

In order to engage with our readers and simplify the legal complexities of the infrastructure sector, EPC World has partnered with Rajani Associates, a full-service law firm for a series of legal Q&As. Through this Legal Q&A column, **SHISHAM PRIYADARSHINI**, Partner, Rajani Associates and **AMISH SHROFF**, Associate Partner, Rajani Associates, will endeavour to address the queries and challenges faced by our readers.



**Shisham Priyadarshini**



**Amish Shroff**

Pranab Mukherjee, gave his approval and promulgated the Banking Regulation Ordinance on May 5, 2017 to bring about amendments in the Banking Regulation Act, 1949 essentially to effectively tackle the issue of the surging NPAs and bad debts in India.

**What are the other amendments in the Banking Regulation Act, 1949 pursuant to the promulgation of the Banking Regulation Ordinance?**

In the Banking Regulation Act 1949, two new Sections have been introduced after Section 35A, which being Section 35AA and Section 35AB

**Why an ordinance was recently introduced amending the Banking Regulation Act?**

Non-Performing assets (NPAs) are essentially loans which borrowers have defaulted on and are no longer repaying to the banks. Bad loans of public sector banks have crossed a staggering amount of ₹ 8 lakh crore, the major portion of which are in sectors such as infrastructure, textiles and steel. As per the record, the stressed assets for public sector banks is the highest at 17% while for the private banks, it is 7% and for foreign lenders it is about 6%. The NPAs in public sector banks is almost 3 times compared to the other peer banks.

In the past, the Reserve Bank of India (RBI) has initiated several restructuring mechanisms like CDR (corporate debt restructuring), 5/25 (long term refinancing mechanism), SDR (strategic debt restructuring) and S4A (Scheme for Sustainable Structuring of Stressed Assets) with the aim to manage the stressed and non-performing assets. While the various restructuring schemes were introduced by the Government, these were unable to effectively resolve the issue of NPAs.

With the figures of NPAs running into several crores and the same expected to increase further, the President of India,

which confers more power on the RBI to tackle the issue of NPAs. As per the new provisions, the Central Government is empowered to authorize, by order, the RBI to issue directions to any banking companies to initiate insolvency resolution process in respect of a default, under the provisions of the Insolvency and Bankruptcy Code, 2016 (IBC).

The provisions also allow the RBI to issue directions to banks for resolution of stressed assets, on its own accord. It further empowers the RBI to form a committee with such members as the RBI may appoint or approve for appointment authorities or committees. The objective of constituting such committees is to advise banking companies to evolve a mechanism to deal with the stressed assets.

**Whether the amendments in the nature of new sections 35AA and 35AB will help in resolving the issue of stressed assets of banks?**

The newly introduced sections in the Banking Regulations Act provide sweeping power to the RBI to deal with and tackle NPAs. The power conferred on the RBI essentially means that any lackluster approach of the Banks to resolve the NPAs issue and/or to initiate the insolvency process

against the defaulter will not be well looked upon by the Central Government as well as the RBI.

In cases where the banks fail to regulate the debtors account within a stipulated timeline of about 6-9 months, the RBI has now power to take over the debtors account and issue directions and ask the Banks to initiate discussion with the defaulters/debtors on the manner to deal with each defaulter. Where ever required, directions can also be issued to initiate insolvency proceedings against the defaulters.

The IBC has already been implemented as a law and the banks are free to commence proceedings under the IBC against the individuals, partnership firms, limited liability partnership and companies if there has been a default. In certain cases where the banks may be reluctant to initiate an insolvency resolution process, the introduction of these new sections proves to be a boon. In such cases, direction may be given by the RBI to initiate the process of resolution of stressed assets. The ordinance may ensure effective use of the IBC for resolution of stressed assets through intervention of the RBI.

Although the amendment to the Banking Regulation Act increases the RBI's involvement in the commercial decisions taken by banks, the power granted to the RBI to regulate the processes of the defaulters and to issue directions, will hopefully, aid in recovering the money owed by the debtors and to an extent mitigate the problem of mounting bad loans.

#### **What is the requirement for the introduction of the new policy 'Shakti'?**

Electricity is one of the essential requirements of modern day life and most of the electricity is produced through coal by thermal power producers (TPPs). The supply of coal to the TPPs had been made on coal linkage arrangement with the power plants as per the provisions of the New Coal Distribution Policy, 2007 (NCDP). Coal linkage to the power plant is a system of issuance of Letter of Assurances (LoA) wherein the requests for linkage are forwarded to Ministry of Power (MoP) for its recommendations. The MoP in turn places the recommendations before the Standing Linkage Committee (SLCLT) which authorizes the issue of LoA to TPPs for supply of supply.

As coal availability is not adequate in India, the country has been importing coal from the international market at a higher price compared to the prices in the domestic market. Even the prices of coal in the international market are on a surge. Due to the prevailing market conditions, many power plant projects are facing shortage of coal.

In order to ensure unhindered supply of coal to the power plant at competitive prices, the Cabinet Committee on Economic Affairs introduced a regime of a new linkage

allocation policy based on transparent and objective criteria for the optimal utilization of the coal, which replaced the old linkage allocation policy. Allocation for such linkages for power sector shall be now on auction of linkages or through power purchase agreement based on competitive bidding of tariffs. This new coal linkage auction policy for power has been named 'Shakti' (a scheme to harness and allocate koyala (coal) transparently in India).

Most of the TPPs were on the verge of turning into non-performing assets, as they could not sell power despite having power purchase agreements because of lack of continuous fuel supply. The new policy would aid not only debt-ridden generators which had to import coal at higher prices but also the future power plants.

As per the statistics available in public domain, the new policy is likely to benefit 20,000 MW private sector thermal capacities with existing power purchase agreements. These include 12,000 MW which were issued LOAs by Coal India Limited (CIL) in 2009 but still lack fuel supply agreements (FSAs) and another 8,000 MW capacity without LOAs which were facing crises after their short-term MOUs with CIL lapsed on March 31 last year.

#### **What are the objectives for introducing RERA?**

The term RERA stands for Real Estate (Regulation and Development) Act, 2016 which was enacted on March 26, 2016. RERA aims to regulate and promote the real estate sector and to ensure the sale of plots, apartments and buildings in a transparent and efficient manner in order to protect the interest of the consumers. RERA along with the rules are applicable only to on-going and/or new projects. The primary objective of RERA is to create accountability of the promoters of the project, bring transparency through disclosure of all sorts of information associate to a project, ensure fair play, reduce frauds and delays and provide a fast-track dispute resolution mechanism.

#### **Was there a requirement to introduce RERA?**

Real estate has always been an unregulated sector wherein the builders and developers took advantage of the absence of any regulatory body. Though, consumer protection laws are available, the recourse available therein are only curative and not preventive. The buyers were at the receiving end. There are plenty of instances where the buyers have been cheated, extra charges were levied for the flat, delay in grant of possession by the builders, change in the project layout. Even the quality of the construction has been a major concern amongst the buyers. In order to address these issues and to protect the right of consumers, the Government of India has enacted consumer centric Act, after a long wait.

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