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The Legal Aspects of the Wilful Defaults in India: A Critical Study

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Abstract

Wilful Default entities are those who have the capacity but does not repay the loans, siphon off the fund, diverts the funds or sells off the mortgaged assets without approval of the banks. In March 2018, the proportion of wilful default in total NPA comprised 44%. Such worrisome figures reinforce the quest to study the issue in-depth; it is impelling to explore the phenomenon and figure out the reason behind such a brazen and rampant act of borrowing and wilfully not repaying. The objective is to find understand legal aspects of the wilful default. The study is descriptive in nature with content analysis from secondary sources like Insolvency and Bankruptcy Law, 2016, Companies Act, 2013, SARFAESI Act, 2002, The Recovery Of Debts Due To Banks And Financial Institutions Act, 1993, Securities and Exchange Board of India Act, and Master Circular of RBI. The research finds that various laws are concurrent to each other and have mild penalty. Only in Companies Act 2013 the penalty is harsher than others. Additionally, preventative measures for the banks have been suggested.

Keywords: Non-Performing Assets, Wilful Default, Insolvency and Bankruptcy Code

JEL: K22, K35, G28, G33

Introduction

In June 2017, India ranked 103rd out of 189 countries in the World Bank's index on Ease of Resolving Insolvencies survey; it takes more than 4 years to resolve the issues of insolvency in India with the recovery rate at 26.4%. Other nations stood ahead are Russia at 54, South Africa at 55, and China at 56 and Brazil at 80 (WorldBank, 2017). This factor is a big deterrent to foreign investors and budding entrepreneurs in the country. With the introduction of Insolvency and Bankruptcy Code, 2016, government has constituted the Insolvency and Bankruptcy Board of India (IBBI) which enables creditors to liquidate the funds from the defaulted entity in 270 days. This has worked as a positive reinforcement to the foreign and domestic investors too. In 2017, India's rank has improved to 77 rank in Ease of Doing Business Index from 100th rank in the previous year. The major reason for such steep hike is credited to the introduction of Insolvency and Bankruptcy Code. India's weak mechanism to solve bankruptcy problems, significant inefficiencies and systemic abuses are some of the reasons for the infirm state of credit markets in India. With the introduction of Insolvency and Bankruptcy Code, 2016 an era of overarching reforms was anticipated with a thrust to the creditor based insolvency. The code is few months old and have faced many teething problems; like bids being made by promoters of defaulting companies. It had to be amended right during the case of Essar Steel bided by Numetal, a part of the stake is owned by the Director of Essar Steel, Mr. Prashant Ruia, this was viewed as a conflict of interest and hence amended.

There is a strong connection between the Bankruptcy Code and Non-Performing Assets (NPA). The situation on NPA in India has been so far the worst in history (ET, 2016). In March 2017, Gross NPA to Advances ratio was 7.49% and the total amount of NPA was Rs. 7.9 lakhs

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crore with the share of Private and Foreign banks being around 15% (RBI, BANK WISE AND BANK GROUP-WISE GROSS NON-PERFORMING ASSETS, 2017). The amount includes NPA from all types of clients; individuals, sole proprietors, partnerships, private and public limited companies further categorized into wilful and general default.

According to the Reserve Bank of India, a wilful defaulter is the defaulting entity who:

- Has the capacity to repay but has not paid the dues.
- diverted the funds for a purpose other than specified in the loan terms,
- Siphoned off the funds.
- Disposed of or sold the movable or immovable fixed assets which were mortgaged against the term loan, without the knowledge of the bank/lender.

In case of non-repayment, the debtor is referred through various recovery mechanisms such as the Debt Recovery Tribunal, Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI), Lok Adalat, Compromise Settlement, etc. The objective of the study the lies in startling revelations of the data pertaining to the NPA of Nationalized, Private and Foreign Banks in India.

The share of nationalized banks is more than 86% in total NPA and it indicates that nationalized banks are the worst hit by the problem of NPA.

Table 1: **Bank Group-Wise Gross Non-Performing Assets, Gross Advances and Gross NPA Ratios of Scheduled Commercial Banks as on 31st March 2017 (Rs. Crores)**

Banks	*Gross NPAs (Rs. Crores)*	*Gross Advances (Rs. Crores)*	*Gross NPAs to Gross Advances Ratio (%)*	*% of Total NPA*
NATIONALISED BANKS	6,84,732	58,66,373	11.67%	86.65
PRIVATE SECTOR BANKS	91,915	22,66,721	4.05%	11.63
FOREIGN BANKS	13,621	3,43,612	3.96%	1.72
Total	7,90,268	84,76,705	9.32%	

Source: RBI

Table 2: Suit Filed Accounts-Wilful Defaulters as on 31-March-17 - Summary (Rs. Crores)

	More than 1 crores			*Rs 25 lakhs and above*			*Total*	*%*
	Total Amount	*% of Total*	*No of Cases*	*Total Amount*	*% of Total*	*No of Cases*		
FOREIGN BANKS	9394	3.8	355	544	0.6	42	9938	2.9
NATIONALISED BANKS	208096	83.5	13947	83102	86.0	7182	291198	84.2
PRIVATE SECTOR BANKS	31825	12.8	2360	12936	13.4	1231	44760	12.9
Total	249314		16662	96581		8455	345896	

Source: TransUnion Cibil

The share of wilful defaults has been drastically increasing and is a matter of concern for the authorities and the economy at large. The amount attributed to wilful default has increased nearly 6 times since the year 2012, that is, from Rs. 0.59 Lakhs Crore to Rs. 3.45 Lakhs Crore in 2018 (CIBIL, Suit Filed Cases Year, 2018). The proportion of total wilful default against the gross NPA is around 44% and it is quite substantial.

The objective of IBC is to assist the task of recovery and provide a better platform to the banks. India is a recent entrant so far as formal Bankruptcy Resolution is concerned, and it has shown positive and progressive results through the IBC resolution process. At the end of June 2018, total outstanding cases under IBC were 977 out of which 716 were corporate. In the April-June 2018 quarter, the total admitted claims by Financial Creditors were Rs. 76,239 Crores out of which Rs. 42,885 Crores were realized in the resolution process, that is, 56.25% of the claimed value (Insolvency and Bankruptcy Board of India, 2018). However, it is relevant as well as imperative to explore the law pertaining to wilful default and it is important to understand the scope of the law, especially the definition, scope and penalty. This study explores the various enactments, notifications and regulations from the government and regulatory bodies like RBI, IBBI and SEBI.

Review of Literature

In India, the mechanism for faster disposal of bad loans has been formally restructured recently; however, such mechanisms are well established in the US, the UK, Canada, Singapore and Australia (EY Financial Services, Restructuring & Turnaround Services, 2017). As commonly understood, an NPL (Non-performing Loan) or NPA are those loans in which interest (or principal) is overdue by 90 days (RBI, Master Circulars, 2001). The NPA definition may vary a bit from other countries, such as US, UK, Japan, Korea, Taiwan and China (Golin & Delhaise, 2013) (Khan, 2009) (Bloem & Freeman, 2005) (Inaba, Kozu, & Sekine, 2017) (Bank C. C., 2004) (Bank H. S., 2015) (Taiwan, 2014) (Bholat, Lastra, Markose, Miglionico, & Sen, 2016). The entire world is facing this unpleasant condition; however, a study (IMF, 2007) reported that the aggregate rate of NPLs exhibits large disparities on a cross-country basis, particularly between developed and developing countries. Some countries suffer severely from bad loans; Egypt, Nigeria, Philippines, Morocco, Algeria, and Tunisia with more than 15 percent, while a few developed countries such as Sweden, Norway, Finland, Australia, and Spain do not seem to be exposed to weak assets quality at less than 1 percent. The conclusion is that with better infrastructure, banking system can work efficiently (Allen, 2004). For developing countries like India, China and Brazil, it is extremely important to strategize for low NPA else the problem will slam the brakes on the growth engine (Mishkin, 1996).

Internal factors; the one can be controlled by the banks is one of the major reasons of NPA. If the banks improve on the operational efficiency then it can lead to reduction in NPA (Kwan & Eisenbeis, 1997). Increased competition in the banking sector coupled with the agency problem has the potential to bring down credit standards and can lead to bad loans (Salas & Saurina, 2002). Another internal factor for NPA is diversion of funds from the original purpose (Vemula & Mahalingam, 2012). There is a very strong direct correlation between quality of assets and the efficiency of bank (Siraj & Pillai, 2013) (Naveenan, 2016). In addition, time overrun, business failure, stalled projects, poor monitoring by banks and, improper selection of technology also significantly result in higher NPA (Joseph & Prakash, 2014). Further, market discipline does not lead to better economic outcomes (Abdelkader, Boulila Taktak, & Jellouli, 2009). In case of loan non repayment, the creditors have to resort to the Bankruptcy resolution mechanism.

In 1801, Clause 4 of section 8 under Article 1 of the United States of America's constitution, the Congress enacted uniform Laws on the subject of Bankruptcies throughout the United States and subsequently the Bankruptcy Reforms Act, 1978, Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA). The right to an individual and/or firm to plead for bankruptcy proceedings was first conferred in England in 1705, England, followed by the USA in 1805, Canada in 1869, Switzerland in 1889, Australia in 1966, the United Kingdom (for Enterprises) in 1986, China in 2006, Ireland in 2011, and India, recently, in 2016 (Insolvency Act, 1986), (US Bankruptcy Law), (Insolvency Act, 1966), (Insolvency and Bankruptcy Code, 2016).

The term wilful is used only in India and nowhere else in the world, elsewhere, the concept of voluntary and involuntary Bankruptcy prevails. In the USA, voluntary bankruptcy is initiated by the individual or the firm while involuntary bankruptcy proceedings are initiated by the creditors or group of creditors (Chapter 11 - Bankruptcy Basics). The term 'wilful' has been vehemently criticized in the context of the rule of law. A default is the violation of a debt contract while wilful default reflects the wanton intent in the mind that is, premeditated. This is argued to be impossible to establish and deemed irrelevant in the context of breach of contract (Shah, 2014). The rights of creditors and debtors are not placed appositely, but scattered under various legislations. Various adjudicatory forums are involved in different categories of creditors and there is no uniform concept of 'insolvency' (Saxena & Sachthey, 2016). The use of SARFAESI Act, 2002 has been fair for non-core assets, whereas for the core assets, security enforcement cannot be given a free hand (this sentence is not clear) (Pandya, 2018). This study identifies the need to explore the nuances of wilful defaulter entities in India, Companies Act, 2013, SARFAESI Act, 2002, The Recovery of Debts Due To Banks and Financial Institutions Act, 1993 and other regulations.

Objective

To analyse and collate the laws relating to wilful defaults and regulations in India with a special focus on Insolvency and Bankruptcy Code, 2016, Companies Act, 2013, SARFAESI Act, 2002, The Recovery of Debts Due To Banks and Financial Institutions Act, 1993, Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) (Third Amendment) Regulations, 2016 and RBI Notifications.

Research Methodology

The study emphasizes the legal aspects related to wilful defaulter entities in India; it is a descriptive study with the scope to study all the relevant laws and regulations to deal with wilful defaults in India. The research is qualitative in nature and the selected sample is the law, notification and regulation issued by the government, and government agencies like SEBI, IBBI and RBI for dealing with wilful default events and cases.

Data Analysis

Content analysis is on the basis of the law for wilful defaulters under the Insolvency and Bankruptcy Code, 2016, Companies Act, 2013, SARFAESI Act, 2002, The Recovery of Debts Due To Banks and Financial Institutions Act, 1993, Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) (Third Amendment) Regulations, 2016 and RBI Notifications.

The Path to Wilful Defaults

The process initiates with the loan application where a bank's appraisal officer studies, verifies and approves the creditworthiness of the borrower. Then, funds are disbursed by the bank, in instalments or in one shot. The officers have to remain updated with the performance of the borrower and are expected to gather relevant and material information time to time. When entities default in making the payment of principal and/or interest beyond ninety days, the loan is classified as a Non-Performing Asset. It is further, categorized as sub-standard asset when due for as long as 18 months, a Doubtful asset when overdue for more than 2 years and a Loss Asset when written off.

When the asset is declared as loss, the internal committee of bank scrutinizes the reasons for default. If the reasons correspond to the definition by RBI, then the committee declares the entity as a wilful defaulter. As guided by the RBI, the persons related to the entity shall be prosecuted under Indian Penal Code and some penalties shall be imposed thereupon. The case is then referred to the Insolvency and Bankruptcy Board for the recovery and since the case has a dimension of fraud, charges under IPC, Companies Act and IBC shall be levied too. The biggest loser is of course the bank where money is blocked for 2 years and then the time for prosecution and recovery. It average of more than 4 years for recovery and 2 years since the borrower has stopped the payment so in total 6 years banks are losing on the capital.

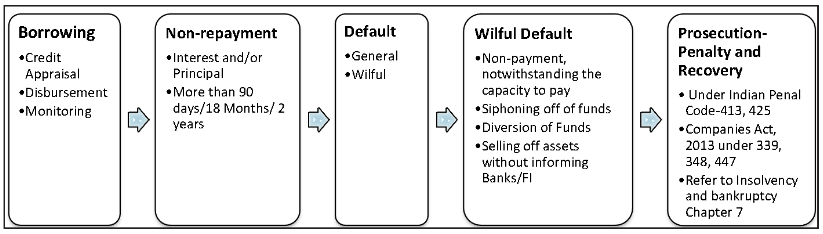

Fig. 1: Flowchart of Wilful Default

Analysis

The study focuses on the legal aspect of wilful defaulter entities, the objective being to bring all the legal aspects under the scanner and analyse from various perspectives. The RBI has worked extensively on the subject and the term too was coined by them. Time and again, the scope and the definition has been refined by RBI to suit the need of the hour. It includes the evolution of definition by RBI, penalty for the wilful defaulter, relevance of wilful default regulations under SEBI, Companies Act, SARFAESI, Debt Recovery Tribunal and Insolvency and Bankruptcy Code.

Definition of Wilful Default

The term wilful default has been defined by the Reserve Bank of India in 1999 through a notification, viz., *Collection and Dissemination of Information on cases of Wilful Default of Rs.25 lakhs and above* and will cover:

- Deliberate non-payment of the dues despite adequate cash flow and good net-worth.
- Siphoning off of funds to the detriment of the defaulting unit.
- Assets financed have either not been purchased or have been sold and proceeds have been mis-utilised.
- Misrepresentation/falsification of records.
- Disposal/removal of securities without the lending bank's knowledge.
- Fraudulent transactions by the borrower.

The modification was made later in 2002 through the Notification and the activities covered under the instances of siphoning off and diversion of funds were categorically spelt out.(RBI, Notification-DBOD. No..DL(W).BC ./110 /20.16.003(1)/2001-02, 2002).

- utilisation of short-term working capital funds for long-term purposes not in conformity with the terms of sanction;
- deploying borrowed funds for purposes / activities or creation of assets other than those for which the loan was sanctioned;
- transferring funds to the subsidiaries / Group companies or other corporate by whatever modalities;
- routing of funds through any bank other than the lender bank or members of consortium without prior permission of the lender;
- investment in other companies by way of acquiring equities / debt instruments without approval of lenders;
- Shortfall in deployment of funds vis-à-vis the amounts disbursed / drawn and the difference not being accounted for.

Siphoning of funds; borrowed from banks or Financial Institutions are utilized for purposes unrelated to the operations of the borrower, which damages the financial health of the lender. The decision regarding siphoning of funds is the judgment of the lenders based on objective, facts and circumstances of the case.

Later, according to the Master circular in the year 2008, after the Hon'ble Supreme Court's Order relating to writ petition Civil No.291 of 1998 titled Common Cause (A registered Society) Vs. Union of India & Anr a suggestion came to expand the scope of definition of "wilful default". (RBI, Notifications-DBOD. No..DL(W). BC. 87/20.16.003/2007-08, 2008).

"3(d) the unit has defaulted in meeting its payment / repayment obligation to the lender and has also disposed of or removed the movable fixed assets or immovable property given by it for the purpose of securing a term loan without the knowledge of the bank / lender."

In 2014, the definition covered four major reasons defining wilful defaulter:

- Capacity to repay but still defaulted in meeting its repayment.
- Diverted the funds for purposes other than those specified in the loan terms.
- Siphoned off the funds, i.e., the funds are neither used in buying assets specified in the loan terms nor other assets.
- Disposed or removed the movable fixed assets or immovable property being collateral for the purpose of securing a term loan, without the knowledge of the bank/lender.

Implications to Wilful Defaulters Under Security and Exchange Board of India Guidelines

SEBI has incorporated the issue of wilful default entities; however, these are guiding principles when the entity is declared as wilful defaulter. The SEBI has been prompt in updating the law regarding the wilful defaulter, According to the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) (Third Amendment) Regulations, 2016, Regulation 4, no issuer shall make a public issue of equity securities, if the issuer or any of its promoters or directors is a wilful defaulter. If the issuer or any of its promoters or directors is a wilful defaulter, it shall make the following disclosures: Name of the bank, the year, outstanding amount, name of the party, steps taken, if any, for the removal from the list of wilful defaulters, other disclosures, as deemed fit by the issuer in order to enable investors to take informed decisions or any other disclosure as specified by the Board of the wilful defaulter entity.

The issuer or any of its promoters or directors is a wilful defaulter has to be disclosed prominently on the cover page with suitable cross-referencing to the pages. Disclosures specified shall be made in a separate chapter or section distinctly identifiable in the Index / Table of Contents. The same were observed in the IPO of HUDCO in 2017, Titagarh Wagon Ltd in 2008, Sunil Synchem in 2004 and many more.

In the case of listing on the Institutional Trading Platform in a SME Exchange, a wilful defaulter is not allowed to participate. In the cases related to registration as intermediaries, Securities and Exchange Board of India (Intermediaries) Regulations, 2008 Criteria for determining a 'fit and proper person' categorically excludes wilful defaulter entities. Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 amended the clause of voluntary Offer. The evolution of definition by RBI and the implication of a wilful defaulter after being so declared for listed companies have been discussed so far. The next section deals with the extent of penalty and/or sentence for wilful default under various laws. RBI has been assiduously working on this issue since 1999.

Penalty for Wilful Default under Various Laws

The penalty clause for the offenders has been distinctly mentioned directly or indirectly under the Regulation of RBI, Companies Act, 2013, SARFAESI Act, 2002, and Insolvency and Bankruptcy Code, 2016. RBI has made the offence stringent over the period of time.

Reserve Bank of India

RBI has amended penalty or the measures in the case of wilful defaulter, time and again. In the year 1999, after defining wilful default , penalty measures were notified in 2002 and subsequently an addition was made in the year 2003 and with a minor change in the definition but nothing was amended for the penalty clause in the year 2008 In the year 2002, the following measures were notified through (RBI, Notification-DBOD. No..DL(W). BC ./110 /20.16.003(1)/2001-02 , 2002).

- Any *additional facilities should not be granted* by any bank / FI to the listed wilful defaulters and should be *debarred from institutional finance* from the scheduled commercial banks, Development Financial Institutions, Government owned NBFCs, investment institutions etc. for floating new ventures for a period of 5 years from the date the name of the wilful defaulter is published in the list of wilful defaulters by the RBI.
- The legal process, wherever warranted, against the borrowers / guarantors and *foreclosure of recovery of dues should be initiated expeditiously*. The lenders may initiate criminal proceedings against wilful defaulters, wherever necessary.
- Wherever possible, the banks and FIs should adopt a proactive approach for a *change of management* of the wilfully defaulting borrower unit.
- A covenant in the loan agreements, with the companies in which the notified FIs have a significant stake, should be incorporated by the FIs to the effect that the borrowing company *should not induct a person* who is a director on the Board of a company which has been identified as a wilful defaulter and if found then he/she be *removed expeditiously*.

Thereafter, in the year 2003 (RBI, Notification-Wilful Defaulters and action thereagainst, 2003), based on the recommendation by the Joint Parliament Committee (Standing Technical Advisory Committee on Financial Regulation), the recommendations relating to the prosecution and initiation of criminal action against the wilful defaulter were accepted. Following measures were taken by the RBI:

- The breach of trust or cheating construed is clearly defined under the existing statutes governing the banks and to be treated as a criminal offence as those with malicious intentions.
- Banks are directed to monitor the funds lent closely through fund usage certificates from the borrower. It is to obtain surety on usage of funds and prosecution in case of any breach.
- To initiate criminal action against wilful defaulters depending upon the facts and circumstances of the

case under the provisions of Sections 403 and 415 of the Indian Penal Code (IPC) 1860. Banks / FIs are, therefore, advised to seriously and promptly consider initiating criminal action against wilful defaulters or wrong certification by borrowers, wherever considered necessary, based on the facts and circumstances of each case under the above provisions of the IPC to comply with instructions of RBI and the recommendations of JPC.

It should also be ensured that the penal provisions are used effectively and determinedly but after careful consideration and due caution. Banks/FIs are advised to put in place a transparent mechanism, with the approval of their Board, for initiating criminal proceedings based on the facts of individual case.

Companies Act, 2013

The relevance of the wilful default case under the Companies Act, 2013 lies in the Section 339 and 348. According to the section regarding information as to pending liquidations, the auditor of the wilful defaulter shall be liable to punishment with imprisonment up to six months or a fine up to one lakh rupees or both. Under Section 339, Liability for fraudulent conduct of business, Clause 1, during the process of winding up of a company if the intent surfaces to defraud creditors of the company or any other persons or any fraudulent purpose, then the Tribunal may declare any person as personally responsible, *without any limitation of liability*, for all or any of the debts or other liabilities of the company as proved.

Under Section 447, Punishment for fraud, without prejudice to any liability including repayment of any debt under this Act or any other law for the time being in force, any person who is found to be guilty of fraud, shall be punishable with imprisonment for a term which shall not be less than six months and which may extend to ten years and shall also be liable to fine which shall not be less than the amount involved in the fraud, but which may extend to three times the amount involved in the fraud.

Insolvency and Bankruptcy Code, 2016

Under chapter 7 on offences and penalties, punishment for concealment of property in case of any officer of the corporate debtor wilfully concealing, tampering, destroying, omitting, violating either of the sections 7, 9, 14, 31, 75, 76 by providing false information, mutilating, mal-practicing, gifting, transferring or falsifying any property before twelve months of declaration as bankrupt, then the officer shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to five years, or with fine, which shall not be less than one lakh rupees, but may extend to one crore rupees, or both.

During the process of bankruptcy, if the officer of the corporate debtor does not disclose to the Insolvency professional all the details of the property, does not co-operate in the resolution process by not passing important information, or not producing facts and accounts shall be punishable as stated above. However, over and above that, the imprisonment may extend up to six months and the fine up to five lakhs rupees.

As for the Offences and Penalties for Partnership firms, an individual debtor or creditor providing false information, concealing material information to the insolvency professional, creditor promising the debtor to vote in his favour dishonestly by accepting money or consideration in kind, wilfully concealing, tampering, destroying, omitting, mutilating, mal-practicing, gifting, transferring or falsifying any property or material information shall be punishable to with imprisonment for a term which may extend to one year, or with fine which may extend to five lakhs rupees, or both.

SARFAESI Act, 2002

There has not be specific mention of the term wilful default; however, based on the relevance of section 27 of the RBI Act, penalties for non-compliance of directions of the Reserve Bank of India shall be punishable with fine which may extend to five lakhs rupees and in the case of a continuing offence, with an additional fine which may extend to ten thousand rupees for every day during which the default continues.

In the context of Companies Act, penalty has been defined for the cases of fraud. The definition of the wilful default activities by RBI and fraud defined under Companies Act matches to a good extent. However, even as RBI has defined the wilful default explicitly and exhaustively, the quest of banks doesn't end merely with the declaration of wilful default; they have to strive to get the capital back. It can be concluded that RBI has been vigilant about the wilful default cases. In June 2017, the list of top 12 defaulter entities was released by the RBI to be referred to National Company Law Tribunal (NCLT) under IBC where NCLT resolved two of the cases by the end of June 2018. Despite of such mechanism there have been issues cropping up every now and then, but the intentions and efforts put in by the government, NCLT and RBI has been commendable. (RBI, Master Circular - Prudential norms on Income Recognition, Asset Classification and Provisioning pertaining to Advances, 2015).

Conclusion.

From the content analysis of law for wilful defaulters, it can be concluded that RBI has worked extensively as the regulatory body. It has tried to address major concerns for the industry and the economy at large. RBI has been vigilant about the practices of wilful default and has been updating the regulations as and when required. After analysing various laws and the current scenario of wilful default, the idiosyncratic characteristics of the laws for wilful default has been chalked down.

From the view point of Legal Aspects it can be concluded as:

- There has been discrepancy in regards to the amount of the penalty; under SARFAESI, it is five lakhs, IBC penalizes in the range from one lakhs to five crores while under Companies Act 2013 the fine shall not be less than the fraud amount and can be extended to 3 times the fraud amount. SEBI emphasizes on the public disclosure of such an entity and the objective is to bring awareness amongst the investors. It discourages the entities from seeking listing on the SME exchange but allows on BSE/NSE exchanges with disclosures.
- No additional funds and facilities shall be granted by the banks/FIs for 5 years from the date of enlistment in the defaulters list.
- Legal process should be initiated expeditiously against borrowers or guarantors for foreclosure of recovery dues and wherever necessary criminal suit should be filed against the wilful defaulters.
- If possible banks/FIs should take proactive measures to change the management of wilful defaulters.
- The enlisted entities (persons) should not be inducted on the board. If found then the process to remove him/her from the board is to be expeditious.
- In case of window dressing of books of accounts and if it is observed that the auditors were negligent and deficient in auditing then Banks/FIs should lodge a complaint to Institute for Chartered Accountants in India (ICAI). Such information shall be shared with SEBI, Ministry of Company Affairs (MCA), Comptroller Auditor General (CAG) and other relevant market regulators.
- Criminal prosecution is warranted under the Indian Penal Code in case of malicious intentions.

Suggested preventative measures for the banks are as follows:

- So far as the law is concerned it is more of a reactive measure. It answers the questions on what will happen if there is a case of fraud or misappropriation. It should be more harsh to prevent such crimes to occur. When the penalty is too low and the benefit is very high, it may tempt people to exploit the situation.
- The real challenge is in vigilance by the banks. The best attempt to thwart such cases is to identify the problem in advance or in its incipiency and stop funding or take the charge of assets.
- Banks need to develop a close network of businessmen and associations who can alert them about the wrongdoings; this practice is prominently adopted by the private sector banks to avoid wrong lending.
- Public sector banks should stand up against the pressure of lending directly or indirectly to or on the recommendations of politicians.
- Banks should implement internal checks and balances by punishing the offenders to set a precedent.

This study is limited to the law pertaining to wilful defaulter entities; it leaves the scope to cover the case laws, the lacunae in the laws like in case of zero percent loan. Whether a Zero Percent Loan is considered as financial debt is yet to be addressed, and many more facets can be covered.

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