

# NATIONAL JUDICIAL ACADEMY



**Training Programme for Senior Law Officers of the State Bank of India**

**at NJA, Bhopal**

**28<sup>th</sup> to 30<sup>th</sup> November, 2017**

**Report on SE -15 to be submitted to Hon'ble Additional Director, NJA,  
Bhopal.**

Submitted by

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## **Object and Background of the Programme**

The National Judicial Academy (NJA) organized a three day Training Programme for Senior Law Officers of the State Bank of India from 28<sup>th</sup> to 30<sup>th</sup> November, 2017 at the NJA Bhopal. The programme was conceived and designed by the Academy at the request and in consultation with senior Management of the SBI. The programme was structured to provide a working knowledge of legal and procedural aspects relating to the banking sector to Law officers and other senior management personnel. Sensitization to the nuanced laws and procedures of Commercial Courts, Bankruptcy Code; Banking Frauds and Cyber-crimes; Adjudication of Debt Recovery Claims; PMLA, were among areas intended to be covered. In the introductory session Hon'ble Director, National Judicial Academy, Bhopal set the theme of the conference and introduced the Speakers for the day.

### **Session - 1**

#### **Evolution of Banking in a Global Scenario : Opportunities and Challenges**

##### **Speaker: Smt. S. Kaur (SBI)**

Smt. S. Kaur from SBI Training Centre Hyderabad was the Resource person for first session. She started her session with history and evolution of banking system in the world. Then she talked about how the banking system has emerged in the Indian context. She said that prior to 1991, Indian Banking sector was not liberalized and it was somewhat conservative. But after the era of globalization, liberalization started in 1991, Indian banking sector also started to cope itself with the globalization. Then she talked about the impact of Bitcoin (a crypto currency) on the world economies and the strategies framed by the central banks all over the world to deal with it. She also stated that in Indian context, even Reserve Bank of India is studying the impact of and trying to frame guidelines on Bitcoin.

Thereafter, she talked about the globalization and the impact of technology on the banking sector. Today the world has almost become a global village and boundaries of the countries are not playing more important role in the banking sector. Therefore, in this era of globalization, for banks, it has become utmost necessary to have KYC of their customers/account holders. It is very important from the perspective of the banking sector security. She said that now a days a new concept called "Universal Banks" is evolving on the canvas of the world. In 2015 first Universal Bank has been started and we as an Indian Bankers should be ready to face this challenge. With these remarks, she concluded her session.

Hon'ble Director, NJA then summed up the session urging the participants that they should once read a book called "Lucifer's Banker".

## **Session - 2**

### **RBI & Banks : Monitor; Mentor; & Regulator**

**Speaker: Mr. Ramdas K. Kamath (SBI)**

Justice G. Raghuram, Director NJA opened up the session with brief introduction of the speaker and set the theme of the session. Then Mr. Ramdas K. Kamath started his session. He started with a brief background of RBI. Then he moved on to discuss the role of RBI for which he cited the preamble of the RBI Act, which says that the objectives of the RBI are “to regulate the issue of bank notes and the keeping of reserves with a view to securing monetary stability in India and generally to operate the currency and credit system of the country to its advantage.” Thereafter, he discussed the organizational structure and main functions of RBI viz. Monetary authority, Issuer of currency, Banker, Agent and Financial Advisor to the Govt., Banker to the Banks, Regulation and supervision of the banking and financial system, Management of Foreign Exchange and Regulation and Supervision of the Payment and Settlement. Then he went on to discuss the relationship between the RBI and Commercial Banks alongwith the developmental and Educative role of RBI for being a mentor for the other Banks. With this he concluded his presentation. Then Director of NJA summed up the session.

## **Session - 3**

### **Credit Appraisal : Red Flags and Best Practices**

**Speakers: Shri. Shams Tabrez**

Mr. Shams Tabrez was the speaker for this session. He started his session with introduction to the term credit appraisal. He said that credit Appraisal is a process to estimate and evaluate the risks associated with the extension of the credit facility. It is generally carried by the financial institutions which are involved in providing financial funding to its customers. He further went on to say that proper credit evaluation of the customer has to be performed; this measures the financial condition and the ability of the customer to repay back the loan in future. This is an important factor which can curb the menace of NPA i.e. Non-Performing Assets which the big issue troubling the Indian Banking sector. He said that rising level of NPAs and increase in frauds in advances are the key concerns for today’s Indian Banking sector. He said, Gaps in adequate screening of promoters/company, Inadequate review of financial statements, Overdependence on certifications, Lack of adequate due diligence, Lack of in-person verification/site visits, Trust-based lending etc. are the key loopholes in the credit appraisal systems and factors responsible for NPA. Then he discussed the common types of frauds related to Sanctioning the loan. Thereafter, he discussed some relevant case studies about the credit appraisals and NPAs. Then he discussed pre-Sanction Process and some Best Practices to be followed by banks while approving the loan proposal. Then he discussed various methods to do the Credit Appraisal of the proposed borrower and concluded his session.

## Session - 4

### Declaration of NPA : Eliminating Subjectivity & Evolving Transparent Norms

**Speaker: Shri. R. K. Kamath**

Mr. Ramdas K. Kamath started his presentation with introduction to NPA i.e. Non-Performing Assets. He said that in general, assets are classified into four categories, viz. –

- 1) **Standard** - Regular account which does not show more than normal risk at any time.
- 2) **Substandard** - NPA for a period not exceeding 12 months;
- 3) **Doubtful** - NPA for a period exceeding 12 months; or if the value of security is eroded by more than 50% of the outstanding.
- 4) **Loss** - Classified by the Branch/ Internal/ external auditors, or value of security is less than 10% of the outstanding.

Then he went on to discuss as to what are the impacts of NPAs. He said due to NPA, the banks cannot generate income, its capital gets blocked, it lowers image & rating of the bank, its disclosure reduces investors' confidence, it increases costs/difficulties in raising resources and it also affects the morale and decision making ability of the employee. He further said that, banks should try to understand the early warning signals which serve as wake up calls to show that a particular account is leading towards becoming a NPA. These early warning signals are - Frequent irregularities, Default in meeting commitments frequently, Delayed/Non-submission of stock statements/financial data, Return of cheques/Bills, Invocation of BGs/Devolvement of LCs, Declining Sales/Profit/Erosion of Net Worth and Non-compliance of terms & conditions of sanction etc. Then he discussed the methods to reduce the NPA. He said there are broadly some legal and some non-legal options to reduce the NPA. The non-legal options are effective follow up and recovery, recovery through external agencies, restructuring/re-phasing, compromise, RBI/SBI One Time Settlement, write offs/AUCA and Sale of Assets of the borrower. The legal options are to approach forums such as DRT, Civil Courts etc. under Debt Recovery Tribunals (DRT) Act, enforcement under SARFAESI Act, BIFR cases and Lok Adalat. With this brief note he concluded his session.

## Session - 5

### Living in the Cyber-World : A Checklist on Cyber-Crimes for Bankers

**Speakers: Mr. Ritesh Bhatia & Mr. Rahul Tyagi**

Mr. Ritesh Bhatia, a cyber-crime investigator and Mr. Rahul Tyagi, an ethical hacker were the resource persons for the session. Director of the National Judicial Academy introduced the resource persons and opened the floor for the discussion. Mr. Bhatia then started his presentation. He gave brief introduction about the world of cyber-crime to the participants. He then discussed

various types of cyber-crimes viz. ransom-ware, phishing/vishing, hacking, e-mail spoofing, ATM skimming and point of sale crimes, spamming, denial of service etc. with the help of slides and the actual photographs. During the said session Mr. Rahul Tyagi was providing the practical experiences of the said crimes. Then Mr. Bhatia went on to discuss the methods to prevent these kinds of crimes and what the bankers can do for the same. During this session most of the participants raised their problems and issues about the cyber security and cyber-crimes and resource persons answered their queries. Thereafter, Mr. Bhatia concluded his session.

### **Session - 6**

#### **Living in the Cyber-World : Decoding Technology for Data Protection**

**Speakers: Mr. Ritesh Bhatia & Mr. Rahul Tyagi**

Mr. Rahul Tyagi started this session with brief introduction to the world of “hacking”. Then he explained as to what is hacking and “ethical hacking”. He said that ethical hackers are playing a very important role in investigation and prevention of cyber-crimes. Then he gave a live on screen as to how the hacking really works. He asked any of the participant to provide his mobile phone to him for just 30 seconds. Accordingly, one participant gave his mobile. Then Mr. Tyagi returned the same to the concerned participant after 30 seconds. Then he started on his screen and opened all the applications, mails, messages, call details, contact lists etc. from the mobile of the participant on the screen. He said within 30 seconds he has downloaded some hidden application in the mobile of participant and through which he is now controlling entire smartphone of the said participant. Now he can mail, call, sms anything from the mobile of the participant. By using the said information he can steal all the amount in his bank account as messages from the banks were also stored in the mobile through which he can get account details and perform online banking of the said participant. Then he gave a demo of how the skimming works. He then went on to discuss the importance of data protection for the bankers. He said that once the data of the account holders of the bank is stolen by the hackers, it will sold in the black market over the internet and through which cyber criminals can wash out your entire bank account. Then he discussed the data protection methods and concluded his session.

### **Session - 7**

#### **Layered Transactions & Money Laundering: An Overview for Bankers-Interactive Session**

**Speakers: Adv. Rajiv Awasthi & Mr. Kapil Dev Taneja**

Adv. Rajiv Awasthi started the session with brief introduction to the Prevention of Money Laundering Act, 2002 (PMLA). He started with saying that he has handled many Money

Laundering cases for prosecution and was also actively involved in the making of PML Act. During this period what he realized was that without the active involvement from the Banks or some officers of the Banks, no money laundering is possible. Then he discussed the overall scheme of the PML Act and gave some practical examples to show as to how the bankers are actually involved in the money laundering cases. He said that there are three stages of money laundering viz. Placement, Integration and (*what comes out is*) White Money. Then he discussed various leading case laws on the subject including Aman Gandhi's case, Radhamohan Lukotia's case etc.

Then the second speaker for the session Mr. Kapil Taneja started his presentation. He discussed the theme of the Act with the help of slide show. He narrated the history of how PML Act came into force and how it is being implemented now. He said that there is cycle of money laundering viz. predicative crimes – placement – layering – and integration. Then he discussed the case law – *Ram Jethmalani vs. Union of India (2010)*. Thereafter, resource persons answered the queries put forth by the participants and lastly, Director, NJA concluded the session.

## **Session - 8**

### **L. C. / Bank Guarantee for Foreign Loans Syndication : The Global Scenario**

#### **Speaker: Smt. S. Kaur**

Smt. S. Kaur from SBI was the resource person for the session. She started her presentation with explaining the concept syndication. She said that syndicated loans are credits granted by a group of Banks to a borrower. The borrower selects an agent to facilitate communications and transactions between the borrower and the banking institutions that will form the syndicate. Generally, it will be a bank that has the necessary syndication capability and experience to obtain market credibility. This bank will be the lead bank or the syndicate manager. She said that syndications are generally required when loans are for large amounts and long term. It is generally used for new projects loans, large equipment leasing and enterprises' M&A financing in transportation, petrochemical, telecommunication, power and other industries. These syndicated loans are used for working capital credit (refinancing of small lines of credit, etc.); Export finance (including ECAs); Capital goods financing (machinery, etc.); Mergers & Acquisitions; Project finance (SPVs, structured according to cash flow); Stand-by facilities; Trade finance (Letters of credit, forfaiting); Guarantees (supply, service) etc. and for other similar reasons. Thereafter, she went on to discuss the process of loan syndication and its intricacies. Then she discussed the global scenario with respect to the loan syndication. She gave the examples of USA and China to explain how they are using the syndication for loan market. Then she discussed the Indian examples of syndication viz. Yes Bank is raising \$400 million through two syndicated loan transactions in Taiwan and Japan, comprising of \$ 250 million from Taiwanese banks and \$150 million from Japan. With this she concluded her session.

## **Session - 9**

### **Addressing Insolvency : Hearing the Sounds of Wake-up calls**

**Speakers: Mr. A T Thorat, Adv. Alok Dhir & Mr. Kapil Dev Taneja**

Hon'ble Director Justice G. Raghuram started the session and introduced all the resource persons for the day. He said that the session on insolvency is spread over the two sessions i.e. sessions 9 & 10 as it is the most important topic for the days. Thereafter, he explained the theme of the sessions for the day and handed the mike to the resource persons.

Mr. A. T. Thorat started his session. He discussed the concept of insolvency with the help of his presentation. Thereafter, he went on to describe the scheme and structure of The Insolvency and Bankruptcy Code, 2016. He said the Act deals with reorganization and insolvency resolution of corporate persons, partnership firms and individuals in a time bound manner for maximization of value of assets of such persons. It also intends to promote entrepreneurship, availability of credit and balance the interests of all the stakeholders including alteration in the order of priority of payment of Government dues and to establish an Insolvency and Bankruptcy Board of India, and for matters connected therewith or incidental thereto. Then he discussed major case laws on the subject. He said that the area is still in the stage of development and law on the subject is almost open. There is still great scope for interpretation. With this remark he concluded his session.

## **Session - 10**

### **Insolvency : The Insolvency and Bankruptcy Code, 2016**

**Speakers: Mr. A T Thorat, Adv. Alok Dhir & Adv. R. Raghunandan**

Mr. A. T. Thorat completed his remaining presentation at the start of this session and handed over the mike to other resource persons. This session was made as a panel discussion on request of the participants and with the permission of the dais. Adv. Alok Dhir and Adv. R. Raghunandan expressed their views on the insolvency laws and then invited the queries from the participants. Most of the participants raised their queries and problems about the insolvency proceedings and the panel tried to clear their doubts. The major problem which came out from the discussion was the availability of good insolvency professionals and good lawyers to deal with the cases. It was said that it is the responsibility of the Banks and banking management and other officers to take the lead and try to find out new ways and nurture the Bar in this area. Another area of concern for the participants was the smooth functioning of the insolvency proceedings and timely orders from the tribunals. For this it was said by the panelists that as discussed earlier the area is still developing and we have to wait for some more time to get the same concretized. With this the session on insolvency was concluded.

## **Session - 11**

### **Navigating Recovery Litigation : DRT Act and SARFAESI Act**

**Speakers: Adv. R. Raghunandan & Mr. Ganapathi Malve**

The aim of this session was to provide working knowledge of the DRT and SARFAESI Act to the participants who have to attend the cases relating to banks before these tribunals and courts.

Mr. Ganapathi Malve started this session. He discussed the framework of DRT Act as well as SARFAESI Act. He said that both these Acts are enacted to securitize the bank loans. The money which bank lends to the borrower is the public money and should not be kept unrecovered for longer period. It is a burden on the exchequer. These are the special forums and bank officers have to use them to navigate their recovery litigation. He said that initially DRT Act was brought in to help the banks to recover their dues, but after some time it was felt that said Act is inadequate to deal with the issue and hence the new Act i.e. SARFAESI Act was brought in. When again it was felt that said Act is also inadequate to deal with the issue, Insolvency and Bankruptcy Code, 2016 has been recently introduced. Thereafter, he said that though these are the options for banks for recovery of their dues from the borrowers, the banker should not directly go under IBC i.e. Insolvency and Bankruptcy Code. In fact, it should be used as a last resort and the initial litigation should be always under DRT and SARFAESI Act. Thereafter, Adv. R. Raghunandan expressed his views about the Acts and floor was left open for the discussion on the issue.

Most of the participants raised their concerns about the functioning of the Debt Recovery Tribunals and the Civil Courts. These were addressed by the panelists.

## **Session - 12**

### **The Daily Menu of Bank Administration Disputes: Legal Heirs'/Succession, Fraud & Misrepresentation**

**Speakers: Mr. Ganapathi Malve**

This was the session meant for the participants to express their concerns regarding their day to day working in the banks and other related matters. Mr. Ganapathi Malve started this session with a question “what is the difference between Lawyer and Law Officer?” He said that in a bank recovery litigation both Lawyers and Law Officers have their individual and distinct role to play. The job of the law officer is to look after the legalities in recovery before the litigation starts. On the contrary, the role of the lawyers comes in only when the actual litigation starts. In this sense the role of the law officers is to see that the dispute between the bank and the borrower ends before the litigation itself. Thereafter, the floor was left open for the participants. The participants shared asked their question to the panel members which were mainly relating to Nil Encumbrance



Certificate, Consumer Cases, Audit Reports of the Banks, Problems with respect to the Gift Deed of the amount in accounts, Title-Deed related frauds etc.

At the end Justice G. Raghuram expressed the vote of thanks and declared that the conference is concluded.

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