

EMPOWERING RBI FOR RIGHT PROCESS

On 4th May 2017, President Mr. Pranab Mukherjee promulgated an Ordinance, further amending the Banking Regulation Act, 1949 by adding Section 35AA and Section 35AB which empowers Reserve Bank of India (RBI), Central Bank, to issue directions from time to time, to Banking Company(ies) and specify authorities or committees to advise banking companies on resolution of stressed assets.

Currently stressed assets are approximately 12% to 14% of total loan and the President is satisfied that circumstances exist which render it necessary to take immediate action. We are sitting on time bomb due to such NPA. The Non-Performing Assets (NPA) is affecting GDP growth in India. GDP growth will accelerate, if more credit is available to new entrepreneurs who lack tangible assets and are ready to take the Risk for Return.

The Ordinance is not a surprise but expected in continuation of reforms of law after enactment of Insolvency & Bankruptcy Code, 2016 (IBC), with the objective of Government to pull valuable resources for viable business and making credit available for the new entrepreneurs. IBC was enacted on 1st December, 2016 after various legislation and process could not ease out such stressed assets, like Civil Courts, DRT, SARFAESI, SICA and CDR etc.

RBI is empowered to issue directions to any banking company (ies) to initiate Insolvency Resolution Process (IRP) in case of “Default”. Default is defined in IBC as non-payment of debt when whole or any part of installment of the amount of debt has become due and payable and is not repaid by the debtor. Commitment need to be honoured is signal given to business owners through IBC.

The Ordinance is well in time and help in many ways to maintain the economic value of assets and balancing interest of all stake holders. It will help Bank to accept the resolution as per guidelines or directions given by RBI without any fear of subsequent investigation by any Government agencies and questioning on his independence or favouring the corporate debtor. RBI may intervene to help in arriving common consensus in case of delay in resolution by Joint Lenders’ Forum (JLF).

Time bound resolution was need of an hour with Policy of “Survival of the Fittest” and “Commitment to be honoured”.

Although questions may arise that the Government has not made any distinction between Bad loan and Bad entrepreneur (defaulter), however one has to wait till RBI issues directions which must be well drafted taking care of all eventualities with the chief goal of releasing assets from locked situation and bring it back to economy.

Government is making all legal reforms looking from front mirror of car for future of economy instead of looking at back mirror and trying to find solutions for why and how the assets became NPA and punish the offender.