



ALL INDIA UNION BANK PENSIONERS AND RETIREES FEDERATION
(Affiliated to All India Bank Pensioners & Retirees Confederation – AIBPARC)

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Dear Comrades,

3rd April , 2019

News of Interest 3rd APR

QUOTE OF THE DAY

“TALK TO YOURSELF ONCE IN A DAY.. OTHERWISE YOU MAY MISS MEETING AN EXCELLENT PERSON IN THIS WORLD.” – SWAMI VIVEKANANDA

HIGHLIGHTS

- 1. SC WRITES OFF RBI'S FEBRUARY 12 CIRCULAR ON RESOLUTION OF STRESSED ASSETS**
- 2. ECONOMISTS CALL FOR AT LEAST 25 BPS RATE CUT BY RBI IN APRIL POLICY MEET**
- 3. PSU BANKS GOT RS 1.95 LAKH CRORE CAPITAL INFUSION IN 18 MONTHS; GOVT COMPLETES MASSIVE RECAPITALISATION**
- 4. BANKS CAN NOW REFER DEFAULTERS TO NCLT ON CASE BY CASE BASIS: BANKERS**
- 5. RATING AGENCIES SEE FURTHER DELAY IN RESOLUTION PROCESS OF STRESSED ASSETS**

Business Standard

1. SC writes off RBI's February 12 circular on resolution of stressed assets

The judgment was a great relief for the aggrieved companies, which were battling an outstanding debt of Rs 3.8 trillion

[Aashish Aryan & Anup Roy](#)

The Supreme Court on Tuesday annulled the Reserve Bank of India's (RBI's) February 12 circular on resolving bad debt and said the banking regulator had acted beyond its legal powers while issuing the directive, potentially inflicting a setback on the central bank's war on non-performing assets (NPAs).

The February 12 circular had asked lenders to institute a board-approved policy for the resolution of stressed assets. Banks were told to start the resolution process as soon as a borrower defaulted on a term loan and were given 180 days to cure it, failing which the account would have to be referred to the National Company Law Tribunal (NCLT). Several companies in the power, sugar and fertiliser sectors had challenged the circular as ultra vires on the grounds that it wrongly classified them as wilful defaulters. They argued that they were stressed because of extraneous reasons beyond their control and could not be treated as wilful defaulters

The judgment was a great relief for the aggrieved companies, which were battling an outstanding debt of Rs 3.8 trillion. Of the over Rs 2 trillion loans of the power sector, bad debts of at least Rs 34,044 crore were primarily due to changes in government policy, failure on the part of the government to fulfil commitments, delayed regulatory response, and non-payment of dues by distribution companies, according to a report submitted by the 37th Parliamentary Standing Committee on the power sector.

The central bank was to gradually lower the ceiling of the loans to include more companies under the February 12 circular later. The circular stated that any company that defaulted on its loan repayment obligation even by a day should be declared a defaulter and banks should start trying to recover their dues. If needed, the company can be referred under the Insolvency and Bankruptcy Code (IBC) and sold off.

A two-judge Bench of Justice Rohinton Fali Nariman and Justice Vineet Saran observed that the banking regulator did not consult the government before issuing a circular that drags a bunch of companies to the IBC. The bone of contention was Section 35AA of the Banking Regulation Act, which says the government can authorise the RBI for issuing directions to banks to initiate the insolvency process, but only in respect of a default, and not for a group of defaulters.

"Without authorisation of the central government, obviously, no such directions can be issued," the Bench said. The top court, however, held that the regulator was well within its rights to exercise powers under Section 35 AA and that the Section, along with Section 35 AB (which gives power to the RBI to issue directions on stressed assets), was not manifestly arbitrary.

The Banking Regulation Act was amended after the introduction of the IBC in 2016. Under the erstwhile Section 21 of the RBI Act, the central bank had broader powers, but Section 35AA narrowed them down, limiting the scope for the central bank.

"... prior to the enactment of Section 35AA, it may have been possible to say that when it comes to the RBI issuing directions to a banking company to initiate the insolvency resolution process under the Insolvency Code, it could have issued such directions under Sections 21 and 35A. But after Section 35AA, it may do so only within the four corners of Section 35AA," the judges said.

Therefore, all actions by banks and non-banking financial institutions, including triggering of insolvency, taken pursuant to the said circular "must fall along with the said circular", the two-judge Bench said. "All cases in

which debtors have been proceeded against by financial creditors under Section 7 of the Insolvency Code, only because of the operation of the impugned circular will be proceedings which, being faulted at the very inception, are declared to be non-est," the SC said.

But the judgment may fundamentally change the way the RBI has carried out its regulatory responsibilities in the past.

"The central bank never wanted to be seen as a micro-manager, and never took decisions on individual companies, but did so for the sector as a whole. The judgment, unfortunately, will force the RBI to become a micro-manager," said a former deputy governor, who did not want to be named.

The RBI did not offer a comment on the judgment.

"The RBI's general powers to issue a wide variety of directions will not be impacted by the judgment. The RBI is expected to be more cautious in the future while exercising the legal provisions which entitle them to issue such directions. It has left the door open for the RBI to direct banks to move under the IBC in respect of specific defaults since it upheld the ordinance. Such notifications must survive the scrutiny of the Act," said Dipankar Bandyopadhyay, partner at law firm Verus.

Another former deputy governor said the judgment was technical, but it did not offer any solution to the problem. "The RBI came up with the February 12 circular only when all options were exhausted and nothing was working. The judgment does not talk about the huge role played by the government in forcing companies to default," said the former RBI official. "The judgment is quite unfortunate and definitely undermines the central bank's powers. This is coming at a time when banks were just getting a grip on the erring promoters and the tables had turned."

It is not clear yet if the central bank will have to go back to the numerous resolution processes that the February 12 circular had superseded. But analysts say the central bank has enough powers to continue with resolution processes, for example provisions can be raised steeply for a bank that fails to come up with a resolution of a defaulter within 180 days. Or, squeezing banks' lending ability drastically from lending to a defaulter. It is unlikely that the central bank will revisit its old schemes.

In its petition, the RBI had said banks had invoked strategic debt restructuring (SDR) in more than 140 cases, but were unable to change ownership in even a handful of cases. In the case of Corporate Debt Restructuring (CDR), of the 591 cases, only 110 succeeded, while 291 cases failed. In 22 cases, handled under different scheme, 20 borrowers were still in default, according to the latest data.

Following the February 12 circular, the Association of Power Producers (APP) and the Independent Power Producers Association of India (IPPAI) had moved the Allahabad High Court challenging the circular. The high court, however, denied them any relief, following which the APP and the IPPAI approached the apex court in August 2018. The top court had then transferred all the pleas challenging the RBI's circular, pending in various high courts, to itself and asked all the parties to maintain the status quo.

Terming the judgment a major success for all industries that were facing action from banks owing to mandatory directions of the RBI, Mahesh Agarwal, an advocate representing power and shipyard companies in the case, said that quashing gave banks the discretion back which had been taken away.

"The court has held the RBI circular to be ultra vires. Banks would, therefore, now be in a position to take independent decision on way forward with regard to resolution of debts, which can now be by way of settlements rather than forced insolvency proceedings," Agarwal said after the verdict.

Tuesday's judgment will have no impact on the cases referred to the NCLT prior to the date of the circular, and affects only those insolvency cases that were specifically referred under the circular, Bandyopadhyay said.

Though the top court has set aside the February 12 circular of the RBI, it stayed away from dealing any other issues that power companies had emphasised as the reasons for their stress.

Thus, action against such companies could still be taken by banks under the IBC, Daizy Chawla, senior partner at law firm Singh & Associates, said.

2. Economists call for at least 25 bps rate cut by RBI in April policy meet

Most of the economists suggested a rate cut of at least 25 bps in the RBI's monetary policy on April 4

Press Trust of India

A panel of economists, including former Chief Economic Adviser Arvind Virmani, on Tuesday called for at least 0.25 percentage point rate cut in the RBI's first monetary policy of the current fiscal to be unveiled later this week.

Virmani said that it is for the RBI to understand that the real interest rate in India right now is very high.

"It is high time to ease monetary policy," Virmani said during a panel discussion on RBI monetary policy organised by Assocham-EGROW Foundation.

Ashima Goyal, Professor of Economics, Indira Gandhi Institute of Development Research and Member, Prime Minister's Economic Advisory Council, and Upasana Bhardwaj, Senior Economist, Vice President Kotak Mahindra Bank, also participated in the discussion.

Indranil Sen Gupta, Chief Economist, Bank of America Merrill Lynch and Surjit S Bhalla, Contributing Editor, Indian Express and Consultant, CNN-IBN were also in the panel.

Most of the economists suggested a rate cut of at least 25 basis points (0.25 percentage point) in the RBI's monetary policy on April 4, while a few suggested an overall rate cut of 50 basis points this year.

Virmani, also the Chairman of EGROW Foundation, said there is a perception change with the stance of the US Federal Reserve changing from rate easing to rate tightening leading to more uncertainty. Goyal said there a need for flexibility with the evolving situation in India, inflation and growth have softened. She said the dwindling private sector investment is worrying, while there are also issues related to transmission of rate cuts by RBI.

"I look forward for 25 basis points (bps) rate cut in the upcoming policy and by another 25 bps subsequently in the next policy," Sen Gupta said.

Bhalla said that growth is a real problem and that the real rate of interest is high. The six-member Monetary Policy Committee (MPC) of Reserve Bank Tuesday started its three-day deliberations for the first bi-monthly monetary policy of 2019-20. The MPC headed by RBI Governor Shaktikanta Das will announce the resolution of the meeting at around noon on Thursday.

Financial Express

3. PSU Banks got Rs 1.95 lakh crore capital infusion in 18 months; govt completes massive recapitalisation

By: [Monika Yadav](#) |

Indian PSU banks have got a massive Rs 1.95 lakh crore in capital funding from the government in just the last one-and-a-half years, as the Narendra Modi-led NDA government completed its part of a proposed Rs 2.5 lakh crore recapitalisation plan during March end.

Indian PSU banks have got a massive Rs 1.95 lakh crore in capital funding from the government in just the last one-and-a-half years, as the Narendra Modi-led NDA government completed its part of a proposed Rs 2.5 lakh crore recapitalisation plan during March end. The government completed its commitment of massive bank recapitalisation into PSU banks with the injection of Rs 5,042 crore in Bank of Baroda ahead of the merger with two other lenders — Vijaya and Dena Bank.

In a bid to overcome the problem of rising bad loans in banks and to give further boost to the micro, small and medium enterprises which got severely impacted during demonetisation, Finance Minister Arun Jaitley in October 2017 had announced a mega plan of recapitalisation of banks by Rs 2.11 lakh crore over a period of two years.

Rs 1.35 lakh crore of the total capital was earmarked to be allocated by the government through bonds. As for the remaining Rs 78,000 crore, banks were supposed to raise Rs 58,000 crore from markets, while the government was to provide the rest by budgetary support.

In FY 2017-18, the government had injected Rs 88,000 crore in banks, including the budgetary support portion and bonds after the announcement of Rs 2.11 trillion bank recapitalisation in October. In the next financial year 2018-19, the government provided the remaining Rs 65,000 crore of the proposed recapitalisation. However, the banks could not raise their own portion of money via markets, leading to the government providing for an additional Rs 41,000 crore.

Its purpose for enhancing capital infusion for this year was to help the banks under RBI's prompt corrective action to meet regulatory capital requirements and also help non-PCA banks which were on the verge of falling under PCA.

According to banking sources, the government is not keen on infusing further capital into banks in the next fiscal and expects three to four strong banks to raise capital from the market. The state-run lenders have recovered more than Rs 98,000 crore in the first three-quarters of last fiscal FY19 through the resolution of bad loans and further recovery from the resolution of these bad assets will help the banks in raising capital and mitigating their dependence on government's capital. All in all the banks have recovered Rs 3 lakh crore since 2015.

Earlier, there were 11 banks under RBI's PCA framework including UCO, Indian Overseas Bank, OBC, Bank of India and Allahabad Bank. Under PCA, the banks are restricted to do big-ticket credit sanctions, branch expansion, dividend payouts and increasing remuneration of CEO. With the help of government's capital, five banks have been able to come out of it and the next five banks may come out of it by the end of next year, according to a government source who didn't wish to be quoted.

Besides bolstering the ailing banks, the other reasons for the government to infuse capital on such large scale were to promote digital banking system, implementing financial inclusion through its schemes like Jan Dhan and Pradhan Mantri Mudra Yojana in the country and to help farmers in meeting their production credit requirements in a timely and hassle-free manner by introducing Rupay Kisan Credit Card.

Economic Times

4. Banks can now refer defaulters to NCLT on case by case basis: Bankers

According to Tyagi, the resolution can be done through any of the mechanism which existed prior to February 12, 2018 circular

PTI|

With the Supreme Court nixing February 12 circular, the banks will now have discretion in taking the defaulting companies to NCLT under Insolvency and Bankruptcy Code (IBC), said experts.

The Supreme Court on Tuesday quashed the RBI's February 12 circular, which prescribed rules for recognising one-day defaults by large corporates and initiating insolvency action as a remedy.

In the best interest of customers, banks will take a call on referring cases to National Company Law Tribunal (NCLT) on case by case basis, a top public sector bank official told PTI.

Prior to February 12 circular of the RBI, the resolution mechanism available to banks were Corporate Debt Restructuring Scheme (CDR), Scheme for Sustainable Structuring of Stressed Assets (S4A), and Joint Lenders' Forum (JLF).

It would be difficult to say now cases would be resolved only through a particular mechanism like CDR, S4A or JLF, the official said, adding it would depend on the gravity of the default cases.

Banks can also look at the Project Sashakt as mechanism for the resolution of stressed assets apart from CDR, S4A and JLF, another senior public sector bank official said.

Last year, over two dozen lenders, led mostly by state-run banks, signed the inter-creditor agreement (ICA) under 'Project Sashakt' to speed up the resolution of stressed assets that are under the Rs 500 crore bracket.

According to former RBI Deputy Governor R Gandhi banks can now take defaulting companies on their own instead of being directed by the regulator.

"It is for the banks now to take a call on case to case basis whether the default is such that it can be taken to NCLT or they are willing to give some more time or restructure it. All these options are within the commercial domain of banks...they will still remain answerable to the RBI," Lakshmikumar & Sridharan Executive Partner Punit Dutt Tyagi said.

According to Tyagi, the resolution can be done through any of the mechanism which existed prior to February 12, 2018 circular.

According to the circular, lenders had to classify a loan account as stressed if there was even a day of default. The bankers had to mandatorily refer all accounts with over Rs 2,000 crore loans to the National Company Law Tribunal (NCLT) or the bankruptcy court if they failed to resolve the problem within 180 days of default.

Lenders were supposed to file an insolvency application under the Insolvency and Bankruptcy Code 2016 within 15 days of the completion of the 180-day deadline. The circular also withdrew the loan resolution mechanisms the RBI had implemented, such as Corporate Debt Restructuring and Strategic Debt Restructuring.

Revised framework for resolution of stressed assets issued on February 12, 2018 invited criticism from various quarters, including a parliamentary panel.

The Reserve Bank of India substituted the previous guidelines with a harmonised and simplified generic framework for resolution of stressed assets in view of the enactment of the Insolvency and Bankruptcy Code.

"Although the new guidelines have been termed as harmonized and simplified generic framework, yet they are far from being so," Standing Committee on Energy in its report tabled in Parliament last year said.

"The Committee are of the opinion that the coinage of restructuring in resolution plan is hollow without having any serious meaning or business which only reflects the blurred vision of RBI in understanding and appreciating the problems. The Committee expect that clarity of thought and transparency in approach should be the guiding factor to streamline and strengthen the sector squirming under ineluctable hardships," it said.

Business Line

5. Rating agencies see further delay in resolution process of stressed assets

[Our Bureau](#)

But genuine borrowers now have more time for resolution

The resolution of stressed loans where lenders' aggregate exposure is Rs.2,000 crore or more could get delayed as the Supreme Court declared the Reserve Bank of India's February 12, 2018 circular on revised framework for resolution of stressed assets ultra vires.

The judgment comes at a time when banks have set much store by the circular for making recoveries from large stressed accounts. Ultra vires means beyond the powers.

As per the framework, banks have to report even a one-day default and draw up resolution plans thereupon so that the borrower is not in default as on 180th day from the date of such default.

If a resolution plan in respect of such large accounts is not implemented as per the specified timelines, banks have to file insolvency application, singly or jointly, under the Insolvency and Bankruptcy Code, 2016 (IBC) within 15 days from the expiry of the said timeline. According to credit rating agency ICRA, the total estimated debt impacted because of the circular was Rs.3.8 lakh-crore across 70 large borrowers, of which Rs. lakh crore, across 34 borrowers, was in the power sector. Further, 92 per cent of this debt was classified as non-performing by banks as on March 31, 2018.

Credit negative for banks

Srikanth Vadlamani, Vice-President, Financial Institutions Group, Moody's Investors Service, said voiding of the February 12 circular is credit negative for Indian banks.

"The circular had significantly tightened stressed loan recognition and resolution for large borrowers. But, with the voiding, this may now have to be watered down.

"The resolution of stressed loans impacted by the circular will be further delayed as the process may have to be started afresh," said Vadlamani.

BK Divakara, former Executive Director, Central Bank of India, observed that promoters of most of the large stressed companies will be happy as they have been asking for restructuring. But whether bankers will be agreeable to restructuring remains to be seen as the quality of the assets would have deteriorated with the passage of time.

"Since the circular stands withdrawn, the earlier restructuring schemes of RBI may get restored. So, restructuring will be permitted.

"The circular's single-day default norm, which was very harsh, will go. So, corporates are getting some time. But payments by them to banks could get

prolonged to 89 days from the due date. With the one-day default norm, borrowers were paying promptly,” explained Divakara.

Anil Gupta, Vice-President & Sector Head - Financial Sector Ratings, ICRA, said the February 12 circular removed the discretion with banks on resolution on stressed accounts by requiring them to compulsorily implement a resolution plan in a time-bound manner or refer the borrowers under the IBC for resolution.

Option for banks

“Despite quashing of the circular, banks will continue to have the option of referring such defaulting borrowers under the IBC, in case the resolution plans fail....Banks have made provisions of over 25-40 per cent on these (large stressed) accounts and hence should not impact the reported asset quality of profitability numbers. However, the resolution process, which was expected to be expedited, may get delayed,” said Gupta.

A banking expert, who did not wish to be named, said the judgment could also impact existing cases under the National Company Law Tribunal where the borrowers may choose to exit the case. With the general elections and formation of government, it is unlikely that any legislative move — if at all any — will be brought until December this year,” he added.

“Though it is a setback to the IBC process, which focusses on time-bound resolution of cases, it is positive for genuine borrowers under stress due to prevailing conditions.

“Lenders who understand the real conditions of the borrowers will be able to solve these cases outside the NCLT and reduce higher haircuts on their exposure to these companies. However, the resolution will be delayed further,” said Mangesh Kulkarni, Research Analyst, Almondz Global Securities.

With kind regards,

Yours Comradely,



(**N. GOVINDRAJULU**)
GENERAL SECRETARY