

The Suppression of Material Facts While Marketing Stressed Assets by Bank is Detrimental to the Interest of Auction Purchaser

H. J. Gurunath

Post Doctoral Fellow

College of Management and Commerce

Srinivas University

Mangalore,

dr.gurunath.hj@gmail.com

Abstract

In our economy the steep growth of non-performance assets in the field of Banking activity is posing a huge problem to Corporate Office, Regulatory agencies, the Government to build the stable and strong Balance-Sheet supported by the attractive Profit Loss Account. In the process the stakeholders and depositors are losing confidence in the Banking organisation. Accordingly, now as a matter of fast-track approach, the Bankers are approaching THE SECURITISATION AND RECONSTRUCTION OF FINANCIAL ASSETS AND ENFORCEMENT OF SECURITY ACT, 2002, at DRT, DRAT to finish the entire recovery of NPA amount within six months, with the team leadership of Bank SECURED OFFICER as bank representative. In the process of enforcing, the bankers will take the physical position of the secured property to the Bank custody, with due directives of the act and provision of law too. Further the said property will be public auctioned the amount will be credited to Bank, to adjust for the NPA loan account from the highest bidder in the bidding deliberations. This is exactly scissor cut re-search, critical approach study required due to problem faced by the AUCTION BIDDER who purchased the stressed assets from the Bankers. With this critical observation, to offer sustainable solution STUDY CONDUCTED to protect the interest of assets purchaser, as OBJECT of the study. The DESIGN / METHODOLOGY / APPROACH, the data and information collected from the NPA account holder, auction bidder, both side council on records, and deep observation, entire deliberations at south India DRT and DRAT tribunals from the year 2021 to 2023 respectfully. The study FINDINGS the bankers are signal jumping all the provision of the law / act, without any authority, suppression of fact are major issues, the said property is not insured, up date local tax is not paid, defective documentation, the bank charge is not created at SUB REGISTRAR OFFICE on the property, failure of credit management, loan sanction to fraud documents, the failure of checks and balance approach among the loan department, audit department and vigilance department, during the study it has come to surface that, one house has been mortgaged to 10 banks, in another case 12 co-operative bank mortgaged to one and same house, further in above case all the 22 banking organisations approached DRT, for recovery the said NPA loan account. The originality / true value of this empirical critical research article is, first of its kind based on the ground realities at open tribunal both DRT, DRAT in south India by observations / deliberations / visualization process dynamics, the Bankers must KNOW the lending must be BUSINESS but

not EXPERIMENT because it is public money, if not this may cost the job of the all related said to be delinquent officials in coming days / years. With this critical fact's suppression of facts, the fate of auction purchaser is only, dragged to further litigation in the related court/ tribunal. With variation in number of differences in the scale of suppression of facts, in other Banks too, in the process of public auction process. Since the power of every kind of Board of Directors, limited they have to depend on Chairman/ President/ CEO about the situation to push Agenda, resolution, ruling without any first-hand independent knowledge, in all respects.

Key Words - DRT, DRAT, Secured Officer, Public Auction, Guidance value of property, Mortgagee of property, Highest Bidder, Reserve Amount, Natural Justice, Misconduct, Pecuniary Gain, True market value, Stressed Assets, Sarfaesi Act.

Introduction

The satisfactory performance of any Industry, Service and Business segments depends on the top performance of MARKETING division, this has to be supported by the twinkle profit and loss account and Stable and Strong Balance Sheet, accordingly all facility and benefits is a priority, to the officials of marketing division in all respects. The matter related to the Banking organisation and financial lending business units, is depending on the PRODUCTS OF LOAN RELATED, by UNDER VARIOUS brands / names of Loan products, service to the public in all respects, by each Bank and Financial providers. To win the confidence of stake holders, depositors to meet other financial commitments, the bank has to recover the said landed amount, in the form of interest and other source as income and the said to be, due loan amount / instalment, as to face the liquidity matters, time to time as per agreement, Law, and Contract. As a matter of very critical situation, now our economy is facing, huge loan recovery problem posing threat to, Banking, lending organisations is totally risk. The impact of Covid- 19 pandemic is also added factor for expanding loan recovery problems. The Banks and other financial organisations are adopting to legal operations under Brand SARFAESI – ACT as a fast-track recovery process, by issuing Demand Notice, Position Notice, Sale notice, Sale of property, and adjust to the said to be NPA loan Account, bid amount, the properties offered as security to the Bank which may be immovable or moveable or both. All the assets will be publicly auction / E- auction is also permitted. But the fact is loan is sanctioned as per the provisions of Law, Act, procedure, supported by the clear directives of RBI, the Government of India and individual Banks internal directives also. If the required EMI and other interest and expenditure is not remitted with in 90 days, the said loan account will be tagged as NPA, and pushed for the loan recovery under the SARFAESI – ACT at DRT, DRAT and Honourable High court, the entire office methods will be headed by the SECURED OFFICER OF EACH BANK with the support of the designated council on record as advocate. The bankers will sell the property on the TAG as the said property will be sold by public auction with expressing / publishing in the newspaper, " AS IS WHAT IS, AS IS WHERE IS and WHATEVER THERE IS" this exactly most un-trusted, suspected, no-proper clarity about the secured assets which have been offered as security for obtaining the loan and pushed for public auction. As per latest practice the banks are selling such NPA loan amounts / documents to Asset Reconstruction Companies at higher discount amount, to meet the liquidity position improvement. The said ARCL also sell the property as per Act to the highest bidder the auction process. This is exactly critical observation, after paying full bid amount the auction purchaser is facing too much problem to get the, sustainable / legally valid title over property and valid title to enjoy the property or resale the same property. This is exactly need for vigilance angle, innovative, critical empirical case study to protect the interest of the highest bidder who purchased the property from the Bankers, with at most trust and business discipline powered by the Ethics, Mission and Vision of the Bank, for every practical business metric. The Banking

and financial organisation corporate office is like a AEROPLAIN having landing gears of INVESTMENT, RECOVERY and CAPITAL / FUNDS STOCK, it has to balance optimally if not accidents bound to result and this will damage the Profit and Loss account and Balance sheet. For this the LEADERSHIP OF BOARD OF DIRECTORS, COMMITMENT OF ADMINISTRATION and DEDICATION OF FIELD LEVEL WORK FORCE is very important, crucial in all respects. If all this observation is correct WHY and HOW the Banking and Financial organisation is facing NPA problem, to cover-up, laps, diffidence of service and various signal jumps in directives of credit management without understanding the ground realities, the said account TAGED as NPA, since the re-payable amount due for just 90 days then pushed to LEGAL MEASURES, UNDER SARFAESI – ACT, this is, happening in our economy. In the process the person who purchased the said public auction property LANDS IN MULTIPLE LITIGATION at various court / tribunal / Arbitration centres. And this is the result of FAILURE of CREDIT MANAGEMENT and CHECKS AND BALANCE between AUDIT and VIGILANCE DEPARTMENT.

The Main Objective of The Study

The crucial object of this study is to discover the PROBLEMS faced by the PUBLIC AUCTION PURCHASER OF PROPERTY during STRESSED ASSETS MARKETED BY THE BANKS and FINANCIAL ORGANISATIONS, UNDER THE SARFAESI – ACT

The Review of Literature

In this chapter, to the best of my knowledge the critical and sensitive re-search is developed as empirical case study, by observation / discussion / deliberations / visualization at tribunal DRT, DRAT and Honourable High court in south India and public auction places.

The Study Period

In this category, the study period is related to year 2021 to 2023 respectfully, related to public sector bank, private sectors bank, foreign bank and regional rural bank.

The Data and Information and study Materials

In this segment, the required data and information is collected from the orders of the DRT, DRAT and HIGH COURT and discussion with both side council on records, related NPA parties, bank secured officers and auction purchasers even the related broad casted at social media and newspapers information's.

The Research Limitations

The critical problems, observations, findings and suggestion is related to the case study banks only, but the situation is one and the same for auction purchasers who purchased, stressed assets from various banks and financial organisations, related under SARFAESI – ACT.

The Scope for Further Critical Study

In this MICROSCOPIC vision of all records, in vigilance angle the conflict of interest, agenda and ruling, orders will exhumed for cross verification of every footage from demand notice to public auctioned property by the banks and financial organisations, will come to surface.

The Case Study Observation / Orders at DRT, DRAT

The Specific Order of Debt Recovery Tribunal

Case One

DRT, Jabalpur Judgement: 2011 (1) DRTC 259, (DRT, Jab) vide S.A. NO.72 of 2008 dated 30/09/2010.

Subject

Bank took no proper care in Classification of A/C as NPA before proceeding to issue Demand Notice – Deposit 25% not done by Bidder on same Date of Auction – Malafide Intention on part of the Authorised Officer. Entire action for recovery was founded on Violation of Provision of Law – Appellant held entitled to damages from bank – Entire proceedings from Issuing of Notice u/s 13(2) including Sale Certificate & consequent delivery of Position quashed – Bank directed to handover Possession of the Secured Assets to Appellant within 15 days – Cost of Rs.25,000/- allowed to Appellant.

Case Two***SALE SET – ASIDE FOR COLLUSION BETWEEN BIDDERS AND BANK OFFICIALS.***

Madras High Court Judgement

Between: Sheebha Philominal Merlin V/S the Repatriates Co-operative Finance. Order dated 10/08/2010.

Regarding procedural Irregularities committed by Bank using provisions of SARFAESI – ACT & Non – compliance of the mandatory provisions of the Act, Fraud Lack of Fair Play, Bonafede’s, etc the entire proceedings initiated by the Bank gets vitiated and is hereby Set – aside for Collusion between the Bidders and Bank Officials. Case is referred to CB – CID for investigation.

Further it is observed during study the bank will obtain 400 percent security in the form of, primary security, co-lateral security, Individual / corporate guarantee and full insurance of loan. Then what sort of banking is going on, if 100 percent loan is not recovered out of 400 percent secured for loan, will clearly expose the , Effectiveness of Board of Directors, the commitment of administration of all department and Diligence of ground level operations QUALITY OF DISCHARAGING THE DUTY, at least, to protect the interest of AUCTION PURCHASER, MARKETED BY BANKS , STRUSED ASSETS, department .when the loan is sanctioned with every financial discipline and procedure, including legal opinion , how the stress assets will be marketed by bank’s under the brand “ AS IS WHAT IS, AS IS WHERE IS and WHATEVER THERE IS”, this is totally suspectable of integrity and suspectable nature of transaction with hidden agenda and conflict of interest packed by bias in all respects.

Case Three

In this critical case, the CO -operative Bank conducted the public auction, accordingly the highest bidder purchased the said asset being Housing property by paying / remitting full auction amount and obtained the physical position of the property, but another 12 co-operative banks financed, for the same house building property, now first purchaser facing, multiple legal litigation at various courts / as per co-operative Acts, with very cost of high legal expenditure.

Case Four

In this sensitive critical case, even the public sector, private sector, Nationalised banks, Mahala bank, private lenders recognised / un-recognised financial sector also sanctioned loan to ONE AND THE SAME HOUSE PROPERTY now fighting for loan recovery under the SARFAESI – ACT, this accounts more than 12 financing institutions, at related DRT in south India.

In The Process of Enforcing Sarfaesi – Act And Marketing The Stressed Assets Following Material Facts Not Disclosed To The Auction Purchaser By The Banks.

The property is not insured, the various government tax pending at agencies, pending legal litigations in the same bank / other bank, any other general lien on the property , no- authorised valuation certificate for worth of property, about the physical position of the property with bank, the documents time bared or not , so documents is original or not , property is single owner or not , all the right owners are executed document or not, any criminal case is pending on the NPA loan account holder on the same property, any facility provided under covid - 19 pandemic period, NPA asset what kind of CATEGORY, if one person participated in auction is process is valid or not, when physical position will be given of the property after remitting bid amount, NPA, asset classification what kind as per RBI norms, Age of the property, the Bank created charge on the said property at sub registrar office or not, when the sale certificate will be given after remitting the auction amount, all the parties signed the document or not who are all having right on property while executing the document.

The sale of secured property under SARFAESI – ACT, being stressed assets by banks, must maintain very high public confidence is crucial, a single worst bad episode could spoil image of Bank and integrity will be suspected in all visions and give way for multiple legal litigations at not only interstate but also inter country too.

The Crucial Suggestions

the bank secured officer must be LAW graduate

the selection training and placement must be critical knowledge for SO.

To the auction purchaser, the disclosure and asset fitness certificate must be given by the vigilance department.

The bank must enforce SARFAESI – ACT as a MEDICINE BUT NOT AS ROTINE FOOD, just because the NPA loan account is just 90, only.

All the officials working, enforcement of SARFAESI – ACT in bank must submit individual assets and liability statement to vigilance department once in six months.

The RBI nominated director must be geared with powers to spot visit with eagle eye to prevent every un-desirable activity, in relation to NPA issues and one time settlement matters, to enforce financial discipline in the Banking activity, to protect the interest of customers, stake holders, corporate office and economy in all respects.

The Conclusion

While marketing Stressed Assets by Banks and Financial organisations under the Brand “AS IS WHAT IS, AS IS WHERE IS, WHAT EVER THERE IS “is totally un-acceptable and against to VIGILENCE JUSTICE and give way for escaping to the SAID TO BE DELIQUENT OFFICIALS from the clutches of DOMESTICE HIGH POWER ENQUIRY and CRIINAL PROSECUTION LAW / ACT. To prevent all observation and allegations, it is better the VIGILENCE DEPARTMENT MUST GIVE FITNESS and DISCLOUSER certificate to the auction purchaser for better transparency in all respects.