

## Non- Performing Assets in India- Footprints of Willful Default or Genuine Default

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**Abstract:** *This paper discuss about the current raising situation of Non- performing assets (NPA) of banking sector in India. This has highlighted the concept Willful Default in the context of the Indian Banking System. The Reserve Bank of India (RBI) has recently declared a dozen of suspected companies under insolvency category and 30-40 companies are in the pipeline by the National Company Law Tribunal (NCLT) expected to declare soon. The RBI has been initiating every effort to ensure that willful defaulters should not adversely affect the health of the banking system. Current regime to identify the weak assets from Banks and law enforcement against them to check whether NPA cases are willful default or Genuine Default through SARFAESI Act . The Indian Banking System doesn't need any more suspicious who pool public money and declare themselves as **Willful Defaulter**.*

*Keywords: Non- performing assets, Willful default, SARFAESI Act*

## **Introduction:**

The growth and financial stability of a country depend on the financial soundness of its banking system. One of the parameters that is used to evaluate the banking sector's financial health via level of Non- Performing Assets (NPAs). Non- performing loans are those assets of the bank that have become non-functional as the respective borrowers and default their liabilities. Borrowed companies and individual that fail to pay up, do so due to hold back and simultaneously things going horribly wrong and beyond their control due to management incompetence, financial inadequacy, product failure, market competition, technological obsolesces, etc are categories as Genuine Default. However, there are some truant borrowers who, despite having the capability to repay money, do not cough up the money, siphon off funds by disposing of assets without the knowledge of the bank. They are suspected to be doing it willfully. They know for lenders, getting their money from them is often an extensive legal clash.

The Reserve Bank of India (RBI) may be going soft on banks in its asset quality review for the March quarter 2017, this has witnessed asset quality-related stress at banks residue very high. As an upshot of this, there is no respite from rapidly increasing bad loans for the lenders. Lenders after lender, particularly public sector ones, have reported massive losses. Willful default initiated in 1999 when the Central Vigilance Commission's instructions for collection of information on willful defaults of Rs.25 lakhs and above. Since then, the RBI has asked banks and notified Financial Institutions to submit information on willful defaulters. Several modifications were made in the identification of willful defaulters and the procedures that should be initiated against them. Recently, with the rising NPAs with the banking system, the case of willful default is getting increased attention.

## **Willful defaulter**

A „willful default“ would be deemed to have occurred if any of the following events is noted:

- (a) The unit has defaulted in meeting its payment / repayment obligations to the lender even when it has the capacity to repay.
- (b) The unit has defaulted in meeting its payment / repayment obligations to the lender and has not utilized the finance from the lender for the specific purposes for which finance was availed of but has diverted the funds for other purposes.
- (c) The unit has defaulted in meeting its payment / repayment obligations to the lender and has siphoned off the funds so that the funds have not been utilized for the specific purpose for which finance was availed of, nor are the funds available with the unit in the form of other assets.
- (d) The unit has defaulted in meeting its payment / repayment obligations to the lender and has also disposed off or removed the movable fixed assets or immovable property given for the purpose of securing a term loan without the knowledge of the bank / lender.

According to the RBI regulations, the identification of the willful default should be made keeping in view the track record of the borrowers and should not be decided on the basis of isolated transactions / incidents. The default to be categorized as willful must be intentional, deliberate and calculated.<sup>1</sup>

### **Hurtling Toward Failure**

RBI has recently declared a dozen of suspected companies under insolvency category and 30-40 companies are in the pipeline by the National Company Law Tribunal (NCLT) expected to declare soon. We can't put out of your mind Vijay Mallya and Kingfisher Airlines (KFA) which have been much in the news over the suspected Rs 9,000 crore owed to lenders, whereas around Rs 1.14 lakh crore of bad loans had been written off by public sector banks involving numerous defaulters between 2013 to 2015, it's an alarming situation for the Indian Banking Sector to have cleansing treatment of identifying these black heads is not sufficient. Willful Defaulters are the results of willful blindness who have heavily debt ridden and got the money from Public Sector Banks (PSBs) without any hitch and some of them have turned NPAs. There should be a forensic audit of all the NPAs as the Assets Quality Review (AQR) is aimed at one time cleansing the Balance Sheet. It will throw more KFAs from the cupboards of PSBs. Regulatory bodies need to fix accountability for those who had thrown public money without relevant questions being raised.<sup>2</sup>

Punjab National Bank's (PNB) gross non-performing assets (NPAs) of Rs 34,338 crore have resulted from willful defaults. As at the end December 2016, PNB had identified 904 companies as being willful defaulters and filed cases against some of them. The number at the end of September 2015 was 764 companies and the value of unpaid loans then was Rs 9,204 crore.<sup>3</sup>

On the contrary, if a layman thinks to raising credit his CIBIL score is checked. It is mandatory to maintain 750 scores as creditworthiness of an individual for availing loans from banks and financial institutions. The question arises, is there any such provision of Reserve Bank of India (RBI) to identify the NPAs in corporate Such as Kingfishers which has made a historic attempt of willful defaulter and sack. It is well said "Precautions are better than cure". So what are the precautionary measures that RBI takes for identifying weak assets possibilities of flattering future NPAs.

### **The Bottom line**

In India, Banks are reeling under a pile of bad loans, with strong back-end played by Reserve Bank of India (RBI) equipped with Insolvency and bankruptcy code (IBC) for accelerating the

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<sup>1</sup> <http://www.indianeconomy.net/splclassroom/154/who-is-a-wilful-defaulter/>

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<http://www.livemint.com/Politics/Iq736RQinPLFTfEQfmK2SK/With-bankruptcy-law-chances-of-another-Mallya-a-happening-are.html>

<sup>3</sup> <http://www.financialexpress.com/economy/wilful-defaults-a-third-of-pnb-npas/214853/>

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process to recognize and provision for weak assets (NPA) of Indian Bank. The attack on the non-performing assets (NPAs) began first in the year 2015 when the Reserve Bank of India (RBI) predetermined norms for early identification of weak assets in the banking sector. Later on, the RBI came with a March 2017 deadline for banks to clean up their balance sheets by disclosing all the hidden NPAs. The whole exercise pressed banks to highlight accounts for a big chunk of impaired assets; the recovery of money still remained a major distress in the sector and the policy makers.<sup>4</sup>

- At the end of March 31, 2017, 21 banks together have taken action against 5,954 willful defaulters under Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, as per data collated by the Finance Ministry.
- The country's largest lender SBI has taken action against 1,444 such defaulters with an outstanding loan of Rs 20,943 crore.
- Remaining 20 banks have taken action against 4,510 willful defaulters with an outstanding loan of Rs 48,496 crore.
- Total outstanding loans due to public sector banks by willful defaulters amounted to Rs 92,376 crore. The total outstanding loans by willful defaulters rose to Rs 92,376 crore at the end of the financial year 2016-17, from Rs 76,685 crore at the end of fiscal 2015-16 -- up 20.4 per cent.
- Willful Defaulters increased to 8,915 at the end of March 2017 as against 8,167 in the previous fiscal. (10 per cent increase on annual basis)
- Out of 8,915 cases of willful defaults, banks have filed FIR (first information report) in 1,914 cases with outstanding loans of Rs 32,484 crore.
- During 2016-17, 27 public sector banks, including SBI and its five associates, had written off Rs 81,683 crore, the highest in the last five fiscals. The amount was 41 per cent higher than that in the previous fiscal.
- Gross NPAs of the public sector banks rose to Rs 6.41 lakh crore at the end of March 2017 as against Rs 5.02 lakh crore a year ago.
- Source:<http://timesofindia.indiatimes.com/business/india-business/psu-banks-take-recovery-action-against-willful-defaulters/story.html>

A major change has been observed in bank's NPA battle due to access to the bankruptcy code injected. Under this, if the majority lenders concur, banks can take companies to the National Company Law Tribunal (NCLT) with a request for time bound resolution plans. If the resolution process fails within a maximum of 270 days, then insolvency process is initiated against the concerned company. Further, with a mutual concern between banks and other stakeholders in the firm, they proceed in the liquidation process.

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<sup>4</sup> <https://qz.com/1020168/the-rbi-is-worried-about-three-big-problems-in-indias-banking-sector/>

As per the RBI Guidelines, banks and institutions are required to submit the list of suit-filed accounts of willful defaulters at the end of every quarter to the Credit Information Bureau (India) Ltd (CIBIL). Banks also report the names of current directors as well as the directors who were associated with the company at the time the account was classified as a defaulter. This helps to put other banks and institution, on guard against such individuals. This list can also include independent and nominee directors.

The most awful thing that can happen if companies get tagged as willful defaulter, this choke off most of its credit channels and further, no added lending facility is available from any bank or institution. Also, shuts the door on any new ventures a willful defaulter has not been permitted to float any new business for five years from the date of being declared a willful defaulter. Lenders are also expected to initiate the legal process, which can include criminal proceedings if necessary, against the borrowers/guarantors and foreclosure of recovery of dues is expedited. Banks kick off action against such accounts under laws like Securitization and

Reconstruction of Financial Assets and Enforcement of Security Interest Act (SARFAESI Act).<sup>5</sup>

But most importantly, banks and institutions have been given the right to change the management of the willfully defaulting company. The Reserve Bank of India has framed rules defining willful default, a process to be followed by banks for declaring borrower as “willful defaulter”.

In order to check incidences of willful default, the RBI has tightened the norms and made it clear that the promoter of the defaulting company cannot escape from his responsibility even if he is not a whole-time director. As per earlier guidelines, a bank couldn't label a non-whole-time director of a company as a willful defaulter unless there was conclusive evidence that the individual was aware of the willful default by the company and had not objected to it.<sup>6</sup>

### **Conclusion:**

It can be concluded, that a willful default occurs when a borrower does not honor an obligation despite having the capacity to pay or siphons off funds by disposing of assets without the knowledge of the bank. But the current situation has raised an important issue which needs extensive research in addressing the issue of rising NPAs in PSBs which are different in ownership and obviously follow a different strategy to finance and recover loans from private banks. In addition to better training of the staff, standardization of norms, improvement in credit appraisal, post-disbursement supervision, credit monitoring there is a need to put emphasize and improve recovery. Specially Public Sector Banks have to ensure higher recovery now and lower NPAs in future.

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[http://www.business-standard.com/article/finance/all-you-need-to-know-about-wilful-defaulters-116022400481\\_1.html](http://www.business-standard.com/article/finance/all-you-need-to-know-about-wilful-defaulters-116022400481_1.html)

<sup>6</sup> [http://www.ptinews.com/news/8984426\\_Wilful-defaulters-owe-Rs-92K-cr-to-PSU-banks](http://www.ptinews.com/news/8984426_Wilful-defaulters-owe-Rs-92K-cr-to-PSU-banks)

In the near term, the economy will continue to recover from the temporary liquidity shock and transformation in the form demonetization, while adjusting to the new goods and services tax (GST), Insolvency and Bankruptcy Code (IBC), The Real Estate (Regulation and Development) Act (RERA) and Capital shortfall with banks due to willful defaulters. The Indian Banking System doesn't need any more suspicious who pool public money and declare themselves as **Willful Defaulter**. In the cases where the assets of the borrowers were over-valued and loans were granted in excess of the market value of their assets must be dealt with critically.

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