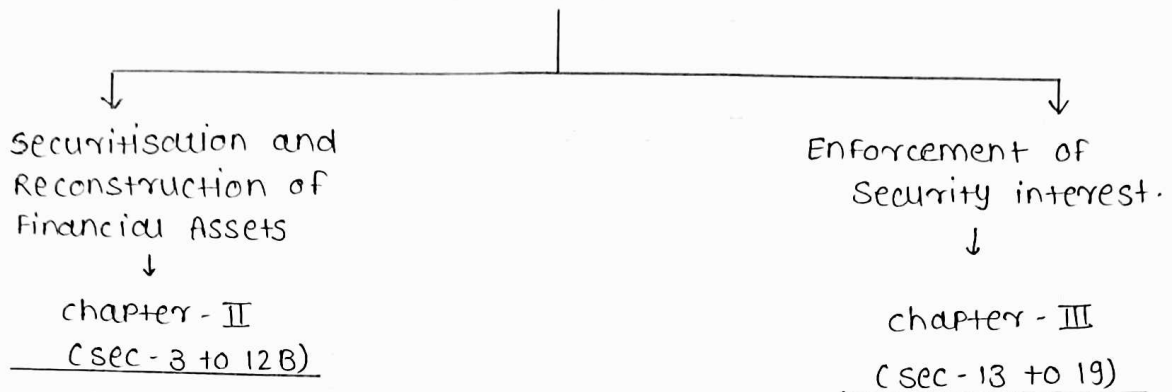


Securitisation and Reconstruction of Financial Assets and

Enforcement of Security Interest Act, 2002



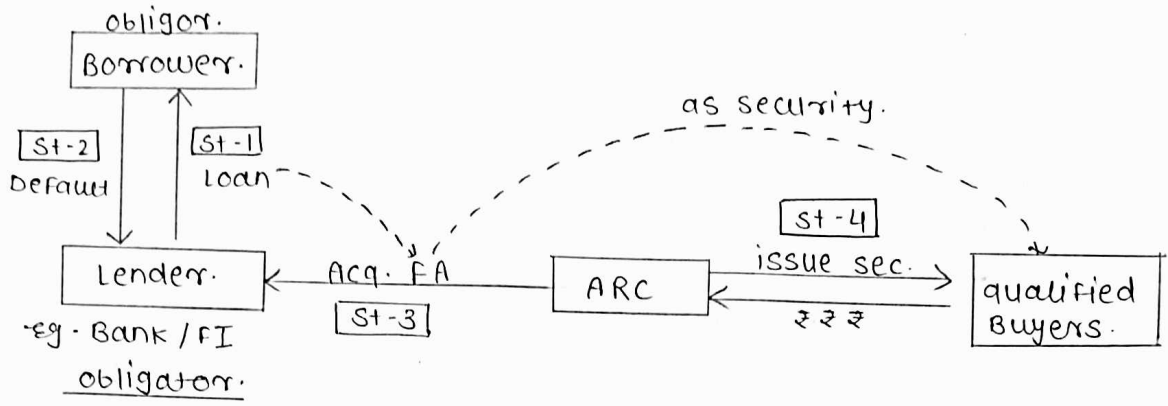
SYNOPSIS -

sec	chapter - II	sec.	chapter - III
3	Registration of ARC.	13	Enforcement of sec. interest
4	cancellation of certificate of Reg.	14	CMM / DM to assist secured crs in taking possession of sec-asset
5	Acquisition of Rights or interest in Financial Assets.	15	Manner and effect of takeover of management.
5A	Transfer of pending application to any one of DRT	16	No compensation to directors for loss of office.
6	Notice to obligor and discharge of obligation of such obligor.	17	Application against measures to recover secured debts.
7	Issue of securities by raising of receipts or funds by ARC.	18	Appeal to appellate tribunal
8	Exemption from registration of security receipt.	18A	Validation of fee levied.
9.	Measures for asset reconstruction	18C	Right to lodge caveat.
10	other Functions of ARC		
11	Resolution of Disputes.		
12	Power of RBI to determine policy and issue directions		
12A	Power of RBI to call for statements and informations		
12B	Power of RBI to carry out audit and inspection.		

PART - I

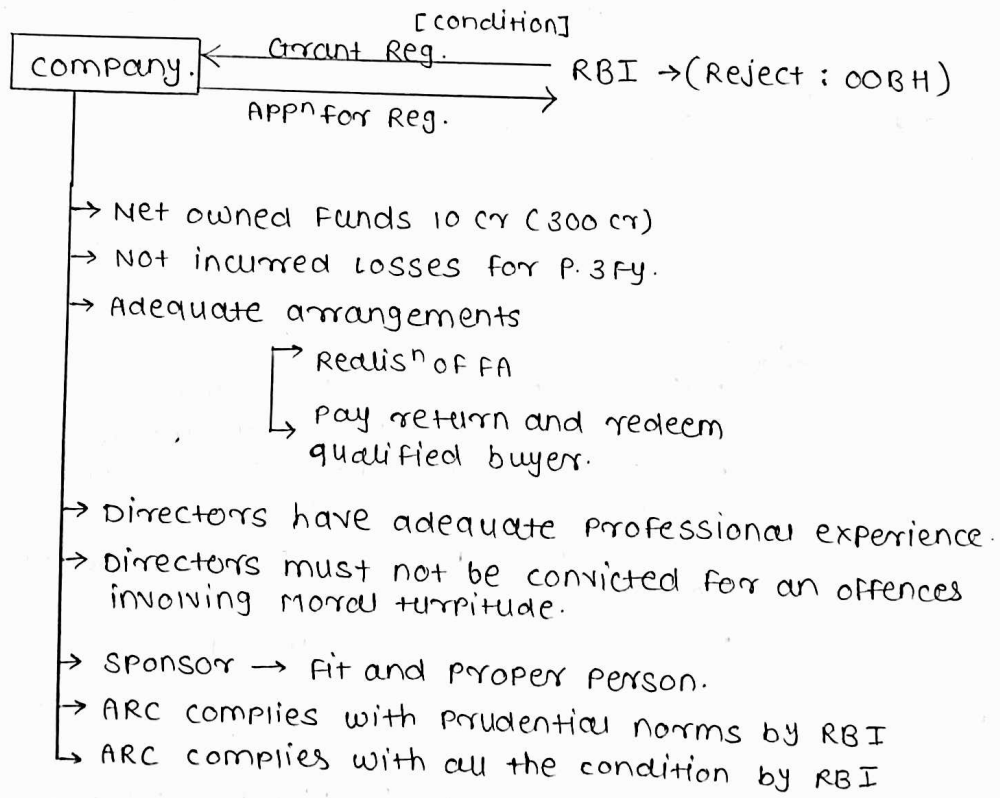
Securitisation & Reconstruction of F.A.

→ concept :



⇓
This concept is termed as securitisation.

Section 3 : Registration of ARC.

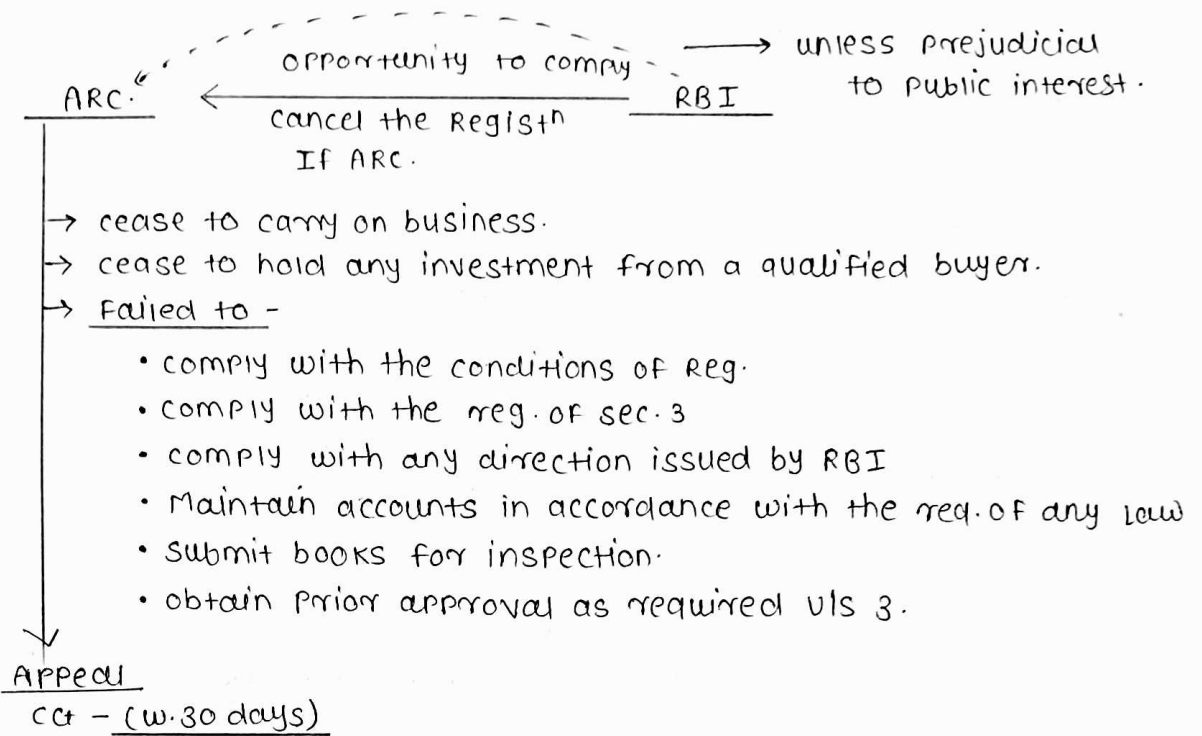


→ ARC will require prior approval of RBI for -

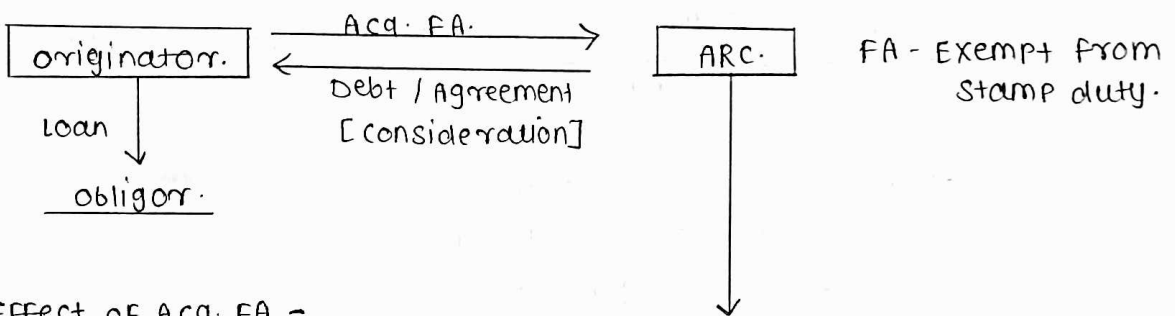
- change in management
- change in reg. office
- change in name.

Section 4 - Cancellation of Certificate of Reg.

②



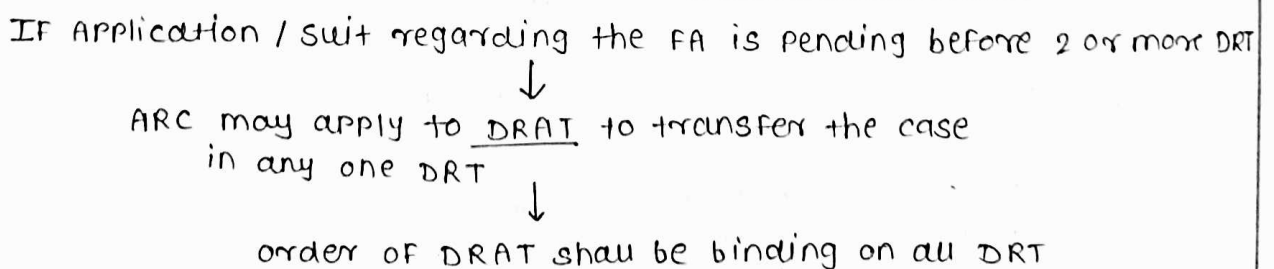
Section 5 Acquisition of Rights / Interest of FA



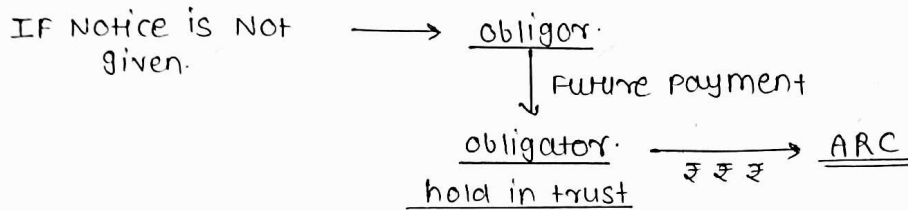
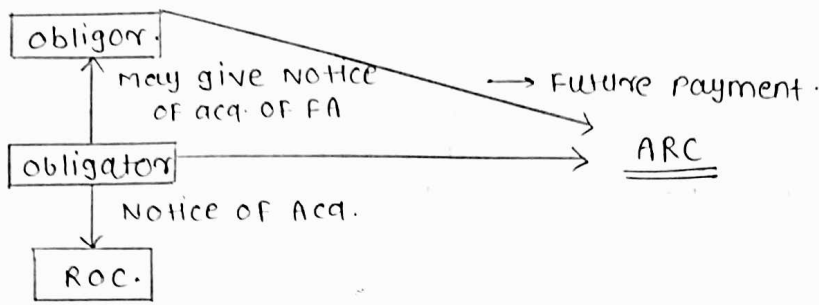
EFFECT OF ACQ. FA -

- ARC will be treated as lender now.
- security will also vest with ARC now.
- All contracts, POA, permissions, approval deemed to be in favour of ARC.
- suit / appeal / proceeding against obligator regarding the FA
- will continue in the name of ARC.

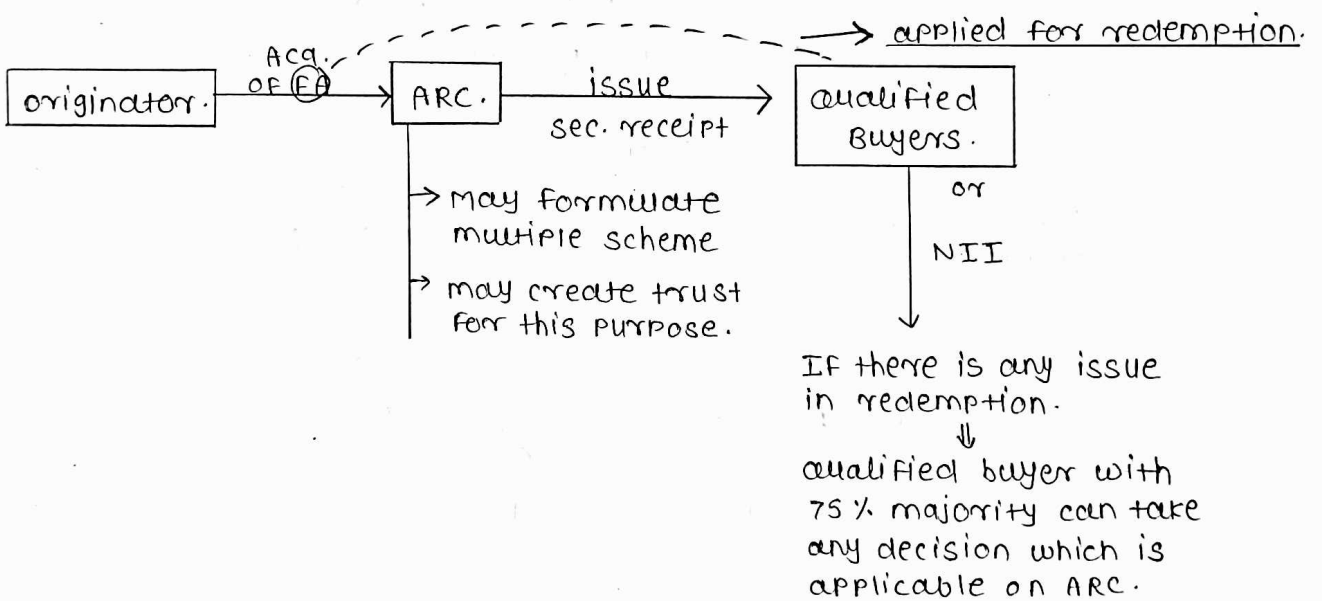
Section 5A - Transfer of pending appⁿ to one DRT.



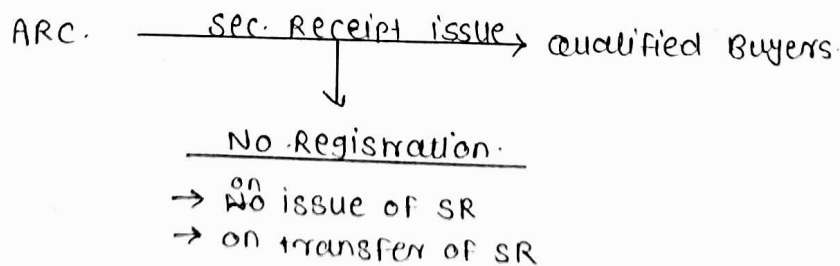
Section-6 Notice to obligor and Discharge of such obligation



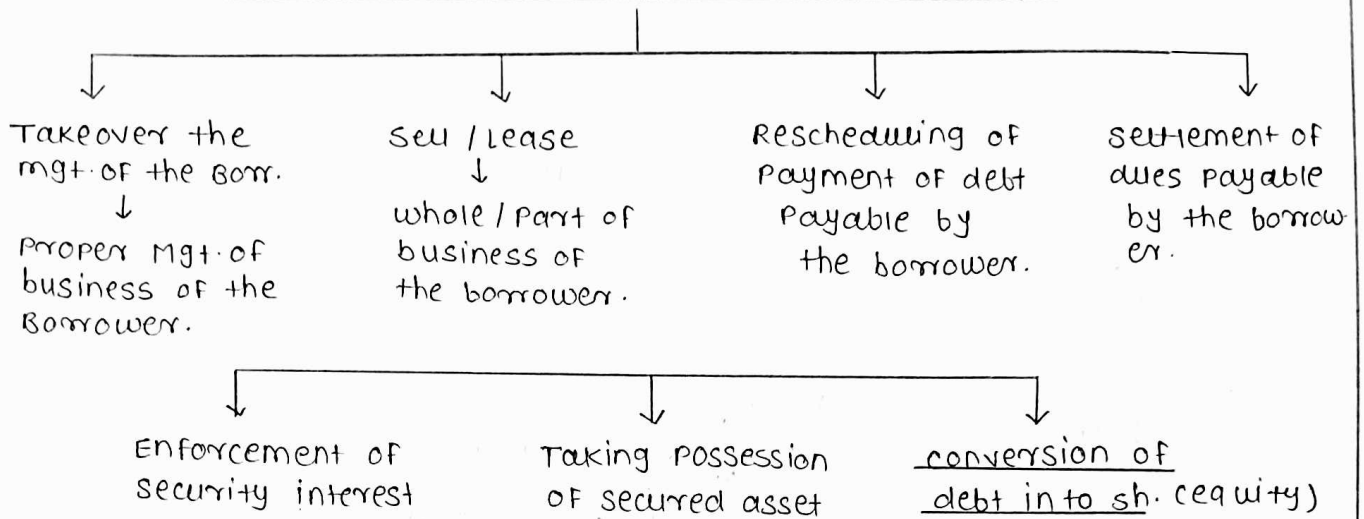
Section 7 - Issue of sec. by raising sec. receipt or funds by ARC



Section 8 - Exemption from Registration of S.R.



Section 9 - Measures for asset reconstruction

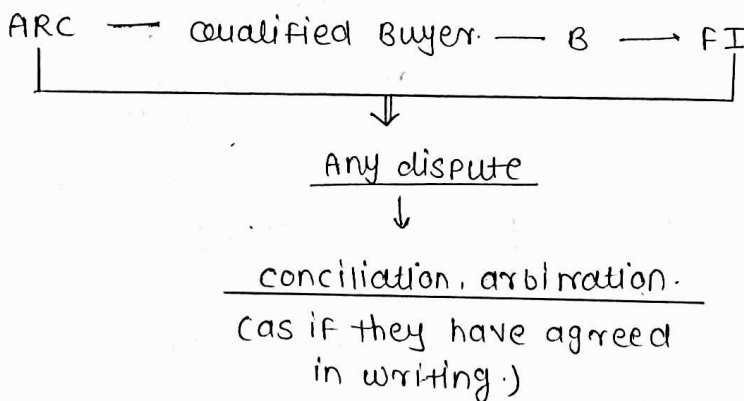


Section 10 - other Functions of Asset Reconⁿ co

- Act as a agent for Bank / FI for recovery
- Act as manager for enforcement of sec. interest [without any fiduciary liability]
- Act as receiver.

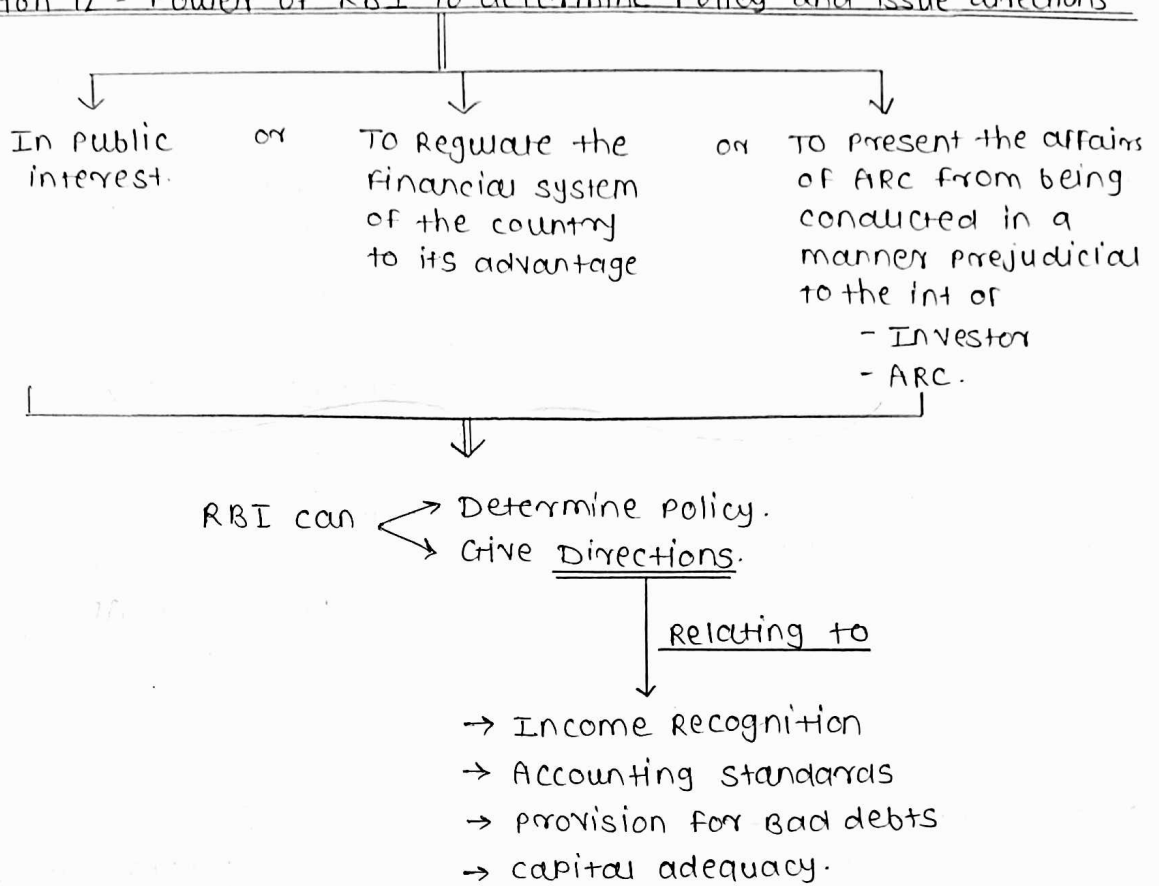
ARC can not do any other business. without prior approval of RBI.

Section - II Resolution of Dispute.



Section 12 - Power of RBI to determine Policy and issue directions

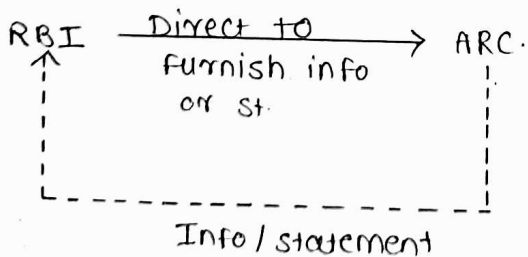
(1)



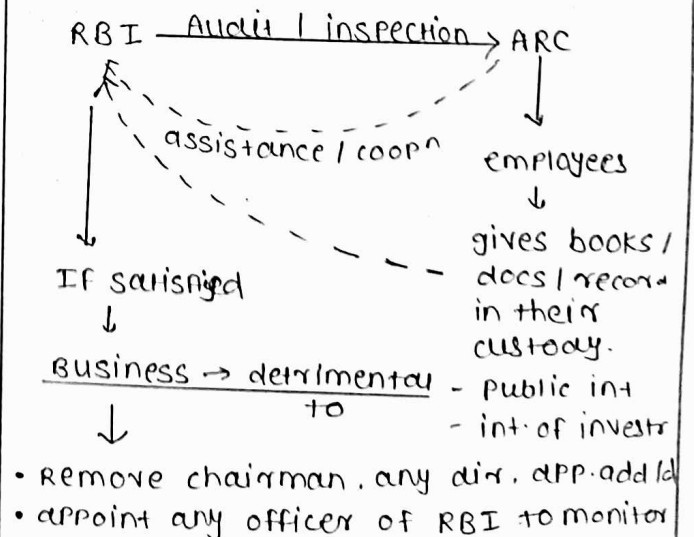
(2) RBI may give the following directions

- Type of FA to be acquired
Process of acq, valuation.
- The aggregate value of fin asset which may be acquired.
- Fees that can be charged by ARC.

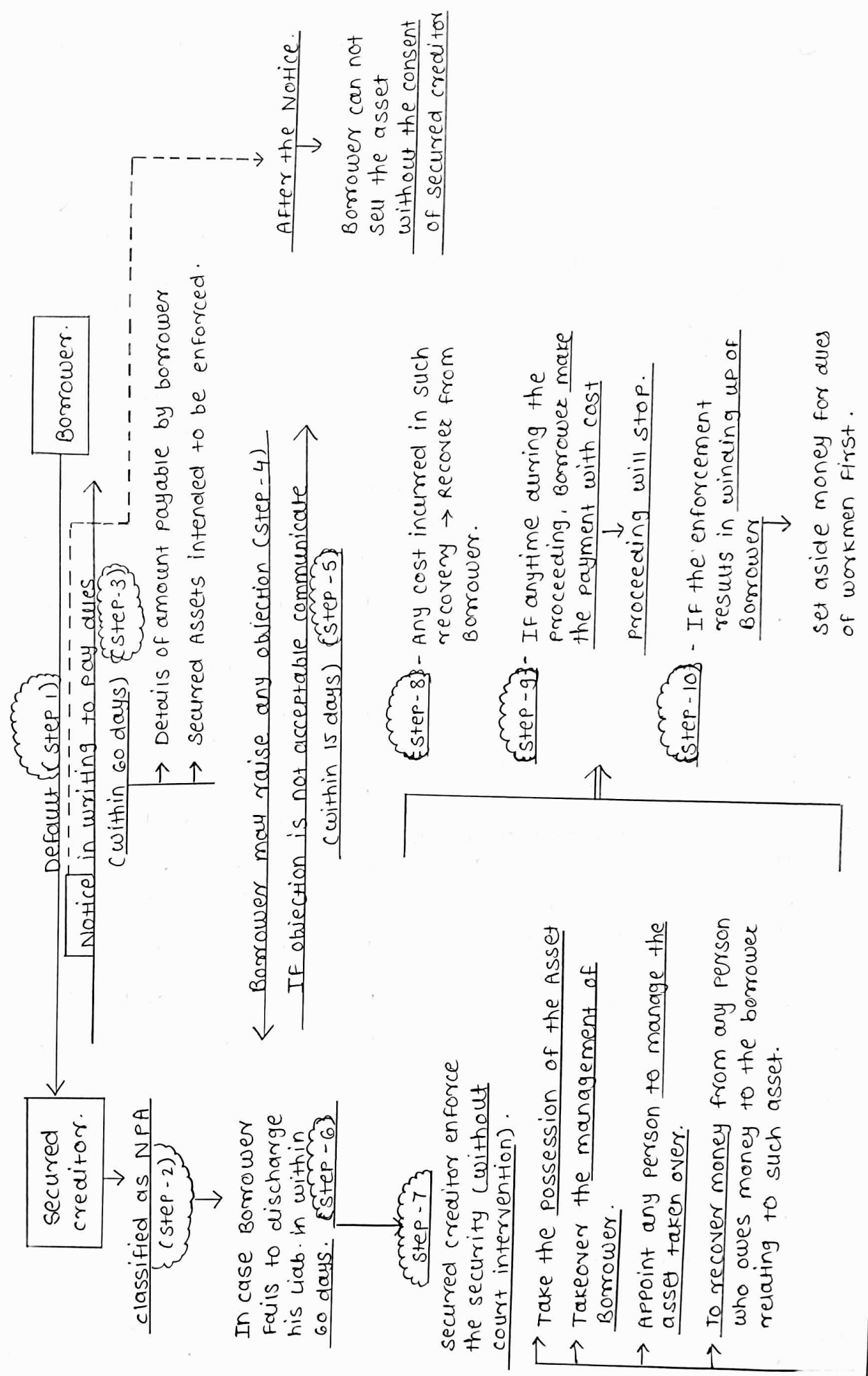
Section 12A - Power of RBI to call for statement / info.



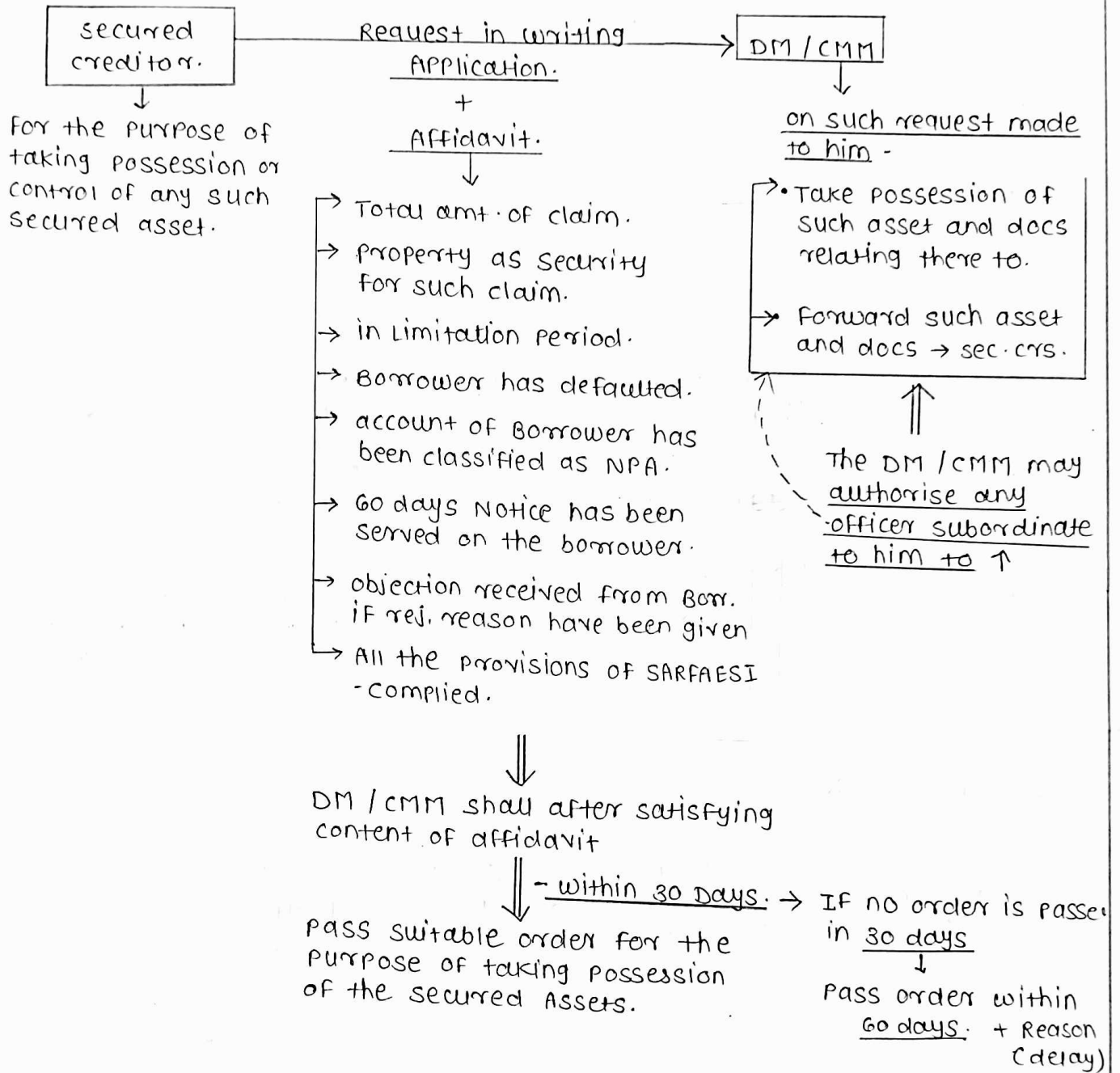
Section 12B - Power of RBI to carry out audit and inspection



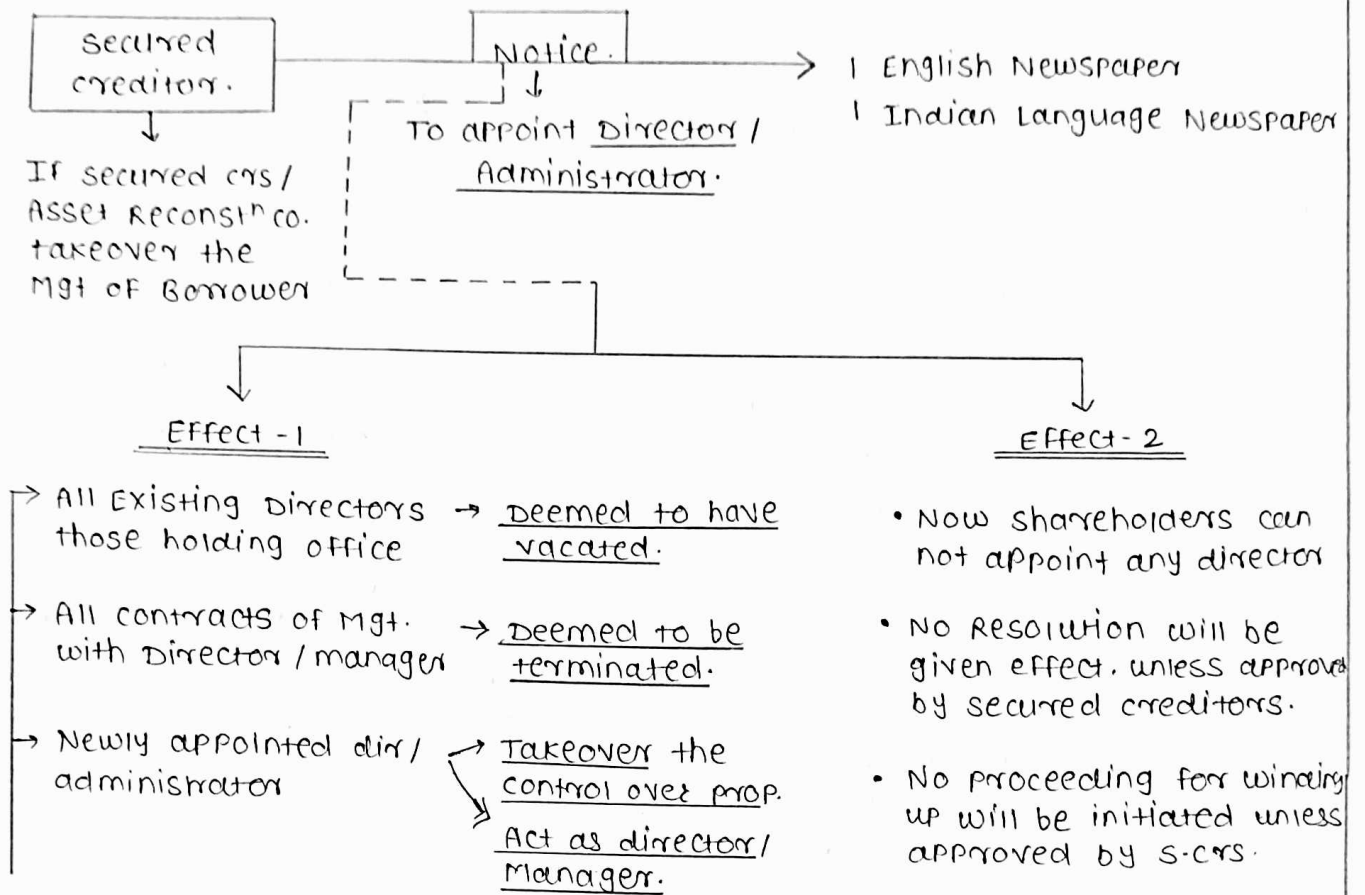
SECTION 13 Enforcement of security interest



section 14 - CMM / DM to assist secured creditor in taking possession of secured Asset



Section 15 - Manner and Effect of takeover of Management.



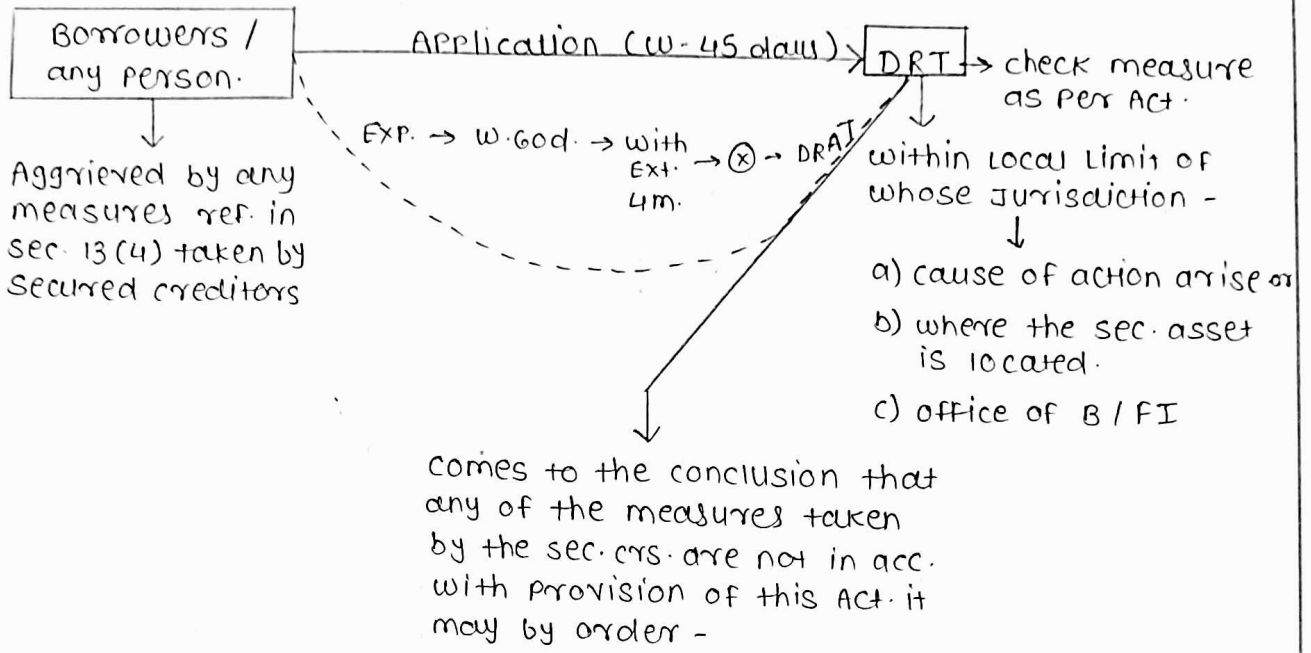
Section 16 - No compensation to directors for loss of office.

No MD / Dir / Manager Person in charge of mgt of the business of the Borrower.



Entitled to any compensation for loss of office or premature termination.

Section 17 - Application Against Measures to Recover Secured Debts.

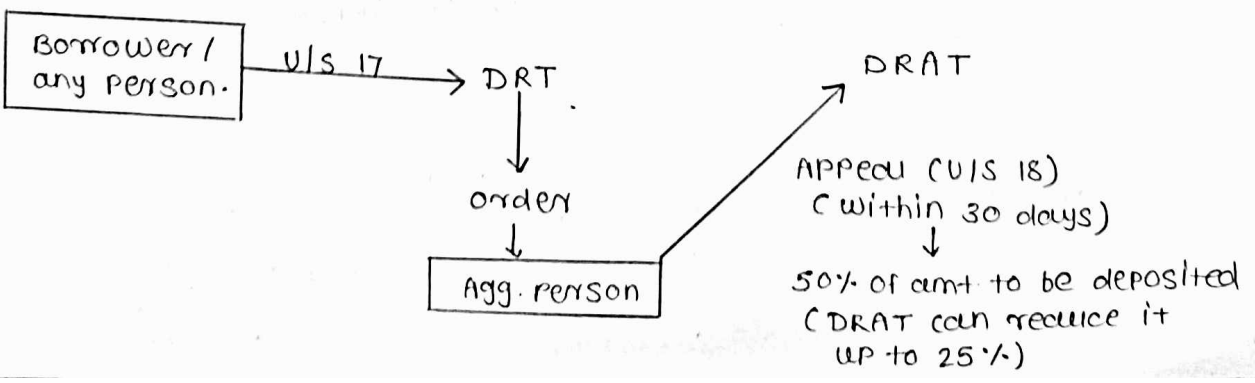


- Declare the measure u/s 13 → Invalid.
- Restore the possession of the area or management of the co.
- Pass such other direction as it may consider appropriate.

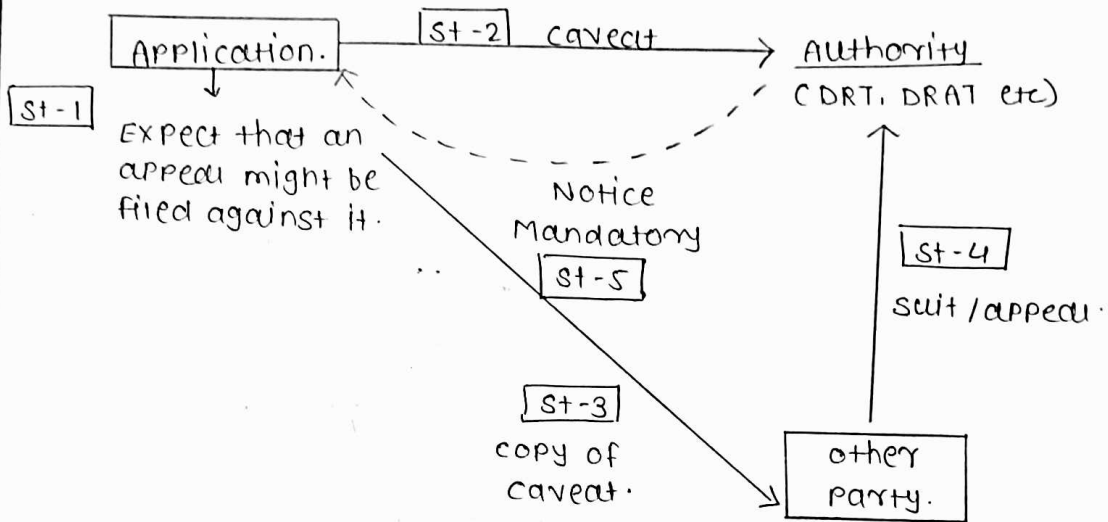
U/S 17 : DRT can examine validity of any lease / tenancy ?

- Lease : valid / expired.
- valid as per TOPA
- AS per terms of mortgage
- created after notice of default

Section 18 - Appeal to Appellate Tribunal



Section 18C - Right to Lodge a caveat



→ Notice of caveat shall serve → by Reg Post, acknowledgement deliv. on the person by whom appⁿ has been made.

→ The caveat shall not remain in force after the expiry of the period of 90 days from the date on which it was lodge.

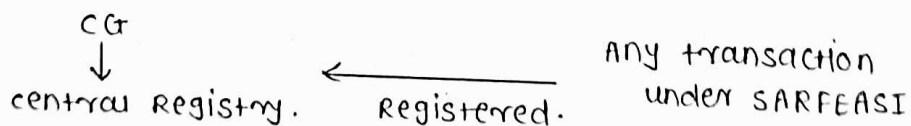
Section 19 - Rights of Borrower to Receive Compensation

If it is held that the possession of sec. asset was obtained by sec. creditor against law



Borrower has the right to receive compensation.

Section 20 - Central Registry



- sec. 21
- Head office - at such place CG may decide
 - CG may define territorial limit within which an office of central Registry may exercise its function.
 - CG appoint a person for the purpose of registration of transaction relating to securitisation, reconstrⁿ of FA & security int. created over properties to be known as central Registry

case laws.

Case Law	Judgement
<u>Mardia chemicals Ltd v UOI</u>	SC held that though some of the provision of the Act 2002 were a bit harsh for some of the borrowers but on those grounds the impugned provisions of the <u>Act can not be said to unconstitutional</u>
<u>Pandurang Ganpati chaugule vs Vishwasrao Patil Murgud Sahakari Bank Limited.</u>	co-operative bank as well as multi state co-operative bank. they are <u>Banks under SARFAESI Act</u>
<u>Canara Bank v Sri Chandramoulishwar SPG. Mills Pvt Ltd.</u>	will <u>insolvency and Bankruptcy code 2016 prevails over SARFAESI Act 2002</u> → yes!