CONCLUSION

The Administration of Financial Resource and the Development of an economy are directly depended on the deployment of available funds by Banks and Financial Institutions. Therefore any stress and strain in an economic system will reflect upon the banking Industry. The circulation of money in the economy is facilitated through the large network of banks spread all over the country. In India the banking system has been playing this important role since its introduction into the economy. Apart from that the banks in India have been prompt and responsive in addressing the social needs of the people. In the recent years Indian Banks are weighed down by enormous amount of bad debts, which threatened the very health of the banking system.

With the Introduction of prudential norms of income recognition, the banks had classified unproductive accounts as Non-Performing Assts which constitute a real economic cost. The NPAs reflect the application of scarce capital and resources for unproductive purpose. The locked up NPAs is neither available for productive redeployment nor any income is generated by it. It affects the credit rate and image of the bank as well as the capacity to raise low cost resources. The banks in India have taken a number of steps to eliminate the NPAs which have been discussed in detail in this thesis. But still there is further scope for refining the credit risk Management and decision making process with modern management tools.

The Lok Adalat has proved to be a very good agency for Quick Justice and speed recovery of smaller loans. The reserve Bank of India has come up with the scheme of one time settlement (O.T.S.) to deal with loans
Conclusion

with higher outstanding. The O.T.S. has proved to be very effective and the Public sector Banks could affect substantial recovery.

If the laws are made more effective and disposal of suits and applications are made faster, the situation will improve considerably. The legal procedure shall be simplified and the Judicial Officers also be positively made aware of the situation. The institutions like DRTs must be provided with adequate staff and the infrastructure to make effective recovery. The courts and Tribunal must be granted enlarged discretion to decide the cases from the basis of equity also.

As the present study is a critical examination of the existing legal mechanism, it would be advisable to sum up the discussion with a summary of available options / mechanism under present day legal system.

RECOVERY OPTIONS AVAILABLE IN INDIA

AGENDA

- Civil Suit
- Summary Procedure
- Foreclosure suit on Mortgage
- Criminal Actions
- Winding up of Company
- Debts Recovery Tribunal
- Section 138 of Negotiable Instrument Act, 1881
- SARFAESI

Recovery Options – Civil Suit

- Civil Suit
- (In case of Banks and Financial Institutions where outstanding is below Rs.1.00 Million)
Conclusion

- Civil remedy
- by filing a civil suit under Section 9 of Civil Procedure Code, 1908
- the court may appoint Court Receiver, Attachment before judgment, Injunction, giving surety/security, depending upon the facts and circumstances of the case.

Recovery Options – Summary Procedure

- Summary Procedure
- (In case of Banks and Financial Institutions where outstanding is below Rs.1.00 Million)
  - Filed under Order XXXVII of Civil Procedure Code, 1908
  - For recovery of certain types of debts the following classes of suits namely:
    - suits upon bill of exchange, hundies and promissory notes;
    - on a written contract
    - on an enactment
    - on a guarantee.
    - Getting an early decree is possible

Recovery Options- Foreclosure suit on Mortgage

- Foreclosure suit on Mortgage
  - Order 34 Rule 11 of Civil Procedure Code, 1908 deals with mortgage suits
  - In case of banks and financial institution where outstanding is more than Rs.1.00 million, DRT’s don’t make such distinction.

Recovery Options- Criminal Actions

- Criminal Actions
  - Where a borrower has, misutilised the loan proceeds or sold the financed assets or obtained the finance by fraudulent means.
  - Criminal actions can be initiated under sections of Indian Penal Code.
    - 420 (cheating)
    - 406 (criminal breach of trust)
    - 465 (forgery)
    - 403 (misappropriation of property)
Conclusion

- More of a deterrent effect

**Recovery Options – winding up of Company**

- Winding up of Company
- If a company doesn’t pay despite demand, action for winding up of the company is initiated.
- Notice under section 434 of Companies Act to be served.
  - before resorting to winding up petition.
  - notice under section 434 of the Companies Act is to be served
  - on the debtor company

**Recovery Options - DRT**

- Debts Recovery Tribunal
  - Bank or financial institution or a consortium of banks can file cases before DRT
  - if the amount of debt due is more than Rs.1.00 Million.
  - In any event the Civil Procedure Code, 1908 is not applicable
  - Modes of recovery of debts are
    - attachment and sale of properties both movable and immovable,
    - arrest of the defendant and his detention in prison,
    - appointing a receiver for the management of the properties.

**Recovery Options- Section 138**

- Section 138 of Negotiable Instrument Act, 1881
  - Dishonor of a cheques is made punishable offence under section 138 of Negotiable Instruments Act, 1988
  - Notice to be issued.
  - By obtaining post dated cheques (PDC) towards repayment, the Lender can initiate action u/s 138.

**Recovery Options- SARFAESI**

- SARFAESI
- Without the intervention of court or tribunal, secured assets can be enforced by the Lender.
- Within 60 days notice period to be issued.
- A notice should be issued by the secured creditor under a security agreement, where any borrower makes any default in repayment of secured debt or any installment.
Conclusion

- In case the borrower fails to discharge his liability in full within the period of sixty days, the secured creditor
- may take possession of assets and
- sell them
- towards its dues
- For the remaining dues if any, Lender can file case before DRT.