



STRESSED POWER SECTOR & ITS RE-ENGINEERING MECHANISM: AN INDIAN PERSPECTIVE

Dr. Binoy J. Kattadiyil and CS Nitika Manchanda
ICSI IIP, IPA of IBBI, New Delhi

Overview of power sector

With a population of 1.4 billion and one of the world's fastest-growing major economies, India will be vital for the future of the global energy markets. With the total installed capacity of 3,67,281 MW scattered amongst thermal (62.8%), Hydro (12%), Nuclear (1.9%) and renewable energy sources 23.1%)¹, India is the third largest producer and the third largest consumer of electricity in the world.

The **power sector** in India is mainly governed by the Ministry of Power. There are three major pillars of power sector these are **Generation, Transmission, and Distribution**. As far as generation is concerned it is mainly divided into three sectors these are Central Sector, State Sector, and Private Sector and as per the statistics of past 10 years, **total growth rate in power generation** has been declined (0.57% growth in 2019-20 in comparison to 5.69% growth in 2015-16) however, we have moved to renewable generation of power methods in comparison to old conventional methods of power generation. The performance of Category wise generation during the year 2018-19 was Thermal Increased by 3.39%, Hydro Reduced by 6.95%, Nuclear Increased by 1.39%, Bhutan Import Increased by 7.78%.²**Transmission** is carried out primarily by central and state companies and largely remains a government controlled activity. The transmission segment was separated from the central generation agency in 1989 and Power Grid Corporation of India (Powergrid) was set up. Power grid is responsible for the planning, implementation, operation and maintenance of inter-state transmission system, and the operation of national and regional power grids. India's transmission lines have grown at an average annual rate of 6.5% between 2007 and 2019 (till March 2019).³**Distribution** is the most important link in the entire power sector value chain. As the only interface between utilities and consumers, it is the cash register for the entire sector. Government of India provides assistance to states through various Central Sector / centrally sponsored schemes for improving the distribution sector⁴.

Issues Faced by the Power Sector

There are many roadblocks in unleashing the full potential of India's power sector. Electricity is critical to fuel the economic growth of India. The Country



is on the fast trajectory of development but to keep the momentum of growth high, availability of uninterrupted power supply is a must. India needs electricity to fuel the growth of every industry, be it large scale or small scale, manufacturing, healthcare or education.

The power sector is undoubtedly facing huge stress due to fuel issues, statutory obligations, emission levels, water scarcity, power theft, less power demand growth, poor quality of coal, availability of transmission corridor, lower performance of old power plants, financial crisis of private power generators/IPP's.

Some of the major reasons for slow down of power sector in India are:

Supply of fuel:The long-term average demand growth rate is expected to remain in the higher single-digit growth levels given the much lower per capita power consumption in India as compared to the global average. Not only this, the poor financial state of State Electricity Boards could possibly lead to lower demand for power going ahead. Capacity utilisation is not effective.

Regulatory road blocks:It has been observed that delays in payments by discoms hurt the viability of generators. The regulator must ensure the sustainable operation of the power sector. However, regulators often insist that the generators forego the late payment surcharge on the delayed payments. This further affects the viability of generators. It is recommended that the Ministry may engage with the regulators to ensure that the late payment surcharge is mandatorily paid.

Health of discoms (distribution companies):Years of populist tariff schemes, mounting AT&C losses and operational inefficiencies have adversely affected the financial health of State Discoms which are currently plagued with humongous out-standing debts.

Fixed Cost Debt and High Real Interest rates:The sector is capital intensive and due to huge amount of capital infusion, the payback period is really high. The ever increasing circular debt due to high tariffs and an inefficient power distribution system is creating resentment among investors

Dependence on imported coals:Around 60 per cent of the generated power comes from thermal power plants. Despite the fact that India has the third largest coal reserves in the world, most of the domestic requirements are met through imports due to poor quality of coal, which is of low Gross Calorific Value, inefficient mining processing, environment problems in creating new mines. As a results the cost of generation of power is deeply connect upon the coal and import price of coal. In energy terms, the average cost of coal in Indian power plants is shockingly high, it has been 15-20 per cent higher than that in the US and Western Europe.



Lack of or delay in execution of Power purchase agreements (PPAs) is also one of the reasons in slow down of power sector in India.

Npas in Power Sector and Steps Taken in Combating with it

As per the RBI, public sector banks have the highest NPAs, most of which are in the power and the telecom sector. It also noted that the most severe shock to the power sector will cause the banking system NPAs to rise by about 68 bps. The Standing Committee on Energy (2018), had examined 34 independent power producers (IPPs), with a capacity of 40 GW, that had turned into NPAs. As of June 2017, there were 34 stressed thermal power plants with an outstanding debt of Rs 1.74 lakh crore.⁵

(i) Government Initiatives⁶

- Constitution of a high-level committee comprising Secretaries in the Ministries of Power, Coal and Department of Financial Services and headed by NITI Aayog's CEO Mr. Amitabh Kant to address the problem of NPAs in India's power sector;
- **DUGJY (DeendayalUpadhyaya Gram JyotiYojana)** – The new scheme has the following components:
 - To separate agriculture and non agriculture feeders to facilitate discoms (distribution companies) in the judicious rostering of supply to agriculture & non agricultural consumers.
 - Strengthening and augmentation of sub transmission & distribution infrastructure in rural areas and metering at distribution transformers, feeders and consumers end in rural areas.
 - Rural electrification subsumed from erstwhile scheme
- **IPDS (Integrated Power Development Scheme)**- The main components of the scheme are:
 - Strengthening of sub transmission and distribution network
 - Metering
 - IT application
 - Provisioning of solar panels

All Discoms including private Discoms and state power departments are eligible for financial assistance under the scheme. Power Finance Corporation (PFC) is a nodal agency for operationalization of this scheme. So far, new distribution strengthening project worth 29238 Crore for 546 circles, projects worth 985 core for IT enablement of 1931 towns, ERP projects worth 792 Crore, smart metering projects worth Rs. 834.41 Crore have been sanctioned.



- **Shakti (Scheme for Harnessing and Allocating Koyala (Coal) Transparently in India)** – Ministry of Power has launched SHAKTI which aims to reform the bureaucratic and non-transparent process of coal allocation for power projects. Allocation of linkages for power sector shall be based on auction of linkages or through PPA (Power purchase agreement) based on competitive bidding of tariffs except for the state and the Central power generating companies.
- **UDAY (UjwaDiscom Assurance Yojana)** – To enable revival of DISCOMS to enable 24x7 power for all. The scheme was intended to resolve problems relating to financial health persisting in DISCOMS;
- **FDI policy** - 100% FDI is allowed under automatic route for power generation projects (except atomic energy), transmission, distribution and trading;
- **SAMADHAN**-(Scheme of Asset Management and Debt Change Structure), the bankers' consortium shortlisted 11 power plants with an overall capacity of over 12 GW, which are either complete or nearing completion. This scheme is an effort to avoid liquidation of these plants at throwaway considerations;
- **SASHAKT**– As part of the scheme, lenders entered into an Inter Creditor Agreement (ICA) in relation to loans above INR 50 Cr. The ICA permits the lead lender to formulate the resolution plan and all decisions are to be guided by majority lenders, i.e. those with 66% share in the aggregate exposure. The other key aspect comprised parking of stressed assets in an asset management company (AMC). Lenders will be able to transfer NPAs onto the books of the AMC immediately, and ARCs will have the opportunity to revive the asset.

Multiple initiatives have been taken to revive power assets facing financial stress, however the same have not fructified as expected.

(ii) Insolvency and Bankruptcy Code of India

Insolvency and Bankruptcy Code of India came into force in the year 2016 as a biggest reform to combat the prevalent NPA situation in the economy and make the economy more robust. The Insolvency code focuses on a timely resolution of stressed accounts, which if not, will led to liquidation. This forces creditors to act in unison or face consequences(one of the significant drawbacks of the earlier schemes) and avoids arbitragesavailable due to multiple regulations.

Since 2014, the Reserve Bank of India (RBI) has cracked down significantly on the stressed loans situation accumulated in the banking system over time bringing to light the seriousness of the problem. This has been supplemented by



very progressive and constructive initiatives such as the Joint Lenders Forum (JLF), Strategic Debt Restructuring — with and without change in control — and S4A Scheme for Sustainable Structuring of Stressed Assets'. These frameworks, though unable to address all situations, are a step forward toward a resolution culture. Default resolution is and will always remain unique to each situation.

After the enactment of IBC, RBI decided to substitute the existing guidelines with a harmonised and simplified generic framework for resolution of stressed assets. In February 2018⁷, the RBI released a framework for restructuring of stressed assets of over Rs 2,000 crore on or after March 1, 2018. The framework provided that the resolutions plan for restructuring must be unanimously approved by all lenders and implemented within 180 days from the date of the first default. If the plan is not implemented within the stipulated time period, the stressed assets must be referred under the IBC within 15 days. **Various power producers appealed to courts against the RBI circular.**

Standing Committee's observations: The Standing Committee on Energy (2018) analysed the impact of the circular on power sector. It noted that the new guidelines are stringent and do not consider the problems in the electricity sector. These new guidelines will worsen the NPA crisis in the sector. It recommended that instead of adopting a sector agnostic approach towards stress resolution, more specific and sector friendly approaches should be used.

During the proceedings, several power companies provided that their reasons for delays in payment of bank dues include: (i) cancellation of coal blocks by the Supreme Court leading to non-availability of fuel, (ii) lack of enough PPAs by states, (iii) non-payment of dues by discoms, and (iv) delays in project implementation leading to cost overruns.

After various appeals, the Supreme Court held that the circular issued by RBI was outside the scope of the power given to it under section 35AA of the Banking Regulation (Amendment) Act, 2017. The nutshell of the SC verdict was that the RBI doesn't have the power to issue such a general circular (the revised framework on resolution of stressed assets) to banks on the management of stressed assets that it will go to IBC directly. Consequently, all IBC proceedings initiated under the RBI circular were quashed.

Afterwards, RBI released "Prudential Framework for Resolution of Stressed Assets" in June 2019⁸ revising the framework for resolution of stressed assets. The RBI's revised framework for the resolution of stressed assets is credit



positive, because it brings back the focus on the need for the timely resolution of such assets, and the build-up of loan loss provisioning against those assets. As per the new guidelines, it is voluntary of banks to go for insolvency; the lenders need not take resolution action on the first day of default. Rather, they have to make plans on the first thirty days of default to undertake the resolution of the stressed assets etc.

Since the coming into force of the provisions of CIRP with effect from December 1, 2016, **3312 CIRPs have commenced by the end of December 2019**, of these, 246 have been closed on appeal or review or settled; 135 have been withdrawn; 780 have ended in liquidation and 190 have ended in approval of resolution plans. **Out of which 100 cases have been admitted under the head electricity & others and out of which only 7 have been resolved, 16 have been liquidated and 72 are ongoing.**⁹

Conclusion

It's been approximately 3.5 years' since the inception of IBC, still only 7 cases of electricity sector have been resolved out of 100 cases admitted till now which is not a good sign for the uplifting of power sector in the economy. Delays in the resolution process can be considered as one of the main reasons for the slow improvement in power sector IPAs. The resolution of stressed power projects under the NCLT may be positive for the banking sector which would be able to recover large part of the Non-Performing Assets post the successful sale of the stressed assets under the NCLT resolutions however, for the overall growth of power sector other difficulties during NCLT proceedings like lack of power purchase agreements & fuel supply agreements, sale of assets at scrap value, consolidation of sector with few powerful power sector entities should also be addressed. Most importantly, Government initiatives to empower power sector like giving coal linkages UdayYojna, DeenDayalUpadhyaya Gram JyotiYojana together with IBC proceedings will definitely help in growth of power sector in long run.

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