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LEGAL IMPLICATIONS OF WRITING OFF LOANS

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Introduction

Recently on 28th April 2020[1], Indian banks wrote-off a huge amount of over Rs. 68,000 crores loans which was due by the top 50 willful defaulters in the states. The top parties included Choksi's scam-hit company, Gitanjali Gems Limited, which owed Rs.5,492 crore and other companies like Nakshatra Brands Private Limited, REI Agro Ltd and Winsome Diamonds & Jewellery, etc. The present article will explain the various intricacies of writing-off loans and different conditions in which a loan can be written off of any individual.

Writing-off Loan[2]is a tool which comes into role when a defaulter doesn't repay the loans for three consecutive quarters leaving the amount to become a Non-Performing Asset (NPA)or a bad loan. It is used by banks to clean up their balance sheets and keep a record of the unrecovered debt given by them to the entities. For e.g. If any person has taken a loan from the bank and fails to return it within the stipulated time then the bank will try to recover the amount with the help of various legal means or by contacting his family members, if in case even after this step bank fails to recover the amount, the bank may write-off the loan. This means that writing off doesn't take back the right of the bank to recover the loan given, it simply helps the bank to keep a track on the amount on the balance sheet.

The most common query among the people is that whether writing-off loan is the same as waiving of loan? The answer is No.

- Waiving-off loan refers to releasing the defaulter from the liability to pay the debt and permanent cancellation of the recovery of dues. For e.g. The loan is waived off in certain circumstances such as during the case of natural calamity, the farmers are exempted or waived off on their dues by the government as a relief for them, whereas in the case of writing off the recovery made after is counted in the profits for the bank in the year of recovery.
- Another difference between the two is that the decision of waiving off loan is taken by the government while that of writing-off loan is taken by the banks.

What happens once the amount is written off by bank?

When a bank writes-off the loan the debt will not be counted as a part of its net non-performing asset and gross income. As explained earlier writing-off loan will not

[1]https://www.news18.com/news/business/banks-technically-write-off-over-rs-68000-cr-loans-choksi-among-50-top-wilful-defaulters-rti-2595437.html
[2]https://www.indiatoday.in/india/story/what-is-loan-write-off-and-how-it-helps-banks-1353388-2018-10-01

amount to the waiver of loan leaving on the bank to recover the debt repayment and may recover it once the bad-loan reaches its resolution and the write-back recovered counts in the profit of the bank and counts in the credibility of the bank. This leads to the cleaning of balance sheets of the bank i.e. to replace the bad assets with good ones.[3] Moreover, when the banks need to take a haircut on a bad loanresolution,the need occurs to recapitalize the banks due to which burden shifts to the taxpayer to compensate it.[4] This process must be transparent and can't be compromised as its essential for the public discourse and guard against the misrepresentation of funds.[5]

Perks enjoyed by banks after writing off a loan

- Once the bank removes the non-performing asset it enjoys a tax deduction from the total loan amount that was given.
- Despite writing off the loan the bank has the option to pursue the loan and can subsequently generate the revenue from the amount.
- The option of selling the defaulted loan always restswith the bank to the third-party agencies to recover the amount from the defaulters.

Even if the loan is written off, the bank can't just let the money go. It tries several different ways to get compensated and recover its amount. Below mentioned are the few ways through which banks recover the debt - [6]

- Securitization –

  In this the bank has the discretion to sell the assets of the defaulters to an asset reconstruction company to recover the amount but in the process only a part of the loan can be recovered in the majority of cases whereas the remaining default amount has to be paid from its own capital or the profit.
- Provisioning – The banks use the recovered profit to compensate the written-off assets.
- Capital- In this, the contributions are made by the shareholders in against the loss incurred by writing off the loan.
- Debt Write-off –

➢ This relieves the bank from as it can now reclaim the blocked funds for continuing the business. The stakeholder which enjoys the most profit is the bank as the reserve money which was kept blocked replenishes and increases the money lending capacity of the bank.

➢ Once the bank acquires its full money lending capacity it can lend more money, participate in bigger financial transactions which would eventually benefit the running economy of the state.

➢ Later as per the will, bank may also take legal steps to put the defaulter under the pressure to recover the amount or to curtail his financial activities.

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[3]https://www.indianeconomy.net/splclassroom/what-is-loan-or-debt-writeoff-whether-it-means-no-need-for-repayment/
[4]https://www.accountingtools.com/articles/2017/5/11/bad-debt-expense
[5]https://economictimes.indiatimes.com/blogs/et-editorials/an-act-of-prudence-not-loan-forgiveness/
[6]https://lms.indianeconomy.net/news/what-is-debt-write-off-what-are-its-implications/

The supreme authority to look after the write-offs and keep checks is Reserve Bank of India (RBI) and it releases several circulars and guidelines through which whole process is governed.[7]

Statistical analysis of past write-off of loans

In the past, there have been several instances where leading banks of the states have written off the loan worth whooping amounts, some of the latest incidents along with the figures are mentioned below –

- The largest bank of the country State Bank of India (SBI) wrote off loans close to Rs. 14,000 Cr. in agriculture sector from the last five years in December 2019 due to the rise in non-performing assets where it rose from 8.89 percent to 13.49 percent in the time span of 5 years.[8]
- The below mentioned table deals with all the famous banks that dealt with big write-offs in FY19.[9]

Bank Name	FY 19 (In Cr.)	FY 18 (In Cr.)
State Bank of India	58,905	40,196
Oriental Bank of Commerce	2,864	3,857
Bank of Baroda	13,102	4,948
Canara Bank	14,267	8,310
UCO Bank	9,744	2,734
Union Bank of India	7,771	3,477
Central Bank of India	10,375	3,003
Bank of Maharashtra	5,127	2,460
Syndicate Bank	6,774	2,313
Cooperation Bank	5,929	8,228
Allahabad Bank	4,283	2,936

The below statistics show the increase in writing off loan by the banks. (In Cr.)[10]

- 2008-09 – 2,165 Cr.
- 2009-10 – 15,068 Cr.
- 2010-11 -20,299 Cr.
- 2011-12 – 18,248 Cr.
- 2012-13 – 31,549 Cr.
- 2013-14 – 25,424 Cr.

[7]https://www.rbi.org.in/scripts/BS_ViewMasCirculardetails.aspx%3FId%3D449
[8]https://www.businesstoday.in/current/economy-politics/sbi-writes-off-agriculture-loans-worth-rs-14000-crore-in-5-years-npas-jump-to-1349/story/391379.html
[9]https://www.bloombergquint.com/economy-finance/public-sector-banks-write-off-a-fourth-of-their-bad-loans-in-fy19
[10]https://thewire.in/banking/indian-banks-wrote-off-rs-1-44-lakh-crore-in-loans-in-2017-2018

- 2014-15 – 52,947 Cr.
- 2015-16 – 71, 253 Cr.
- 2016-17 – 89,048 Cr.
- 2018-19 – 1,44,093 Cr.
- Total - 480,093 Cr.

Conclusion

Although it is argued that write-off doesn't amount to waiver; however, historically banks have not been able to recover much from written-off accounts.
Post the admission of the application for insolvency by the Adjudicating Authority, IPR is appointed who takes over the management from the CD and makes best efforts to ensure that a successful resolution of the CD is obtained and maximum recovery can be made by creditors. It should however be noted that the will of the legislature as indicated by the Bankruptcy law Reform Committee was that the primary purpose of IBC is not debt recovery but debtor resolution. The category of debt would be significant to ascertain the participation of the creditor in the Committee of Creditors (which takes all future decisions pertaining to debt recovery and resolution of the debtor). For e.g. if the creditor has given any operational debt then, the operational creditor cannot become a part of the COC. In case of homebuyers; however, it has been stated that despite their debt being operational they can be part of the COC.

The Economic Survey for 2018-19 pointed outrecovery from other sources (like SARFEASI, DRT, LokAdalat) was 23% while the same was 43% under the IBC between 2017-19.The overall recovery in resolved cases is nearly ₹74,497 crore for the financial creditors, which is 194% of the liquidation value.[11] Resultantly, less loans are being written off as bad debts and there is reduction in the NPA count of banks.

[11]https://www.thehindu.com/business/budget/recovery-under-ibc-higher-at-43/article28287222.ece