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EDITORIAL

Non Performing Assets in Banking Sector - Impacting Economic Growth

Need for credit monitoring mechanism



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

The cases and overall quantum of Non Performing Assets in Banking Sector have reached alarming levels. RBI has specially brought out a list of 150 extra large borrowers having weak financial health. The size of borrowings by certain borrowers has grown geometrically impacting debt-equity ratio, large and risky financial leverage and risk to financial market system. In view of large NPA, the

Banking system has become averse to further lending, thereby negatively impacting Make in India, New projects, expansion, working capital and growth and growth momentum of economy.

An In-depth research into the issues involved clearly bring out following major issues:-

- The Assessment of credit need, strength and sources of promoters, viability of the project, estimated time for completion, risk of contingency, regulatory and policy risk is inefficient and ineffective. The systems are not commensurate to the need and there is significant lack of appropriate skills within the banking sector.
- The professional integrity, ethics, professional business friendly approach need commitment and strengthening.
- The terms of sanction including pre-disbursal and post-disbursal conditions are not complied with in majority of the cases, including in respect of
 - o Promoter's contribution
 - o End use of funds
 - o Prior approval before further borrowing
 - o Major capital expenditure commitment by borrower and the group companies.
 - o Share transfer/pledge by promoters including borrowing against the same and its end use
 - o Investment in associates, subsidiaries etc.

- o Extending advances not in the ordinary course of business

No effective action is taken by the banks in case of non compliance and in most of large cases, a relaxed view is taken

- Monitoring of audited accounts and quarterly results of the borrowers, their subsidiary companies, associates and other group companies and related parties is seriously weak.
- The drawing power allowed to borrowers on the basis of inventory and debtors is not supported by credible and verified information.
- The Issues highlighted in the borrower's Audit Report and Notes to Accounts are ignored.
- Diversion of funds or improper end use is not monitored by detailed scrutiny of Annual/Quarterly financial statements. The break up schedules and actual facts behind the published figures are ignored.
- Related party transactions, overdue debtors, non moving stocks, advances not relating to business, unapproved investments are all ignored.
- Increase in Current liabilities, Secured loans of borrower from third parties, Borrowings from other banks, NBFCs, Commercial paper, Debentures and Deposits are not taken into consideration while monitoring credit.

Auditor's appointment

A very large public sector bank has advertised to appoint a national level CA firm for concurrent audits of the bank's branches. The minimum eligibility is gross annual receipt of Rs. 150 crores professional fee. The CA fraternity needs to react.

- The bank's Board of Directors, Top management and Middle management have a big dearth of knowledge and skill to analyse borrower's financials, notes and their qualification in their Audit Reports. There is hardly any system to monitor financial statements and actual

contd.....Pg.3



LATEST IN FINANCE

1.0 Govt amends Atal Pension Yojana

The government has amended Atal Pension Yojana (APY) to give an option to the spouse to continue to contribute for balance period on premature death of the subscriber.

2.0 India's first small bank to start operations on April 13

Jalandhar-based Capital Small Finance Bank Limited is set to become India's first Small Area Finance Bank (SFB) by flagging-off its operations on April 13, 2016.

3.0 RBI eases ECB norms for infra space

The Reserve Bank of India (RBI) has allowed all companies engaged in the infrastructure sector to raise External Commercial Borrowings with a minimum maturity of five years, including those Non-Banking Finance Companies (NBFC) regulated by the central bank.

By putting the NBFCs directly in the category of infrastructure, RBI has made it easier for these firms to raise additional resources of up to \$750 million, provided they use the proceeds only for financing infrastructure, and not for their own use.

4.0 Govt launches portal on Intellectual Property

The government has launched a portal, Indian IP Panorama, which will act as a single window interface for information on intellectual property and provide guidance on leveraging it for competitive advantage.

The portal seeks to increase awareness and build sensitivity towards IP, among stakeholders in the SME sector, Academia and Researchers.

5.0 RBI revises rules for resolution of Stressed MSME loans

The Reserve Bank of India has revised rules pertaining to revival of advances to small businesses and asked lenders to form district-level committees to resolve stressed loans to Micro, Small and Medium Enterprises (MSMEs).

Restructuring of loan accounts with exposure of above ₹ 25 crore will continue to be governed by the extant guidelines on Corporate Debt Restructuring (CDR) or Joint Lenders' Forum (JLF) mechanism.

There will be district-level committees which will resolve the stress in MSMEs under their

jurisdictions. In case of a MSME banking with multiple lenders, the lead bank's panel's should deal with the issue.

The committees shall comprise regional head of the bank as chairperson, and MSME loans in-charge as the convener and member. The bank should also appoint an external expert nominated by the bank and a representative of the State Government.

6.0 SC green light to SEBI to sell Sahara assets

The Supreme Court allowed the market regulator Securities and Exchange Board of India (SEBI) to devise a mechanism to sell 86 properties belonging to the Sahara group to recover dues in the illegal bonds case.

CAPITAL MARKET

1.0 NSE issues norms for Companies listed on Non-Operational bourses

Under the new norms, the firm seeking listing is required to have a Net Worth of at least Rs 10 crore or the Paid-Up Equity Capital of the company need to be at least Rs 5 crore, National Stock Exchange (NSE) said in a circular.

Besides, there should not be any disciplinary action against the firm by other stock exchanges and regulatory authorities in the past three years.

2.0 SEBI allows commodity derivatives trading in bourses at IFSC

Markets regulator Securities and Exchange Board of India (SEBI) has allowed trading in commodity derivatives at Stock Exchanges operating in International Financial Services Centre (IFSC).

3.0 NSE launches Nifty MidSmallcap 400 index

NSE has launched a new Nifty MidSmallcap 400 index, which will represent the mid and small market capitalisation segments of the stock market.

4.0 SEBI bans wilful defaulters from markets, company boards

Cracking a whip on 'Wilful Defaulters', SEBI has decided to bar them from raising public funds through stocks and bonds, and also from taking board positions at listed companies.

SEBI has also decided to bar such defaulters from



EDITORIAL

.....from Pg. 1

Non Performing Assets in Banking Sector

physical operations of even very large borrowers on an ongoing basis or even during disbursements.

- Early warning signals are not captured for necessary action.
- The appointment of auditors has been left in the hands of top management of banks, adversely impacting quality and depth of audit.
- Even branch audits appointments has been restricted to 20% large branches and appointments are made very late towards end of March, while expecting and insisting reports in 7 to 10 days, leaving hardly any time for detailed review. The appointment is being made by management and not by independent persons.
- Inadequate action is taken on audit reports by bank auditors including account wise comments in long form Audit Reports. Even there is no focus on credit monitoring through a specialized Audit keeping in view that internal credit monitoring is very weak.
- The concurrent audit's scope coverage and reporting requirements are mis-directed to routine verifications.
- There is a need for major overhaul in the Indian Banking system including:
 - Strengthening of the Board of directors, top management and key positions by capable and rightly qualified persons. Employment of qualified Chartered Accountants in larger numbers will significantly help.
 - Borrowers have to have the fear of judiciary and legal action including loosing of management and control of the entity itself.
 - The time spent on judiciary process needs to be curtailed drastically.

setting up market intermediaries such as mutual funds and brokerage firms. These defaulters would also not be allowed to take control of any other listed company.

5.0 SEBI allows cross-currency futures in multiple pairs

Market regulator SEBI allowed stock exchanges to introduce Cross-currency futures and exchange traded Cross-currency option contracts in multiple currency pairs. The Cross currency

- Credit Monitoring within the bank and from outside experts of high quality need to be institutionalized. There is a need to appoint 2 independent professional Directors as selected by Banks to monitor day to day operations and fund management.
- A regular Bank Information System is to be put in place so that periodical updates of borrower, Group companies, subsidiaries, associates, related party transactions and specific areas and nature of transactions is duly reported to the bank as certified by an Independent firm of Chartered Accountants.
- The Bank Auditors need to bring out all cases of misfeasance, diversion of funds, potential sickness and lack of financial discipline among borrowers, independently in an efficient and excellent manner.
- The appointment of auditors needs to be undertaken independent of Bank's management.
- RBI has been one of the most effective regulator and banking supervision and guidance has to be revamped significantly by RBI. Even RBI annual inspection report should be an open public document at least for all levels of bank management and all Auditors and consultants.
- A comparative study of status of NPA in Private sector banks & Public sector bank need to be done to understand the real reasons of high NPA in public sector banks.
- The role of politicians, ministry of finance and administrators in the working of public sector banks.
- Industry specific factors shall be considered before declaration of an account as NPA. Every industry has its distinctive features. Let the NPA norms be formulated and modified accordingly.

futures will be available in various pairs, including Euro (EUR)-US Dollar (USD), Pound Sterling (GBP)-USD and USD-Japanese Yen (JPY). On the exchange traded option contracts front, Euro-Rupee (INR), GBP-INR and JPY-INR have been added to the existing USD-INR pair, SEBI said in a circular.

6.0 Sebi Seeks More Disclosures by Mutual Fund Houses to Investors

Investors will soon get to know the commissions



that mutual funds pay distributors. The Securities and Exchange Board of India (SEBI) has asked mutual fund houses to clearly mention the actual commission, including gifts and junkets, given to distributors in the half-yearly account statement.

"The term 'Commission' here refers to all direct monetary payments and other payments made in the form of gifts, rewards, trips, event sponsorships, etc. by fund houses to distributors.

CORPORATE LAWS

1.0 Arbitration no bar to consumer complaint

The National Consumer Commission has stated, in case of *Mahindra Holidays and Resorts India Ltd. vs Adnan Rassiawala*, that a consumer can make a complaint to a consumer forum even if there is an arbitration clause in the agreement between him and a service provider.

2.0 Fund set up by the government, to use unclaimed money for Senior Citizens

Government has set up a welfare fund which will utilize unclaimed money, estimated to be in excess of ₹9,000 crores, lying in PPF, Employees Provident Fund & Small Savings Schemes to provide healthcare facilities & pension to senior citizens.

3.0 Directors not liable to vacate office on failing to file returns as company was barred to hold meetings by an injunction

The Company Law Board, Kolkata Bench held that where an interim injunction had been imposed upon company not to hold general meeting due to which financial statements could not be filed for three consecutive years, directors of company could not be said to have vacated their offices in terms of section 167(1), read with section 164(1) due to default in filing financial statements.

Partha Ghosh v. Pragati 47 Development Ltd. [2016] 67 taxmann.com 79

4.0 Panel drafts model Act for leasing of Farm Land by States

To encourage investments and boost productivity in the farm sector, a government-appointed committee has drafted a model Agricultural Land Leasing Act that will legalise tenancy for the purpose of farming.

5.0 Green nod exemption for Zero-pollution load industries

More than 30 industries that have zero pollution load have been exempted from taking environmental clearance as the centre released a new four-colour classification scheme for industries based on their pollution potential.

Under the new categorisation system, industries that pollute the most have been put in the red category, while the moderately polluting units are classified orange. Industries that have a significantly low pollution load have been placed in the green category, while those that operate without causing any pollution have been categorised as white.

Terming it a "landmark" decision that gives a "fair picture" of the industries, Environment Minister Prakash Javadekar said the new system of re-categorisation is based on an elaborate scientific exercise.

The existing system was creating problems because it did not reflect the actual pollution caused by the various units.

6.0 Bureau of Indian Standards Bill passed

Parliament has passed a Bill under which the Bureau of Indian Standards (BIS) can order recall of products not conforming to standards, in addition to cancellation of licence of the manufacturer. It can also order compensation to consumers in case goods and services do not conform to the standards.

The Bill also empowers the government to implement mandatory hallmarking of precious metal articles, such as gold and silver.

7.0 Oppression plea can't be filed at convenience of appellant: HC

The High Court of Delhi held that where appellants did not impugn either allotment of Rights Issue or their removal from Board of Directors at relevant time and raised such grievances only when company's economic difficulties were over and it was on path of substantial progress, appellant's interest in company was limited to their initial shareholding and nothing more.

Raj Kumar Bhatia v. AV Light Automotives Ltd. [2016] 67 taxmann.com 263



AUDIT / ACCOUNTANCY

1.0 New CARO 2016- Highlights

Application

Every company including a foreign company, except –

- a banking company; an insurance company; a company licenced under section 8; a one person company; a small company
- a private limited company not being a subsidiary or holding company of a public company having
 - paid up capital and reserves and surplus not more than rupees one crore; and
 - total borrowings not more than rupees one crore; and
 - total revenue not more than rupees ten crore
- Applicable for the Financial years commencing on or after 1st April, 2015

Key notes

- Whether the title deeds of immovable properties are held in the name of the company. If not, provide the details thereof
- In respect of loans, investments, guarantees, and security whether provisions of section 185 and 186 of the Companies Act, 2013 have been complied with. If not, provide the details thereof.
- In case, the company has accepted deposits, whether the directives issued by the Reserve Bank of India and the provisions of sections 73 to 76 or any other relevant provisions of the Companies Act, 2013 have been complied with? If not, the nature of such contraventions be stated;
- Whether the company has defaulted in repayment of loans or borrowing to a financial institution, bank, Government or dues to debenture holders? If yes, the

period and the amount of default to be reported (in case of defaults to banks, financial institutions, and Government, lender wise details to be provided)

- Whether moneys raised by way of initial public offer or further public offer (including debt instruments) and term loans were applied for the purposes for which those are raised. If not, the details together with delays or default and subsequent rectification, be reported
- Whether managerial remuneration has been paid or provided in accordance with relevant provisions
- Whether all transactions with the related parties are in compliance with sections 177 and 188 of Companies Act, 2013 and the details have been disclosed in the Financial Statements etc.
- Whether the company has made any preferential allotment or private placement of shares or fully or partly convertible debentures during the year under review and whether section 42 of the Companies Act, 2013 have been complied with and the amount raised have been used for the purposes for which the funds were raised. If not, provide the details in respect of the amount involved and nature of non-compliance;
- Whether the company has entered into any non-cash transactions with directors or persons connected with him, whether the provisions of section 192 of Companies Act, 2013 have been complied with;
- Whether the company is required to be registered as an NBFC under section 45-IA of the Reserve Bank of India Act, 1934 and whether the registration has been obtained.

MCA Notification dt. 29th March, 2016

2.0 SEBI directive to issuer firms on Ind AS

Market regulator SEBI has mandated that all draft offer documents filed between April 1, 2017 and March 31, 2019 will have to state accounts according to the Ind AS for the latest three years

and according to Indian GAAP for the next two years. This is being done to harmonise the statement of accounts in a public offering with the phase wise implementation of Ind AS, being done by the MCA.



3.0 Companies (Accounting Standards) Amendment Rules, 2016

MCA has notified Companies (Accounting Standards) Amendment Rules, 2016 vide Notification dt 30th March 2016, to omit AS 6 on Depreciation Accounting and to amend / substitute the following Accounting Standards:

- AS 2: Valuation of Inventories
- AS 4: Contingencies and events Occurring after Balance Sheet Date
- AS 10: Property, Plant and Equipment
- AS 13: Accounting for Investments
- AS 14: Accounting for Amalgamation
- AS 21: Consolidated Financial Statements
- AS 29: Provisions, Contingent Liabilities and Contingent Assets

INDIRECT TAXATION

1.0 Service Tax on Sarkari Services

Indian companies will have to pay service tax on any service they avail from the government or local authority from the next fiscal year, broadening the scope of the levy to include not just spectrum but all auctions, right of way, licence fees and development rights. These will all attract service tax, now applied at 15%, inclusive of two cesses.

2.0 Service tax dues payable by director can't be recovered from company

The High Court of Madras held that since company is a separate and independent entity, service tax dues payable by director (or director's proprietorship firm) cannot be recovered from company.

Atchaya Engineering (P.) Ltd. v. Additional Commissioner, Chennai. [2016] 67 taxmann.com 273

3.0 Service exporters may avail of Cenvat credit and refund thereof even without registration

In absence of any provision in service tax law or CENVAT Credit Rules, 2004 requiring registration of service exporters, who are not liable to pay any service tax, service exporters may take credit and refund thereof even without registration.

Commissioner of Service Tax v. Tavant Technologies India (P) Ltd. [2016] 67 taxmann.com 193.

4.0 1 year time-limit to claim refund of ST counted from date of receipt of export proceeds and not from date of export

The CESTAT, Bangalore Bench held that export of services is complete only after receipt of consideration towards same; hence, service exporters may claim refund of utilized Cenvat credit within time-allowed under section 11B, viz., 1 year from date of receipt of consideration.

Infosys Technologies Ltd. v. Commissioner of Service Tax, Bangalore. [2016] 67 taxmann.com 313

DIRECT TAXATION

1.0 CBDT eases rules for 'Staying' tax demand

Now, Assessing Officers can grant a stay of demand until the first appeal is disposed if the taxpayer pays 15 per cent of the disputed demand. The CBDT has further said that in case of any deviation from the standard pre-payment of 15 per cent by the Assessing Officer, the case will be referred to the administrative Principal Commissioner or Commissioner will take a final call. In case, despite a 15 per cent stay, the tax payer is still unhappy, he can approach the jurisdictional administrative Principal Commissioner or Commissioner.

2.0 CBDT signs 11 more advance pricing pacts with taxpayers

The Tax Department has signed 11 more Advance Pricing Agreements (APAs) with taxpayers covering overseas transactions within group entities so as to reduce litigations.

3.0 CBDT forms directorates to monitor taxpayer service

To reduce grievances of tax payers, the CBDT has set up a dedicated structure for delivery and monitoring of taxpayer services. CBDT Member (Revenue and Tax Payer Services) will oversee the related services in Central Board of Direct Taxes.

Two separate Directorates - Directorate of Tax Payer Services I and Directorate of Tax Payer Services II - have been set up, it added.

Together, these Directorates will be responsible for delivery and monitoring of taxpayer services in the field offices and e-services deliverable through various electronic platforms of the Department.



4.0 Tax pact with Indonesia in force, will help fight black money

Nearly four years after a deal, India has implemented the new DTAA with Indonesia. The new agreement will take effect in respect of incomes derived on or after April 1, 2017.

Some of the significant aspects of the new pact include the introduction of a 'Limitation of Benefit' (LOB) clause and provision for exchange of banking information for tax administration purposes.

5.0 New ITR forms for AY 2016-17

The Finance Ministry has notified new Income Tax Return forms for assessment year 2016-17.

6.0 Only net interest should be disallowed under sec. 14A

The ITAT Ahmedabad Bench held that for purpose of computing disallowance under section 14A, amount of net interest is to be taken into consideration.

*Aditya Medisales Ltd. V. Additional Commissioner of Income-tax, Range-1, Baroda** [2016] 67 taxmann.com 270

7.0 Capital gains tax waiver for Bond and Debenture holders

The government will treat bonds and debentures as a single security for calculating the holding period without factoring in the conversion date, a decision that could make investors eligible for long-term capital gains tax exemption. Thus, the holding period for the long-term capital gains tax will be from the date a debenture or bond is acquired and not from the day the debenture is converted to shares.

The Central Board of Direct Taxes has amended the rules dealing with the issue. The new regime will come into effect from April 1.

8.0 CPC-TDS enables online functionality for correction in Form 26QB

The functionality for correction of Form 26QB has been made available online from 29th Feb, 2016 to the deductors/buyers. Hence the buyer, whose PAN exists in Form 26QB, can log in to www.tdscpc.gov.in and make the correction for the specified fields with/without Digital Signature.

9.0 Investment in Gold bonds notified as valid mode of investment by a trust under sec. 11(5)

Investment in "Stock Certificate" as defined in clause (c) of paragraph 2 of the Sovereign Gold Bonds Scheme, 2015 has been notified as valid mode of investment by a trust under sec. 11(5) vide *Notification No. SO 1206(E) [NO.21/2016 (F.NO.142/1/2016-TPL), dated 23-3-2016*.

10.0 Sum paid by 'Dish TV' to TV Channels to receive their programmes for further telecasting would attract TDS u/s 194J

The ITAT Delhi bench held that where assessee made payment to TV channels to receive their programs for further telecasting TDS was to be deducted under section 194J

*Dish TV India Ltd. v. Assistance Commissioner of Income-tax (TDS)** [2016] 67 taxmann.com 282

11.0 Salary of NR for rendering service in US won't be taxed in India as per DTAA even if salary was received in India

The ITAT Jaipur Bench held that where during relevant assessment year, assessee rendered services in USA, salary received by him for such services in India from sister concern of US employer would be exempt from Indian taxation under article 16(1) of Indo-US DTAA.

Neeraj Badaya v. Assistant Director of Income-tax, (International Taxation), [2016] 67 taxmann.com 240

FINANCIAL INDICATORS

	Current Rate*	Previous Month	3 Month ago	6 Month ago
3 Month LIBOR (%)	0.63	0.64	0.61	0.32
SENSEX	24900.63	24623.34	24825.04	26904.11
NIFTY	7614.35	7486.15	7563.85	8143.60
CRR (%)	4	4	4	4
REPO (%)	6.50	6.75	6.75	6.75
REVERSE REPO (%)	6.00	5.75	5.75	5.75
Gold (per 10 gm)	29131	29703	26071	26568
Silver (per kg)	36671	37607	33481	36560
Crude (USD/bbl)	39.72	38.61	32.90	49.95
₹ vs USD	66.47	67.09	66.92	64.73
₹ vs Euro	75.90	74.94	72.77	73.60
₹ vs 100 Yen	61.04	59.13	56.78	53.86
₹ vs RMB	10.32	10.88	10.16	10.26
₹ vs Pound	94.04	95.75	97.28	99.30
MCX Aluminium (per kg)	101.10	105.15	99.05	103.85
MCX Copper (per kg)	308.20	335.90	297.20	336.55

*As on April 10, 2016

(Sources: MoneyControl, NSE, BSE, RBI, MCX)

12.0 Secret commission paid to employees of competitors restricted to 1% of total sales

The High Court of Gujarat held that where assessee claimed deduction of secret commission paid to employees of different companies who had given business to assessee, since assessee had not kept any accounts as to where and to whom such commission was paid, Tribunal was justified in allowing assessee's claim to extent of one per cent of total sales.

Patel Brothers v. Deputy commissioner of Income Tax [2016] 67 taxmann.com 257



FEMA

1.0 Mauritius to monitor offshore investments


The International Monetary Fund (IMF) has asked Mauritius to set up a 'macro-prudential authority' to monitor the offshore investments.

2.0 RBI notifies 49% FDI under automatic route in insurance


Reserve Bank has notified 49 per cent Foreign Direct Investment (FDI) under automatic route in Insurance sector.


Start a Business
Maintain a Business




How this works




Register



Fill Incorporation Form



Submit & Sign required documents



Company Formed

Be it setting a new business or maintaining an existing one now simply do it online

For Indian Owners

- Public Limited Company
- Private Limited Company
- Non-profit Making Company
- Sole Proprietorship
- Company With Unlimited Liability
- Partnership Firm
- Limited Liability Partnership
- Huf (Hindu Undivided Family)
- One Person Company
- Co-operative Society

For Foreign Owners

- Wholly Owned Subsidiary
- Joint Venture Company
- Liaison/representative office
- Project Office
- Branch Office

Maintain Your Company

- Regular Filing Services
- Corporate Secretarial Services
- Securities Exchange Board Of India And Stock Exchange Related Services
- Attorney And Solicitor Services
- FEMA-RBI Related Services
- Services For Investment Outside India/in India
- Advisory On Corporate Transaction
- Make Your Deed (Drafting Of Deeds, Agreements)
- Other Services

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