

Extension of Three Months' Time to Remit Balance of Public Auction Amount to Bank from Purchaser is Detrimental to the Interest of Non-Performance Loan Account Holder and Not- Fair

H. J. GURUNATH

Post – Doctoral Fellow

Collage of Management and Commerce

Srinivas University

Mangalore

dr.gurunath.hj@gmail.com

Abstract

The Mercantile community of Industry, Service and Business activity is facing the huge negative impact of COVID – 19, PANDAMIC, impacted in huge growth of NON-PERFORMANCE ASSETS in the banking segment posing the critical business indicator both in Profit and Loss Account, Balance Sheet of each Bank. As a result, this is exposing the threat to public confidence for the investor and stakeholders, customers at all level. Now the Bankers are using every legal measure for loan recovery, since the Bank is lending the public money, it has to recover the at any cost to face the liquidity and other commitment contract matters. To solve the NPA, loan accounts huge problems, the Bankers are enforcing the, wild and aggressive chase recovery equation under the, fast track legal process under the, THE SECURITISATION AND RECONSTRUCTION OF FINANCIAL ASSETS AND ENFORCEMENT OF SECURITY INTEREST ACT – 2002, with additional tools as various amended procedure and process. Under this Act the Bankers will take the physical position of secured property and auction the said property as per provisions of act, and recover the NPA loan amount. At this critical vision of recovery process, the auction purchaser has to pay the twenty five percent of public auction amount including the pre-deposited amount, on the same day / next working day. And the balance of seventy five percent of auction amount has to remit with in fifteenth day to the Bank. SINCE THE ACT IS AMENDED TIME UP TO THREE MONTHS, TO REMIT THE 75 % amount to Bank. But this is INJURIOUS TO THE NPA- LOAN ACCCOUNT HOLDER, suffering by additional interest burden, since the interest will be charged up to the date of close of NPA loan account, in banking law and practice, when the property is sold from, on that day onwards the purchaser is the owner of the property in all respects of enforcement process, by the bank. The main critical object of this case is to discover the IMPACT of extension of three months' time to auction purchaser to remit 75 percent of remaining amount to bank, NPA account holder to the Government Exchequer, All the banks like state bank of India, commercial banks, private, nationalized and regional rural bank also enforcing the above Act, the study is conducted in south India, being study period from 2019 to 2023. It hac come to surface, that the

failure of credit management and NPA management is the dark factor for growth of NPA, further additional time to remit 75 % to bank is additional financial burden to every NPA loan account holder, and this is against to natural JUSTICE, BIAS, SPECIAL FAVOUR TO PURCHASER, at the cost of asset looser (NPA, A/C holder). In the process of study it has come to surface, by giving too much time to auction bidder it also , building the, various kind of un-desirable activity of auction bidder and integrity questionable involvement of Bank officials, totally exposed, in some case that is a news in T V and PRINT MEDIA , further the million dollar question is, who has to solve the matter, the Government, Related Bank , regulatory agencies or Reserve Bank of India, in this investigative empirical critical case study. The additional financial burden being Rs. 19,72,603/00, for NPA loan account holder for loan limit Rs. 5-00, crore, just for 3 months / 90 days.

Key Words

Auction purchaser, Secured Officer, Bank, SARFAESI – ACT, Highest bidder, Auction Sale, Secured Interest, Natural Justice, DRT, DRAT, Bias, Disclosure.

Introduction

The capital is, one of the major factors of production, in business venture and economic development activity is un-disputed fact in all respects. Due to impact and side effect of Covid – 19 pandemics, every economy, including India is just reactivated the Industry, Service and Business activity, is slowly progressing production, consumption, export and import is in progress. Before and after the impact of covid -19 pandemic, the problem of NON-PERFORMANCE ASSETS to Banking activity moved very dangerous level to every banking activity to posing threat to have the STABLE BALANCE SHEET and CONFORTABLE and SATISFACTORY business indicators in the Profit and Loss Account in all most all Banking activity and financial organisations, fighting for stable existence to protect the interest of Stake holders, customers , depositors and Economy is totally daunting task to , Corporate Office, RBI, Regulatory agencies and to the Government related to Public Sector Bank, Private Sector Bank, Regional Rural Bank , SEBI and other financial institutions and foreign banks also. Accordingly the Bankers are using the provisions of the securitisation and reconstruction of financial assets and enforcement of security interest act, 2002 , as instant / fast track recovery process, in this approach progress fully not satisfied due to failure of credit management and pleadings at Loan recovery tribunals, accordingly the public auction of secured property both moveable and immoveable is not fully not sold in the open market, by bidding process on line or of line, but the physical position of property is in the hands of Banks only in majority cases. In the process, deliberations at DRT, DRAT and high court various Act of misconduct also exposed committed by Bankers and auction process agencies. The moment the loan account declared as NPA status loan account, the Bank secured officer will start the recovery measures under the legal process under SARFAESI – ACT, starting from the issuing the Demand notice, Position notice, Sale notice and conducting the public auction process, with due process of law. By publishing the same in the leading news paper about the same including the Terms and Conduction, with expressing the payment of the EMD and 25 percent of bid amount on the day or next working day, and remaining balance has to be paid / remitted to bank being the remaining 75 percent amount of bid amount. This is exactly critical observation, the SARFAESI – ACT has been amended to remit the balance of 75 percent amount to the bank with in 90 days' time as extended, THIS IS THE CRUCIAL IMPACT OF THE NEW AMENDED RULES IS ADDITIONAL FINANCIAL BURDON TO THE NPA LOAN ACCOUNT HOLDER, because the bank will charge interest up to the last of remitting amount to the loan account. This clearly establish authorities made special favour to auction purchaser at the cost of NPA LOAN ACCONT HOLDER, with this critical observation without any technical

or logical parameters of public auction process is COMPROMISED and it establish the incompetence of highest bidder financial worth is suspectable and providing the way for undesirable further activity for pecuniary gain to insiders / outsider's team of auction purchases persons. With these un-disputed facts, the critical study has been conducted regarding the IMPACT of extending time to remit 90 days' time to auction purchaser to remit 75 percent amount to Bank. To offer new vision to the bankers and all other authorities, empirical study has been conducted blended with critical angle supported by the creative research article to protect the interest of the NPA loan account holder.

The Main Objectives of the Study

The clear object of this empirical study is to discover impact on NPA loan account holder, Financing Bank, the Government and auction purchaser by providing the 90 days' time to remit 75 percent of public auction amount to the Bank and to suggest the sustainable solution for the same.

The Review of Literature:

In the special category of empirical case study research is UNIQUE BECAUSE to the best of my knowledge, critical study has been conducted based on the impact of extending the time / amending the SARFAESI – ACT, to remit the balance amount of, public auction amount 75 percent amount with in 90 days, to the Bankers by Auction purchaser.

The Study Period:

In this category of fact projection in research, the study period is related in the south India from the year 2019 to 2023 respectfully, at DRT, DRAT and related High court.

The Data and information of Study input information / Materia's:

In this very sensitive , part of critical information all the required knowledge is collected, discussed referred the NPA files, from the both side council on records, total 108 NPA loan account holders, related to the Public sector Bank, Private sector Bank, Regional Rural Bank and other financiering originations and this is sufficient to critical study purpose in all respects.

The critical research Article limitations:

The problems, findings and suggestion are related to the selected NPA loan account only of each category of Bank, but the problems are common in general all type of NPA loan Account Holder, in the Banking segment, but the suggestion holds good for all Banks and NPA loan account holders.

The Scope for Further Critical Study:

During the study period it has come to surface, the un-desirable activity of Bankers and participants of public auction footages, by compromising the terms and conditions of auction procedure and process to control and compress the highest bid amount deliberations, it is totally related to the VIGILENCE MATTER OF EACH BANK, but the matter is not any SCOPE in this research article. Like failure of credit management, Checks and Balance between and among various department in the bank.

The Critical Research Gap

To the best of my knowledge, the research gap is, there is no, ACAMEDIC TRAIL before implementing new law / Act, Amending the existing law / act, in the vision of COMMERCE, ECONOMICS, MANAGEMENT, FINANCE impact on economy, corporate office, customers and stake holders and side implications or problems to prevent or avert the same.

The Case Study in Various Banks, Methodology incorporated for study.

One NPA loan Account is selected for deep study purpose from each type of Bank in south India in respectfully. With NPA Loan amount is outstanding is being: one crore, two crore, three crore, four crore and five crores respectfully.

The Footages Observation at Public Auction / E – Auction

The bankers will conduct the auction as per the process recommended at SARFAESI- ACT provisions, bidding starts at 10:30 hours morning and ends in 17:30 hours, the highest bidder has to remit 25 percent of bid amount on the same day or next day to the bank in all respects, the bidder has to pay remaining 75percent of bid amount must be remitted to bank with in 90 days from the date of public auction in all respects. The bankers will give the, position certificate of the property after completion of procedure at area related sub-registrar office process completed, to the highest bidder.

The Critical Observation and Footage of Bidding Process

Even for single bidder participated in the bidding process, the certificate will be given as HIGHEST BIDDER is totally false and not correct in terms of business metrics, and misleading the all authorities in all respects in terms of logic and technically.

Following additional financial Burdon to NPA loan account holder

The moment bidding is completed, the auction purchaser is the owner of the property in all respects, further for 90 days' time given to highest bidder the following interest has to be paid / collected by the bidding process amount by bankers to adjust for the NPA loan account

Following Are Calculations of Additional Financial Loss to NPA Loan Account Holder For one crore amount RS. 4,31,507/00.

For two crore amount RS.8,63,014/00.

For three crore amount RS. 12,94,521/00.

For four crore amount RS. 17,26,627/00.

For five crore amount RS. 21,57,534/00.

The interest charged at 17:5 percent, for 90 days , since it is a public auction process, by the Banking authorities, giving time to auction purchaser is favour by bank and authorities and bias in all respects.

The Impact of Above Special Favour to Purchaser

On the Government:

The remittance of the government exchequer is delayed by 90 days, the government project is delayed by 90 days, the payment of old bills to various contractors is delayed.

The Impact on NPA Loan Account Holder

Additional interest Burdon, the social status is compressed, various kind of family problems ignited, the standard of living is totally miserable, so no chance of any new business venturer on trust factor since CIBIL is totally damaged.

The Impact on Bankers

The fund is blocked for not enforcing the strict business metrics, New investment is delayed for 90 days, un-necessary expenditure on TA and DA to the secured officer, the provisions for NPA Accounts is ignited, profit is reduced, dividend is delayed payments, implementation of CRS IS ALSO DELAYED, revenue in the form of interest is also delayed.

The Suggestion

Being a banker, and it is duty to study the market and place property for public auction in the right condition of market at least government reserved rate offered. giving time to pay the bid amount for 90 days is against to ethics, vision and mission of bank, that must be honest business by bankers or for that 90 days additional interest must be compensated by the Government, or it must not be, charged by the bakers at any cost. The government must enforce the social media for mass financial literacy with active participation of every banker. The nominee director of the Reserve Bank of India must be empowered to inspect the branches and observe ground realities of problems faced by the NPA loan account holders. The enforcement of SARFAESI- ACT must be as medicine but not as blindly food, just because the loan account is NPA, by the Bankers, if not the economy will be slowdown and migration of workers will be exposed in the long run.