulars for withdrawing or not pressing of appeals on settled issues.

<Press Release- CBDT dated 15th Jan, 2016>

4.0 Mauritius to begin automatic tax information exchange from Sept 2018

Mauritius will start automatic exchange of tax information with other nations only from September 2018.

5.0 Co. getting benefit of preferential treatment or brand couldn't be chosen as comparable

The ITAT Delhi Bench held that in case of assessee providing engineering design and related services to its AE, companies having functional difference and company making payments towards use of established brand resulting in substantial increase in its operating profits, could not be accepted as valid comparables while determining ALP.

Bechtel India (P.) Ltd. v. Deputy Commissioner of Income-tax, Circle 4 (2), New Delhi. [2016] 66 taxmann.com 6

6.0 No sec. 14A disallowance if tax free investment wasn't made out of interest bearing funds

The High Court of Karnataka held that disallowance made under section 14A, read with rule 8D, towards interest expenditure would not be tenable where Assessing Officer failed to establish a nexus between interest bearing funds and investment made.

Commissioner of Income-tax, Bangalore v. Karnataka State Industrial & Infrastructure Development Corpn. Ltd. [2016] 65 taxmann.com 295

7.0 HC allowed deduction of entire deferred revenue expenditure as assessee had abandoned its project

The High Court of Calcutta held that where decision to abandon project was taken in relevant year, balance deferred revenue expenditure relating to said project would be deemed to arise in relevant year and would be allowed as such.

Commissioner of Income-tax, Kolkata-IV v. Alcove Industries Ltd. [2016] 65 taxmann.com 311.



8.0 Tribunal gets flak from HC for deleting sec. 68 addition without examining identity and creditworthiness of creditors

The High Court of Delhi held that where it was alleged that on-money received in cash by real estate companies from flat purchasers was routed back in those companies in form of share capital/unsecured loans, etc. using assessee as a conduit, unless identity and creditworthiness of concerned fund owner were confirmed, addition made in hands of assessee could not be deleted.

Pr. Commissioner of Income-tax-6 v. Matchless Glass Services (p.) Ltd. [2016] 65 taxmann.com 310

9.0 Interest on FD is deductible under sec. 10B if FD is made to facilitate letter of credit and bank guarantee

The High Court of Delhi held that interest on FDRs which were under lien with Bank for facilitating letter of credit and bank guarantee facilities would qualify for deduction under section 10B.

Riviera Home Furnishing v. Additional Commissioner of Income-tax, Range 15. [2016] 65 taxmann.com 287

10. Interest received under Land Acquisition Act is taxable in year of receipt under head income from other sources

The High Court of Punjab and Haryana held that where assessee, a landowner, received interest under section 28 of Land Acquisition Act, 1894, said interest was taxable under section 56 as income from other sources in year of receipt.

Manjet Singh (HUF) Karta Manjeet Singh v. Union of India. [2016] 65 taxmann.com 160

INDIRECT TAXATION

1.0 Coaching institute not liable to service-tax on book sold to students if same is separately invoiced

The CESTAT, New Delhi bench held that where sale of study materials was shown separately in invoice, assessee was eligible for benefit of exemption in respect of said sale under Notification No. 12/2003-ST; hence, value of study material would not form part of value of coaching services.

Mastermind Classes (P.) Ltd. v. CCE, Indore. [2016] 65 taxmann.com 112

2.0 No limit on incremental growth of exports for allowing benefit of IEIS scheme under FTP 2009-14: HC

The High court of Bombay held that duty credit scrip benefit under Incremental Export Incentivisation Scheme (IEIS) under FTP 2009-14 can be claimed even for amount exceeding Rs. 20 lakhs, but subject to greater scrutiny; clarification dated 23-9-2004 taking a contrary view was invalid and quashed accordingly.

JSW Steel Ltd. v. Union of India. [2016] 66 taxmann.com

3.0 Cenvat Credit rules amended

Sales promotion includes services by way of sale of dutiable goods on commission basis.

The CENVAT credit of any duty shall not be utilised for payment of the Swachh Bharat Cess. <Notification No. 02/2016-Central Excise(N.T.)>

4.0 Processing fees paid to Foreign Bank for arranging borrowings is liable to service-tax under reverse charge

The CESTAT, Chennai bench held that processing fee paid to Foreign Banks for arranging External Commercial Borrowings, is liable to service tax under reverse charge under Banking and other Financial Services.

JSW Steel Ltd. v. Commissioner of Service Tax, Salem. [2016] 65 taxmann.com 203

FINANCIAL INDICATORS

	Current Rate*	Previous Month	3 Month ago	6 Month ago
3 Month LIBOR (%)	0.62	0.62	0.36	0.31
SENSEX	23766.80	24825.04	25482.52	28101.72
NIFTY	7221.4	7563.85	7731.8	8525.6
CRR (%)	4	4	4	4
REPO (%)	6.75	6.75	6.75	7.25
REVERSE REPO (%)	5.75	5.75	5.75	6.25
Gold (per 10 gm)	28199	26071	25184	24761
Silver (per kg)	36700	33481	33754	34020
Crude (USD/bbl)	31.64	32.9	44.55	48.74
₹ vs USD	67.87	66.91	66.11	63.7
₹ vs Euro	76.64	72.77	70.39	69.87
₹ vs 100 Yen	59.21	56.78	53.63	51.22
₹ vs RMB	10.43	10.15	10.38	10.26
₹ vs Pound	98.29	97.28	100.51	98.75
MCX Aluminium (per kg)	101.7	99.05	96.1	99
MCX Copper (per kg)	306.5	297.2	306.05	328.1
*As on February 11, 2016		(Sources: MoneyControl, NSE, BSE, RBI, MCX)		

EDITORIAL**JNU – Enemy of nation misusing freedom of speech**

It is highly shameful that certain sections of the "Student" and "Academicians", openly held an event in the JawaharLal Nehru University (JNU) campus, against the hanging of parliament attack convict Afzal Guru.

The student organisers of the event, pasted posters across the JNU campus, inviting the students together for a protest march against "judicial killing of Afzal Guru and Maqbool Bhatt". The anti-social elements, shamefully misused the democracy and even shouted anti-India slogans and "Pakistan zindabad" to show their so called solidarity with "Struggle of Kashmir people for their democratic right to self-determination"

It is very important for us to retrospect, as to how

such antinational element gets support from across the borders. India is trying to improve its relations with Pakistan and neighboring countries and there seems to be a sincere attempt from the other side also. However there are several international conspirators, who need to be identified, who are against the peace process and create one unrest or the other. Stern and tough action is required to be taken against enemies of India. The real culprit may not only be Kanhaiya Kumar and his team but also the real people behind the show.

Every Indian, including all political parties needs to support stern action. Even the left parties and Congress need to rise to the occasion and sideline the terrorist elements. It is important to kill any tendency to misuse the democracy by international enemies of India.

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