

Debt Recovery & SARFAESI

Lesson 24

KEY CONCEPTS

■ Securitisation ■ Asset reconstruction Company ■ Financial assets ■ Financial Lease ■ Borrower ■ Security Interest ■ Stressed Assets ■ Non-performing asset ■ Financial Institutions ■ Debt Recovery Tribunal

Learning Objectives

To understand:

- The legal frame work provided for law regulating securitisation and reconstruction of financial assets
- SARFAESI Act, 2002
- The important definitions and concepts
- To familiarize the students with the legal frame work pertaining to debt recovery.

Lesson Outline

- Introduction
- SARFAESI Act, 2002
- Asset Reconstruction Companies
- Measures for asset reconstruction
- Enforcement of security interest by creditors
- Central Registry
- Debt Recovery
- Debt Recovery Tribunals (DRT)
- Application to the DRT
- Modes of Recovery
- Lesson Round-Up
- Test Yourself
- List of Further Readings
- Other References (Including Websites/Other Links)

REGULATORY FRAMEWORK

- Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002
- Recovery of Debts due to Banks and Financial Institutions Act, 1993

An Act to regulate securitisation and reconstruction of financial assets and enforcement of security interest and to provide for a Central database of security interests created on property rights, and for matters connected therewith or incidental thereto.

INTRODUCTION

In the traditional lending process, a bank makes a loan, maintaining it as an asset on its balance sheet, collecting principal and interest, and monitoring whether there is any deterioration in borrower's creditworthiness.

This requires a bank to hold assets till repayment of loan. The funds of the bank are blocked in these loans and to meet its growing fund requirements, a bank has to raise additional funds from the market. Securitisation is a way of unlocking these blocked funds.

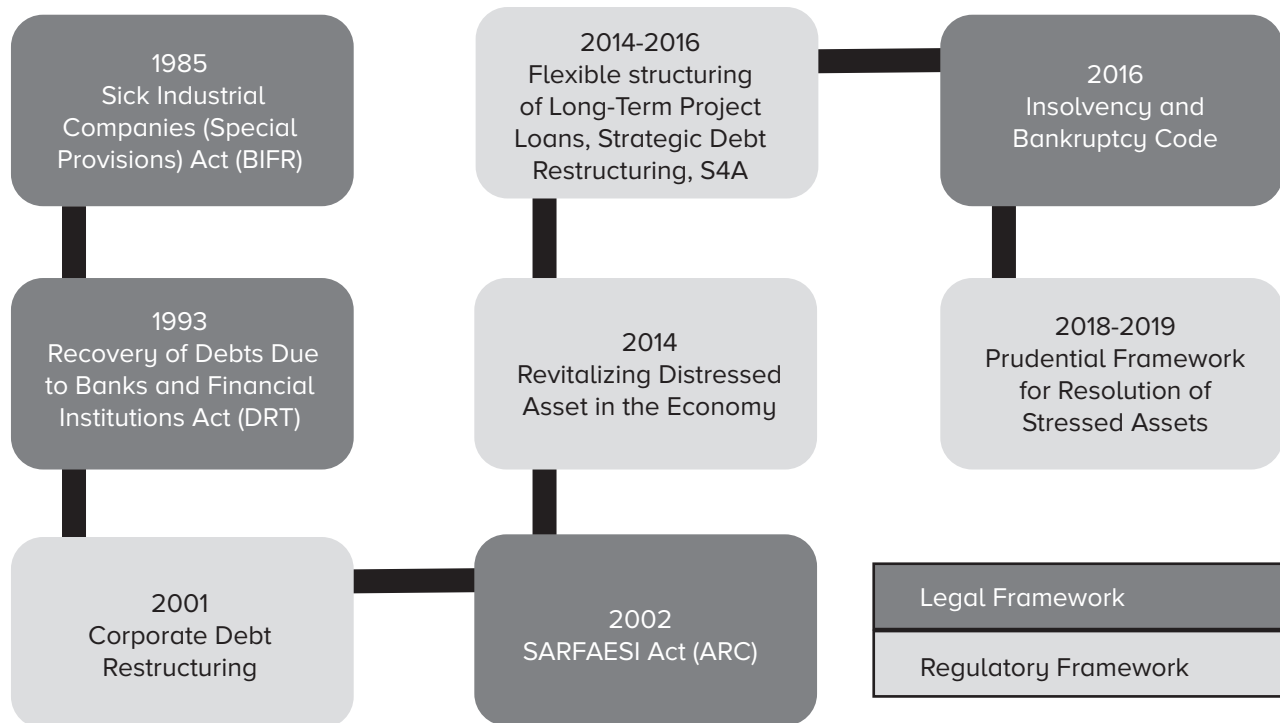
The process leads to the creation of financial instruments that represent ownership interest in, or are secured by a segregated income producing asset or pool of assets. The pool of assets collateralises securities. These assets are generally secured by personal or real property (e.g. automobiles, real estate, or equipment loans), but in some cases are unsecured (e.g. credit card debt, consumer loans).

EVOLUTION OF REGULATORY FRAMEWORKS FOR HANDLING OF STRESSED ASSETS

A sound banking system is an essential requirement for maintaining financial stability in any country. One of the parameters of soundness is the level of non-performing assets (NPAs) in the banking system. In this context, it is common knowledge that the Indian banking system has often been saddled with high levels of NPAs which has been affecting the profitability and eventually the capital position of banks, especially the public sector banks (PSBs). This has been one of the factors which has led to some level of risk aversion among the banks and thereby deceleration of credit growth in the country in the recent years.

In view of its importance for the health of the banking system, management of NPAs has been attracting attention from the RBI and the Government for quite some time now. The first such significant legal framework to manage the stress in the banking system was the Sick Industrial Companies (Special Provisions) Act, 1985 (SICA). It was enacted for timely detection of sickness in industrial units and to undertake speedy action to resolve the insolvency of sick units through a Board of experts, namely the Board for Industrial and Financial Reconstruction (BIFR). SICA failed to meet its objective due to delays caused by legal suits and lack of timely decisions by the stakeholders and, therefore, was finally repealed in the year 2003. Related provisions of this Act were added in the Companies Act, 2013 and the National Company Law Tribunal (NCLT) took over the functions of BIFR. Insolvency resolution frameworks as a tool for handling stressed assets culminated into the Insolvency and Bankruptcy Code, 2016 (IBC). IBC was enacted as a single code to consolidate the existing frameworks for insolvency and bankruptcy and has emerged as a significant tool for recovery.

Other noteworthy legislations which aimed to facilitate recovery of debt for banks and Financial Institutions include the Recovery of Debt due to Banks and Financial Institutions Act, 1993 (RDDBFI Act) and the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, 2002. The former Act attempts to provide speedy recovery through tribunals, namely, Debt Recovery Tribunals (DRTs) whereas the latter allows secured creditors to enforce their security interest without the intervention of the courts. The Act also led to creation of asset reconstruction companies (ARCs) as a permanent institutional arrangement to handle the stressed financial assets of banks and other financial institutions.



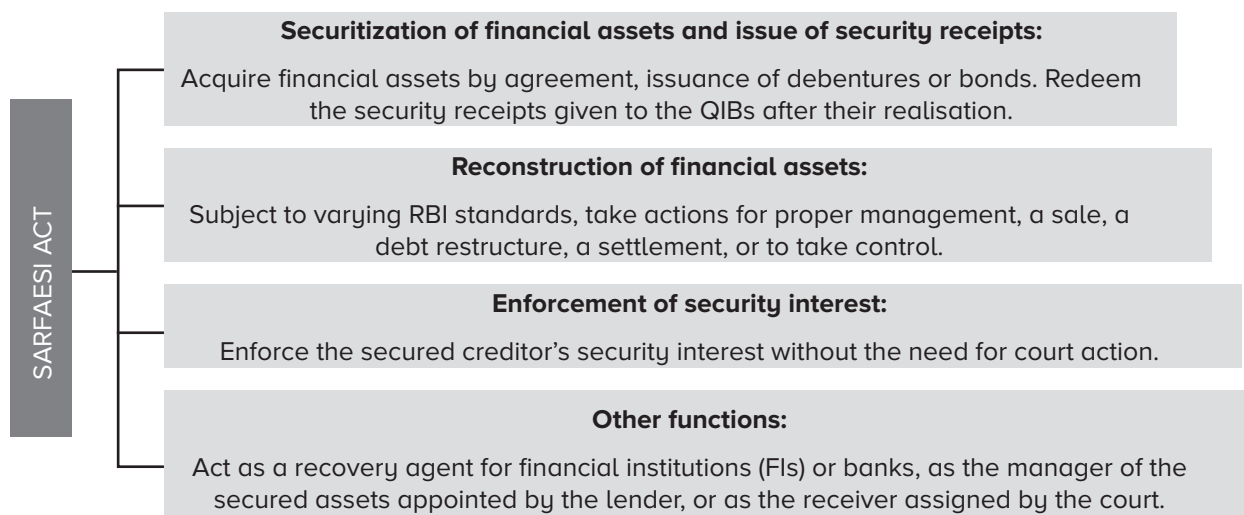
Source: Report of the Committee to Review the Working of Asset Reconstruction Companies, September 2021.

REGULATION OF SECURITISATION AND RECONSTRUCTION OF FINANCIAL ASSETS OF BANKS AND FINANCIAL INSTITUTIONS

Introduction

The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Ordinance, 2002 was promulgated on the 21st June, 2002 to regulate securitisation and reconstruction of financial assets and enforcement of security interest and for matters connected therewith or incidental thereto. The provisions of the Ordinance enabled banks and financial institutions to manage problems of liquidity, asset liability mismatches and improvement in recovery by exercising powers to take possession of securities, sell them and reduce non-performing assets by adopting measures for recovery or reconstruction.

The SARFAESI Act, 2002 has empowered the Banks and Financial Institutions with vast power to enforce the securities charged to them. The Banks can now issue notices to the defaulters to pay up the dues and if they fail to do so within 60 days of the date of the notice, the banks can take over the possession of assets like factory, land and building, plant and machinery etc. charged to them including the right to transfer by way of lease, assignment or sale and realize the secured assets. In case the borrower refuses peaceful handing over of the secured assets, the bank can also file an application before the District Magistrate or Chief Metropolitan Magistrate for taking possession of assets. The Banks can also take over the management of business of the borrower. The bank in addition can appoint any person to manage the secured assets the possession of which has been taken over by the bank. Banks can package and sell loans via “Securitisation” and the same can be traded in the market like bonds and shares.



CONSTITUTIONAL VALIDITY OF THE SARFAESI ACT

The SARFAESI Act, 2002 was challenged in various courts on grounds that it was loaded heavily in favour of lenders, giving little chance to the borrowers to explain their views once recovery process is initiated under the legislation. Leading the charge against the said Act was Mardia Chemicals in its plea against notice served by ICICI Bank. The Government had, however, argued that the legislation would bring about a financial discipline and reduce the burden of Non-Performing Assets (NPAs) of banks and institutions.

In **Mardia Chemicals Ltd. v. UOI [2004] 59 CLA 380 (SC)**, it was urged by the petitioner that:

- there was no occasion to enact such a draconian legislation to find a short-cut to realise non-performing assets ('NPAs') without their ascertainment when there already existed the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 ('Recovery of Debt Act') for doing so;
- no provision had been made to take into account lenders liability;
- that the mechanism for recovery under Section 13 does not provide for an adjudicatory forum of inter se disputes between lender and borrower; and
- that the appeal provisions were illusory because the appeal would be maintainable after possession of the property or management of the property was taken over or the property sold and the appeal is not entertainable unless 75 per cent of the amount claimed is deposited with the Debts Recovery Tribunal ('DRT').

The Hon'ble Supreme Court held that though some of the provisions of the Act 2002 were a bit harsh for some of the borrowers but on those grounds the impugned provisions of the Act cannot be said to be unconstitutional in the view of the fact that the objective of the Act is to achieve speedier recovery of the dues declared as NPAs and better availability of capital liquidity and resources to help in growth of economy of the country and welfare of the people in general which would sub-serve the public interest.

The Supreme Court observed that the Act provides for a forum and remedies to the borrower to ventilate his grievances against the bank or financial institution, inter alia, with respect to the amount of the demand of the secured debt. After the notice is sent, the borrower may explain the reasons why the measures may or may not be taken under Sub-section (4) of Section 13. The creditor must apply its mind to the objections raised in reply to such notice. There must be meaningful consideration by the Court of the objections raised rather than to ritually reject them and to proceed to take drastic measures under Sub-section (4) of Section 13. The court held that such a procedure/mechanism was conducive to the principles of fairness and that such a procedure was also important from the point of view of the economy of the country and would serve the purpose in the growth of a healthy economy. It would serve as guidance to secured debtors in general in conducting their affairs.

The court opined that the fairness doctrine, cannot be stretched too far, such communication is only for the purposes of the secured debtors knowledge and cannot give an occasion to the secured debtor to resort to any proceeding, which are not permissible under the provisions of the Act. Thus, a secured debtor is not allowed to challenge the reasons communicated or challenge the action likely to be taken by the secured creditor at that point of time unless his right to approach the DRT as provided under section 17 matures on any measure having been taken under Sub-section (4) of Section 13.

Moreover, another safeguard is also available to a secured borrower within the framework of the Act i.e. to approach the DRT under Section 17 though such a right accrues only after measures are taken under Sub-section (1) of Section 13.

The Hon'ble Supreme Court, however, found that the requirement of deposit of 75 per cent of the amount claimed before entertaining an appeal (petition) under Section 17 is an oppressive, onerous and arbitrary condition and against all the canons of reasonableness. It held this provision to be invalid and ordered that it was liable to be struck down. The amount of deposit for making an appeal has since been reduced to 5% of the amount claimed, to keep it reasonable and also to check the genuineness of the Appellant.

It may be noted that-

Non-performing asset means an asset or account of a borrower, which has been classified by a bank or financial institution as sub-standard, doubtful or loss asset,—

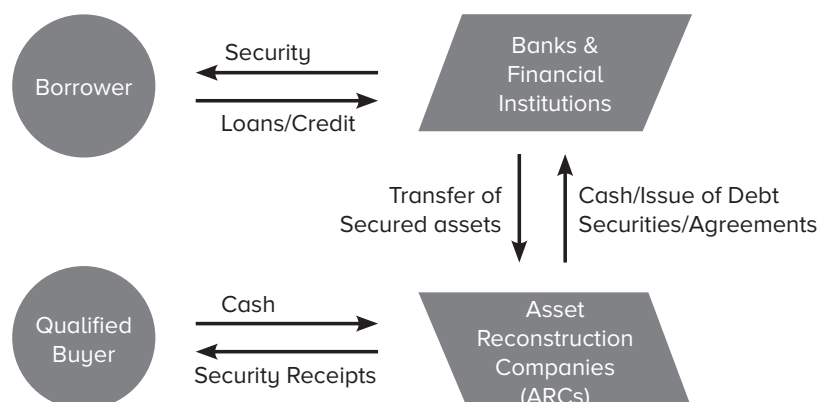
- (a) in case such bank or financial institution is administered or regulated by any authority or body established, constituted or appointed by any law for the time being in force, in accordance with the directions or guidelines relating to assets classifications issued by such authority or body;
- (b) in any other case, in accordance with the directions or guidelines relating to assets classifications issued by the Reserve Bank. [Section 2(1)(o)]

Asset Reconstruction Company

Asset reconstruction company means a company registered with Reserve Bank under section 3 of SARFAESI Act for the purposes of carrying on the business of asset reconstruction or securitisation, or both.

The problem of non-performing loans created due to systematic banking crisis world over has become acute. Focused measures to help the banking systems to realise its NPAs has resulted into creation of specialised bodies called asset management companies which in India have been named asset reconstruction companies ('ARCs'). The buying of impaired assets from banks or financial institutions by ARCs will make their balance sheets cleaner and they will be able to use their time, energy and funds for development of their business. ARCs may be able to mix up their assets, both good and bad, in such a manner to make them saleable.

The main objective of asset reconstruction company ('ARC') is to act as agent for any bank or financial institution for the purpose of recovering their dues from the borrowers on payment of fees or charges, to act as manager of the borrowers' asset taken over by banks, or financial institution, to act as the receiver of properties of any bank or financial institution and to carry on such ancillary or incidental business with the prior approval of Reserve Bank wherever necessary. If an ARC carries on any business other than the business of asset reconstruction or securitisation or the business mentioned above, it shall cease to carry on any such business within one year of doing such other business.

Process under SARFAESI Act**Registration of asset reconstruction companies**

As per Section 3(1) of the Act, no asset reconstruction company shall commence or carry on the business of securitisation or asset reconstruction without—

- a. obtaining a certificate of registration granted under this section; and
- b. having net owned fund of not less than one crore rupees or such other higher amount as the Reserve Bank, may, by notification, specify;

Provided that the Reserve Bank may, by notification, specify different amounts of owned fund for different class or classes of asset reconstruction companies:

The requirement of net owned funds for ARCs has been increased to Rs 300 crore on an ongoing basis from the existing requirement of Rs 100 crore.

However, the RBI has provided a glide path for the existing ARCs to achieve the minimum required NOF of Rs 300 crore — Rs 200 crore by March 31, 2024; and Rs 300 crore by March 31, 2025. (RBI/2022-23/128 DoR.SIG. FIN.REC.75/26.03.001/2022-23 dt October 11, 2022)

Provided further that an asset reconstruction company, existing on the commencement of this Act, shall make an application for registration to the Reserve Bank before the expiry of six months from such commencement and notwithstanding anything contained in this sub-section may continue to carry on the business of securitisation or asset reconstruction until a certificate of registration is granted to it or, as the case may be, rejection of application for registration is communicated to it.

Every asset reconstruction company shall make an application for registration to the Reserve Bank in such form and manner as it may specify.

Sub-clause 3 states that the Reserve Bank may, for the purpose of considering the application for registration of an asset reconstruction company to commence or carry on the business of securitisation or asset reconstruction, as the case may be, require to be satisfied, by an inspection of records or books of such asset reconstruction company, or otherwise, that the following conditions are fulfilled, namely:—

- i. that the asset reconstruction company has not incurred losses in any of the three preceding financial years;
- ii. that such asset reconstruction company has made adequate arrangements for realisation of the financial assets acquired for the purpose of securitisation or asset reconstruction and shall be able to pay periodical returns and redeem on respective due dates on the investments made in the company by the qualified buyers or other persons;

- iii. that the directors of asset reconstruction company have adequate professional experience in matters related to finance, securitisation and reconstruction;
- iv. that any of its directors has not been convicted of any offence involving moral turpitude;
- v. that a sponsor of an asset reconstruction company is a fit and proper person in accordance with the criteria as may be specified in the guidelines issued by the Reserve Bank for such persons;
- vi. that asset reconstruction company has complied with or is in a position to comply with prudential norms specified by the Reserve Bank;
- vii. that asset reconstruction company has complied with one or more conditions specified in the guidelines issued by the Reserve Bank for the said purpose.

The Reserve Bank may, after being satisfied that the conditions specified in sub-section (3) are fulfilled, grant a certificate of registration to the asset reconstruction company to commence or carry on business of securitisation or asset reconstruction, subject to such conditions, which it may consider, fit to impose.

The Reserve Bank may reject the application made under sub-section (2) if it is satisfied that the conditions specified in sub-section (3) are not fulfilled:

Provided that before rejecting the application, the applicant shall be given a reasonable opportunity of being heard.

Every asset reconstruction company shall obtain prior approval of the Reserve Bank for any substantial change in its management including appointment of any director on the board of directors of the asset reconstruction company or managing director or chief executive officer thereof or change of location of its registered office or change in its name:

Provided that the decision of the Reserve Bank, whether the change in management of an asset reconstruction company is a substantial change in its management or not, shall be final.

Explanation.—For the purposes of this section, the expression “substantial change in management” means the change in the management by way of transfer of shares or change affecting the sponsorship in the company by way of transfer of shares or amalgamation or transfer of the business of the company.

It may be noted that-

Asset reconstruction means acquisition by any asset reconstruction company of any right or interest of any bank or financial institution in any financial assistance for the purpose of realisation of such financial assistance; [Section 2(1)(b)]

Asset reconstruction company means a company registered with Reserve Bank under section 3 for the purposes of carrying on the business of asset reconstruction or securitisation, or both; [Section 2(1)(ba)]

Bank means –

- i) a banking company; or
- ii) a corresponding new bank; or
- iii) the State Bank of India; or
- iv) a subsidiary bank; or
- iva) a multi-State co-operative bank; or
- v) such other bank which the Central Government may, by notification, specify for the purposes of this Act. [Section 2(1)(c)]

Securitisation means acquisition of financial assets by any asset reconstruction company from any originator, whether by raising of funds by such asset reconstruction company from qualified buyers by issue of security receipts representing undivided interest in such financial assets or otherwise; [Section 2(1)(z)]

In 2013, the government amended the Act to include co-operative banks formally under the definition of banks eligible to use it. However, petitions were filed questioning the authority of the notification and the power of Parliament to amend the SARFAESI Act.

The Supreme Court vide order dated 05th May, 2020 in the matter of '**Pandurang Ganpati Chaugule vs. Vishwasrao Patil Murgud Sahakari Bank Limited**' held that co-operative are banks under the State legislation and multi-State co-operative banks are 'banks' under section 2(1)(c) of SARFAESI Act, 2002. The order also stated that it is permissible for the Parliament to enact the law to provide recovery procedures for bank dues that have been done by providing speedy recovery of secured interest without intervention of the court/tribunal.

This move helps the co-operative banks to avoid inordinate delays in the recovery of their bad loans due to the involvement of civil courts and co-operative tribunals. The Indian banking system has 1,544 urban co-operative banks (UCBs) and 96,248 rural co-operative banks, with substantial deposits from retail investors. Considering their size, for the smooth functioning of these co-operative banks, speedy recovery of defaulting loans is critical.

Cancellation of certificate of registration

Section 4 provides for cancellation of certificate of registration. It states that Reserve Bank may cancel a certificate of registration granted to an asset reconstruction company, if such company—

- a. ceases to carry on the business of securitisation or asset reconstruction; or
- b. ceases to receive or hold any investment from a qualified buyer; or
- c. has failed to comply with any conditions subject to which the certificate of registration has been granted to it; or
- d. at any time fails to fulfil any of the conditions referred to in clauses (a) to (g) of sub-section (3) of section 3; or
- e. fails to—
 - i. comply with any direction issued by the Reserve Bank under the provisions of this Act; or
 - ii. maintain accounts in accordance with the requirements of any law or any direction or order issued by the Reserve Bank under the provisions of this Act; or
 - iii. submit or offer for inspection its books of account or other relevant documents when so demanded by the Reserve Bank; or
 - iv. obtain prior approval of the Reserve Bank required under sub-section (6) of section 3:

Provided that before cancelling a certificate of registration on the ground that the asset reconstruction company has failed to comply with the provisions of clause (c) or has failed to fulfil any of the conditions referred to in clause (d) or sub-clause (iv) of clause (e), the Reserve Bank, unless it is of the opinion that the delay in cancelling the certificate of registration granted under sub-section (4) of section 3 shall be prejudicial to the public interest or the interests of the investors or the asset reconstruction company, shall give an opportunity to such company on such terms as the Reserve Bank may specify for taking necessary steps to comply with such provisions or fulfilment of such conditions.

Section 4(2) states that an asset reconstruction company aggrieved by the order of cancellation of certificate of registration may prefer an appeal, within a period of thirty days from the date on which such order of cancellation is communicated to it, to the Central Government:

Provided that before rejecting an appeal such company shall be given a reasonable opportunity of being heard.

Section 4(3) states an asset reconstruction company, which is holding investments of qualified buyers] and whose application for grant of certificate of registration has been rejected or certificate of registration has

been cancelled shall, notwithstanding such rejection or cancellation be deemed to be an asset reconstruction company until it repays the entire investments held by it (together with interest, if any) within such period as the Reserve Bank may direct.

Acquisition of rights or interest in financial assets

Section 5 states that, notwithstanding anything contained in any agreement or any other law for the time being in force, any asset reconstruction company may acquire financial assets of any bank or financial institution—

- (a) by issuing a debenture or bond or any other security in the nature of debenture, for consideration agreed upon between such company and the bank or financial institution, incorporating therein such terms and conditions as may be agreed upon between them; or
- (b) by entering into an agreement with such bank or financial institution for the transfer of such financial assets to such company on such terms and conditions as may be agreed upon between them.

Any document executed by any bank or financial institution under sub-section (1) in favour of the asset reconstruction company acquiring financial assets for the purposes of asset reconstruction or securitisation shall be exempted from stamp duty in accordance with the provisions of section 8F of the Indian Stamp Act, 1899:

Provided that the provisions of this sub-section shall not apply where the acquisition of the financial assets by the asset reconstruction company is for the purposes other than asset reconstruction or securitisation.

If the bank or financial institution is a lender in relation to any financial assets acquired under sub-section (1) by the asset reconstruction company, such asset reconstruction company shall, on such acquisition, be deemed to be the lender and all the rights of such bank or financial institution shall vest in such company in relation to such financial assets.

If the bank or financial institution is holding any right, title or interest upon any tangible asset or intangible asset to secure payment of any unpaid portion of the purchase price of such asset or an obligation incurred or credit otherwise provided to enable the borrower to acquire the tangible asset or assignment or licence of intangible asset, such right, title or interest shall vest in the asset reconstruction company on acquisition of such assets under sub-section (1).

Unless otherwise expressly provided by this Act, all contracts, deeds, bonds, agreements, powers- of-attorney, grants of legal representation, permissions, approvals, consents or no-objections under any law or otherwise and other instruments of whatever nature which relate to the said financial asset and which are subsisting or having effect immediately before the acquisition of financial asset under sub-section (1) and to which the concerned bank or financial institution is a party or which are in favour of such bank or financial institution shall, after the acquisition of the financial assets, be of as full force and effect against or in favour of the asset reconstruction company, as the case may be, and may be enforced or acted upon as fully and effectually as if, in the place of the said bank or financial institution, asset reconstruction company, as the case may be, had been a party thereto or as if they had been issued in favour of asset reconstruction company, as the case may be.

If, on the date of acquisition of financial asset under sub-section (1), any suit, appeal or other proceeding of whatever nature relating to the said financial asset is pending by or against the bank or financial institution, save as provided in the third proviso to sub-section (1) of section 15 of the Sick Industrial Companies (Special Provisions) Act, 1985, the same shall not abate, or be discontinued or be, in any way, prejudicially affected by reason of the acquisition of financial asset by the asset reconstruction company, as the case may be, but the suit, appeal or other proceeding may be continued, prosecuted and enforced by or against the asset reconstruction company, as the case may be.

On acquisition of financial assets under sub-section (1), the asset reconstruction company, may with the consent of the originator, file an application before the Debts Recovery Tribunal or the Appellate Tribunal or any court or other Authority for the purpose of substitution of its name in any pending suit, appeal or other proceedings and on receipt of such application, such Debts Recovery Tribunal or the Appellate Tribunal or court or Authority shall pass orders for the substitution of the asset reconstruction company in such pending suit, appeal or other proceedings.

It may be noted that-

Financial asset means debt or receivables and includes—

- i) a claim to any debt or receivables or part thereof, whether secured or unsecured; or
- ii) any debt or receivables secured by, mortgage of, or charge on, immovable property; or
- iii) a mortgage, charge, hypothecation or pledge of movable property; or
- iv) any right or interest in the security, whether full or part underlying such debt or receivables; or
- v) any beneficial interest in property, whether movable or immovable, or in such debt, receivables, whether such interest is existing, future, accruing, conditional or contingent; or
- (va) any beneficial right, title or interest in any tangible asset given on hire or financial lease or conditional sale or under any other contract which secures the obligation to pay any unpaid portion of the purchase price of such asset or an obligation incurred or credit otherwise provided to enable the borrower to acquire such tangible asset; or
- (vb) any right, title or interest on any intangible asset or licence or assignment of such intangible asset, which secures the obligation to pay any unpaid portion of the purchase price of such intangible asset or an obligation incurred or credit otherwise extended to enable the borrower to acquire such intangible asset or obtain licence of the intangible asset; or
- vi) any financial assistance. [Section 2(1)(l)]

Financial institution means—

- i) a public financial institution within the meaning of section 4A of the Companies Act, 1956;
- ii) any institution specified by the Central Government under sub-clause (ii) of clause (h) of section 2 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993;
- iii) the International Finance Corporation established under the International Finance Corporation (Status, Immunities and Privileges) Act, 1958;
- iiia) a debenture trustee registered with the Board and appointed for secured debt securities;
- iiib) asset reconstruction company, whether acting as such or managing a trust created for the purpose of securitisation or asset reconstruction, as the case may be;
- iv) any other institution or non-banking financial company as defined in clause (f) of section 45-I of the Reserve Bank of India Act, 1934 (2 of 1934), which the Central Government may, by notification, specify as financial institution for the purposes of this Act. [Section 2(1)(n)]

Transfer of pending applications to any one of Debts Recovery Tribunals in certain cases

Section 5A stipulates that if any financial asset, of a borrower acquired by an asset reconstruction company, comprise of secured debts of more than one bank or financial institution for recovery of which such banks or financial institutions has filed applications before two or more Debts Recovery Tribunals the asset reconstruction company may file an application to the Appellate Tribunal having jurisdiction over any of such Tribunals in which such applications are pending for transfer of all pending applications to any one of the Debts Recovery Tribunals as it deems fit.

On receipt of such application for transfer of all pending applications under sub-section (1), the Appellate Tribunal may, after giving the parties to the application an opportunity of being heard, pass an order for transfer of the pending applications to any one of the Debts Recovery Tribunals.

Notwithstanding anything contained in the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, any order passed by the Appellate Tribunal under sub-section (2) shall be binding on all the Debts Recovery

Tribunals referred to in sub-section (1) as if such order had been passed by the Appellate Tribunal having jurisdiction on each such Debts Recovery Tribunal.

Any recovery certificate, issued by the Debts Recovery Tribunal to which all the pending applications are transferred under sub-section (2), shall be executed in accordance with the provisions contained in sub-section (23) of section 19 and other provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 shall, accordingly, apply to such execution.

It may be noted that-

Debt shall have the meaning assigned to it in clause (g) of section 2 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993) and includes –

- (a) unpaid portion of the purchase price of any tangible asset given on hire or financial lease or conditional sale or under any other contract;
- (b) any right, title or interest on any intangible asset or licence or assignment of such intangible asset, which secures the obligation to pay any unpaid portion of the purchase price of such intangible asset or an obligation incurred or credit otherwise extended to enable any borrower to acquire the intangible asset or obtain licence of such asset; [Section 2(1)(ha)]

Debts Recovery Tribunal means the Tribunal established under sub-section (1) of section 3 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993; name changed Recovery of Debts and Bankruptcy Act, 1993 [Section 2(1)(i)]

Notice to obligor and discharge of obligation of such obligor

Section 6 of this Act states that the bank or financial institution may, if it considers appropriate, give a notice of acquisition of financial assets by any asset reconstruction company, to the concerned obligor and any other concerned person and to the concerned registering authority including Registrar of Companies in whose jurisdiction the mortgage, charge, hypothecation, assignment or other interest created on the financial assets had been registered.

Where a notice of acquisition of financial asset under sub-section (1) is given by a bank or financial institution, the obligor, on receipt of such notice, shall make payment to the concerned asset reconstruction company, as the case may be, and payment made to such company in discharge of any of the obligations in relation to the financial asset specified in the notice shall be a full discharge to the obligor making the payment from all liability in respect of such payment.

Where no notice of acquisition of financial asset under sub-section (1) is given by any bank or financial institution, any money or other properties subsequently received by the bank or financial institution, shall constitute monies or properties held in trust for the benefit of and on behalf of the asset reconstruction company, as the case may be, and such bank or financial institution shall hold such payment or property which shall forthwith be made over or delivered to asset reconstruction company, as the case may be, or its agent duly authorised in this behalf.

Issue of security by raising of receipts or funds by asset reconstruction company

Without prejudice to the provisions contained in the Companies Act, the Securities Contracts (Regulation) Act, 1956 and the Securities and Exchange Board of India Act, 1992, any asset reconstruction company, may, after acquisition of any financial asset under sub-section (1) of section 5, offer security receipts to qualified institute buyers or such other category of investors including non-institutional investors as may be specified by the Reserve Bank in consultation with the Board, from time to time, for subscription in accordance with the provisions of those Acts.

A asset reconstruction company may raise funds from the qualified buyers by formulating schemes for acquiring financial assets and shall keep and maintain separate and distinct accounts in respect of each such scheme for every financial asset acquired out of investments made by a qualified buyer and ensure that realisations of

such financial asset is held and applied towards redemption of investments and payment of returns assured on such investments under the relevant scheme.

The scheme for the purpose of offering security receipts under sub-section (1) or raising funds under sub-section (2), may be in the nature of a trust to be managed by the asset reconstruction company, and the asset reconstruction company shall hold the assets so acquired or the funds so raised for acquiring the assets, in trust for the benefit of the qualified buyers holding the security receipts or from whom the funds are raised.

The provisions of the Indian Trusts Act, 1882 shall, except in so far as they are inconsistent with the provisions of this Act, apply with respect to the trust referred to in clause (a) above.

In the event of non-realisation under sub-section (2) of financial assets, the qualified buyers of an asset reconstruction company, holding security receipts of not less than seventy-five percent of the total value of the security receipts issued under a scheme by such company, shall be entitled to call a meeting of all the qualified buyers and every resolution passed in such meeting shall be binding on the company.

The qualified buyers shall, at a meeting called under sub-section (3), follow the same procedure, as nearly as possible as is followed at meetings of the board of directors of the asset reconstruction company, as the case may be.

It may be noted that-

Qualified buyer means a financial institution, insurance company, bank, state financial corporation, state industrial development corporation, trustee or asset reconstruction company which has been granted a certificate of registration under sub-section (4) of section 3 or any asset management company making investment on behalf of mutual fund or a foreign institutional investor registered under the Securities and Exchange Board of India Act, 1992 or regulations made thereunder, any category of non-institutional investors as may be specified by the Reserve Bank under sub-section (1) of section 7 or any other body corporate as may be specified by the Board. [Section 2(1)(u)]

How will an asset reconstruction company raise fund from qualified buyers?

As per Section 7(2) of SARFAESI Act, an asset reconstruction company may raise funds from the qualified buyers by formulating schemes for acquiring financial assets and shall keep and maintain separate and distinct accounts in respect of each such scheme for every financial asset acquired out of investments made by a qualified buyer and ensure that realisations of such financial asset is held and applied towards redemption of investments and payment of returns assured on such investments under the relevant scheme.

Exemption from registration of security receipt

Section 8 of the Act contains exemption from registration of security receipt. Notwithstanding anything contained in sub-section (1) of section 17 of the Registration Act, 1908,—

- (a) any security receipt issued by the asset reconstruction company, as the case may be, under sub-section (1) of section 7, and not creating, declaring, assigning, limiting or extinguishing any right, title or interest, to or in immovable property except in so far as it entitles the holder of the security receipt to an undivided interest afforded by a registered instrument; or
- (b) any transfer of security receipts, shall not require compulsory registration.

It may be noted that –

Security receipt means a receipt or other security, issued by a asset reconstruction company to any qualified buyer pursuant to a scheme, evidencing the purchase or acquisition by the holder thereof, of an undivided right, title or interest in the financial asset involved in securitisation; [Section 2(1)(zg)]

Measures for assets reconstruction

Without prejudice to the provisions contained in any other law for the time being in force, an asset reconstruction company may, for the purposes of asset reconstruction, provide for any one or more of the following measures, namely:—

- (a) the proper management of the business of the borrower, by change in, or take over of, the management of the business of the borrower;
- (b) the sale or lease of a part or whole of the business of the borrower;
- (c) rescheduling of payment of debts payable by the borrower;
- (d) enforcement of security interest in accordance with the provisions of this Act;
- (e) settlement of dues payable by the borrower;
- (f) taking possession of secured assets in accordance with the provisions of this Act;
- (g) conversion of any portion of debt into shares of a borrower company:

Provided that conversion of any part of debt into shares of a borrower company shall be deemed always to have been valid, as if the provisions of this clause were in force at all material times.

The Reserve Bank shall, for the purposes of sub-section (1), determine the policy and issue necessary directions including the direction for regulation of management of the business of the borrower and fees to be charged.

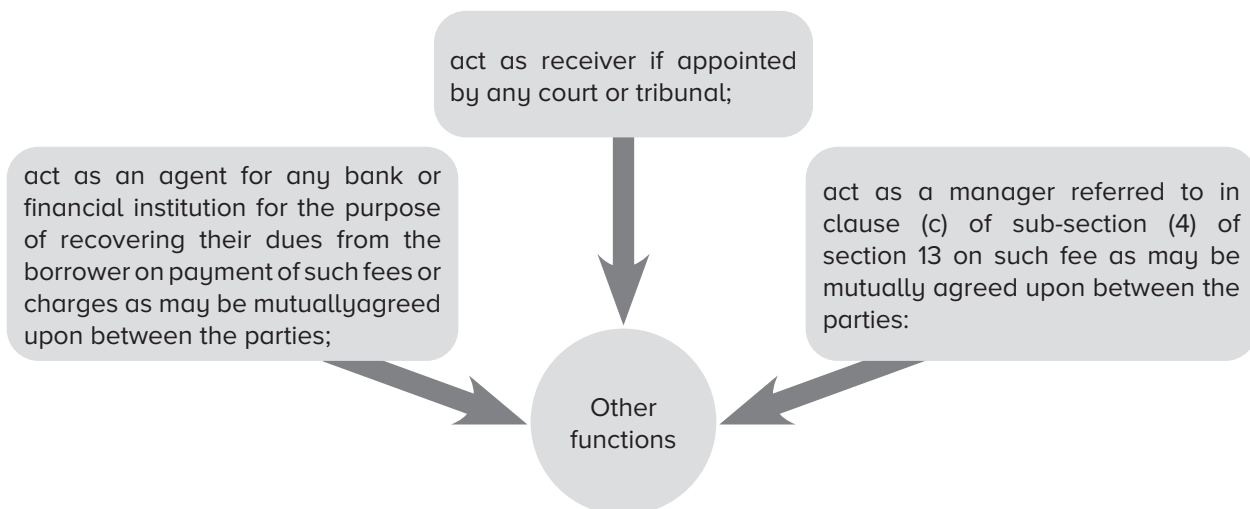
The asset reconstruction company shall take measures under sub-section (1) in accordance with policies and directions of the Reserve Bank determined under sub-section (2).

It may be noted that –

Borrower means any person who has been granted financial assistance by any bank or financial institution or who has given any guarantee or created any mortgage or pledge as security for the financial assistance granted by any bank or financial institution and includes a person who becomes borrower of an asset reconstruction company consequent upon acquisition by it of any rights or interest of any bank or financial institution in relation to such financial assistance or who has raised funds through issue of debt securities. [Section 2(1)(f)]

Other functions of asset reconstruction company

Section 10 of the acts states that, any asset reconstruction company registered under section 3 may—



Provided that no asset reconstruction company shall act as a manager if acting as such gives rise to any pecuniary liability.

Save as otherwise provided in sub-section (1), no asset reconstruction company which has been granted a certificate of registration under sub-section (4) of section 3, shall commence or carry on, without prior approval of the Reserve Bank, any business other than that of securitisation or asset reconstruction:

Provided that an asset reconstruction company which is carrying on, on or before the commencement of this Act, any business other than the business of securitisation or asset reconstruction or business referred to in sub-section (1), shall cease to carry on any such business within one year from the date of commencement of this Act.

Explanation.—For the purposes of this section, “asset reconstruction company” or “asset reconstruction company” does not include its subsidiary.

How are disputes relating to securitisation or reconstruction resolved?

According to Section 11 of SARFAESI Act, where any dispute relating to securitisation or reconstruction or non-payment of any amount due including interest arises amongst any of the parties, namely, the bank, or financial institution, or asset reconstruction company or qualified buyer, such dispute shall be settled by conciliation or arbitration as provided in the Arbitration and Conciliation Act, 1996, as if the parties to the dispute have consented in writing for determination of such dispute by conciliation or arbitration and the provisions of that Act shall apply accordingly.

Power of Reserve Bank to determine policy and issue directions

Under Section 12 of the Act, if the Reserve Bank is satisfied that in the public interest or to regulate financial system of the country to its advantage or to prevent the affairs of any asset reconstruction company from being conducted in a manner detrimental to the interest of investors or in any manner prejudicial to the interest of such asset reconstruction company, it is necessary or expedient so to do, it may determine the policy and give directions to all or any asset reconstruction company in matters relating to income recognition, accounting standards, making provisions for bad and doubtful debts, capital adequacy based on risk weights for assets and also relating to deployment of funds by the asset reconstruction company, as the case may be, and such company shall be bound to follow the policy so determined and the directions so issued.

Without prejudice to the generality of the power vested under sub-section (1), the Reserve Bank may give directions to any asset reconstruction company generally or to a class of asset reconstruction companies or to any asset reconstruction company in particular as to—

- (a) the type of financial asset of a bank or financial institution which can be acquired and procedure for acquisition of such assets and valuation thereof;
- (b) the aggregate value of financial assets which may be acquired by any asset reconstruction company;
- (c) the fee and other charges which may be charged or incurred for management of financial assets acquired by any asset reconstruction company;
- (d) transfer of security receipts issued to qualified buyers.

Power of Reserve Bank to call for statements and information

The Reserve Bank may at any time direct an asset reconstruction company to furnish it within such time as may be specified by the Reserve Bank, with such statements and information relating to the business or affairs of such asset reconstruction company (including any business or affairs with which such company is concerned) as the Reserve Bank may consider necessary or expedient to obtain for the purposes of this Act.

Power of Reserve Bank to carry out audit and inspection

The Reserve Bank may, for the purposes of this Act, carry out or caused to be carried out audit and inspection of an asset reconstruction company from time to time.

It shall be the duty of an asset reconstruction company and its officers to provide assistance and cooperation to the Reserve Bank to carry out audit or inspection under sub-section (1).

Where on audit or inspection or otherwise, the Reserve Bank is satisfied that business of an asset reconstruction company is being conducted in a manner detrimental to public interest or to the interests of investors in security receipts issued by such asset reconstruction company, the Reserve Bank may, for securing proper management of an asset reconstruction company, by an order—

- (a) remove the Chairman or any director or appoint additional directors on the board of directors of the asset reconstruction company; or
- (b) appoint any of its officers as an observer to observe the working of the board of directors of such asset reconstruction company:

Provided that no order for removal of Chairman or director under clause (a) shall be made except after giving him an opportunity of being heard.

It shall be the duty of every director or other officer or employee of the asset reconstruction company to produce before the person, conducting an audit or inspection under sub-section (1), all such books, accounts and other documents in his custody or control and to provide him such statements and information relating to the affairs of the asset reconstruction company as may be required by such person within the stipulated time specified by him.

ENFORCEMENT OF SECURITY INTEREST

Enforcement of security interest

According to Section 13, notwithstanding anything contained in section 69 or section 69A of the Transfer of Property Act, 1882, any security interest created in favour of any secured creditor may be enforced, without the intervention of the court or tribunal, by such creditor in accordance with the provisions of this Act.

Sub-clause 2 states that, where any borrower, who is under a liability to a secured creditor under a security agreement, makes any default in repayment of secured debt or any instalment thereof, and his account in respect of such debt is classified by the secured creditor as non-performing asset, then, the secured creditor may require the borrower by notice in writing to discharge in full his liabilities to the secured creditor within sixty days from the date of notice failing which the secured creditor shall be entitled to exercise all or any of the rights under sub-section (4).

Provided that—

- (i) the requirement of classification of secured debt as non-performing asset under this sub-section shall not apply to a borrower who has raised funds through issue of debt securities; and
- (ii) in the event of default, the debenture trustee shall be entitled to enforce security interest in the same manner as provided under this section with such modifications as may be necessary and in accordance with the terms and conditions of security documents executed in favour of the debenture trustee.

Sub-clause 3 states that, the notice referred to in sub-section (2) shall give details of the amount payable by the borrower and the secured assets intended to be enforced by the secured creditor in the event of non-payment of secured debts by the borrower.

Sub-clause 3A states that, if, on receipt of the notice under sub-section (2), the borrower makes any representation or raises any objection, the secured creditor shall consider such representation or objection and if the secured creditor comes to the conclusion that such representation or objection is not acceptable or tenable, he shall communicate within fifteen days of receipt of such representation or objection the reasons for non- acceptance of the representation or objection to the borrower:

Provided that the reasons so communicated or the likely action of the secured creditor at the stage of communication of reasons shall not confer any right upon the borrower to prefer an application to the Debts Recovery Tribunal under section 17 or the Court of District Judge under section 17A.

Sub-clause 4 states that, in case the borrower fails to discharge his liability in full within the period specified in sub-section (2), the secured creditor may take recourse to one or more of the following measures to recover his secured debt, namely:—

- a. take possession of the secured assets of the borrower including the right to transfer by way of lease, assignment or sale for realising the secured asset;
- b. take over the management of the business of the borrower including the right to transfer by way of lease, assignment or sale for realising the secured asset:

Provided that the right to transfer by way of lease, assignment or sale shall be exercised only where the substantial part of the business of the borrower is held as security for the debt:

Provided further that where the management of whole of the business or part of the business is severable, the secured creditor shall take over the management of such business of the borrower which is relatable to the security for the debt;

- c. appoint any person (hereafter referred to as the manager), to manage the secured assets the possession of which has been taken over by the secured creditor;
- d. require at any time by notice in writing, any person who has acquired any of the secured assets from the borrower and from whom any money is due or may become due to the borrower, to pay the secured creditor, so much of the money as is sufficient to pay the secured debt.

Sub-clause 5 states that, any payment made by any person referred to in clause (d) of sub-section (4) to the secured creditor shall give such person a valid discharge as if he has made payment to the borrower.

Sub-clause 5A states that, where the sale of an immovable property, for which a reserve price has been specified, has been postponed for want of a bid of an amount not less than such reserve price, it shall be lawful for any officer of the secured creditor, if so authorised by the secured creditor in this behalf, to bid for the immovable property on behalf of the secured creditor at any subsequent sale.

Sub-clause 5B states that, where the secured creditor, referred to in sub-section (5A), is declared to be the purchaser of the immovable property at any subsequent sale, the amount of the purchase price shall be adjusted towards the amount of the claim of the secured creditor for which the auction of enforcement of security interest is taken by the secured creditor, under sub-section (4) of section 13.

Sub-clause 5C states that, the provisions of section 9 of the Banking Regulation Act, 1949 shall, as far as may be, apply to the immovable property acquired by secured creditor under sub-section (5A).

Sub-clause 6 states that, any transfer of secured asset after taking possession thereof or take over of management under sub-section (4), by the secured creditor or by the manager on behalf of the secured creditor shall vest in the transferee all rights in, or in relation to, the secured asset transferred as if the transfer had been made by the owner of such secured asset.

Under section 13(7), where any action has been taken against a borrower under the provisions of sub-section (4), all costs, charges and expenses which, in the opinion of the secured creditor, have been properly incurred by him or any expenses incidental thereto, shall be recoverable from the borrower and the money which is received by the secured creditor shall, in the absence of any contract to the contrary, be held by him in trust,

to be applied, firstly, in payment of such costs, charges and expenses and secondly, in discharge of the dues of the secured creditor and the residue of the money so received shall be paid to the person entitled thereto in accordance with his rights and interests.

Under section 13(8), where the amount of dues of the secured creditor together with all costs, charges and expenses incurred by him is tendered to the secured creditor at any time before the date of publication of notice for public auction or inviting quotations or tender from public or private treaty for transfer by way of lease, assignment or sale of the secured assets,—

- i. the secured assets shall not be transferred by way of lease assignment or sale by the secured creditor; and
- ii. in case, any step has been taken by the secured creditor for transfer by way of lease or assignment or sale of the assets before tendering of such amount under this sub-section, no further step shall be taken by such secured creditor for transfer by way of lease or assignment or sale of such secured assets.

Under section 13(9), subject to the provisions of the Insolvency and Bankruptcy Code, 2016, in the case of financing of a financial asset by more than one secured creditors or joint financing of a financial asset by secured creditors, no secured creditor shall be entitled to exercise any or all of the rights conferred on him under or pursuant to sub-section (4) unless exercise of such right is agreed upon by the secured creditors representing not less than sixty per cent in value of the amount outstanding as on a record date and such action shall be binding on all the secured creditors:

Provided that in the case of a company in liquidation, the amount realised from the sale of secured assets shall be distributed in accordance with the provisions of section 529A of the Companies Act, 1956:

Provided further that in the case of a company being wound up on or after the commencement of this Act, the secured creditor of such company, who opts to realise his security instead of relinquishing his security and proving his debt under proviso to sub-section (1) of section 529 of the Companies Act, 1956, may retain the sale proceeds of his secured assets after depositing the workmen's dues with the liquidator in accordance with the provisions of section 529A of that Act:

Provided also that liquidator referred to in the second proviso shall intimate the secured creditor the workmen's dues in accordance with the provisions of section 529A of the Companies Act, 1956 and in case such workmen's dues cannot be ascertained, the liquidator shall intimate the estimated amount of workmen's dues under that section to the secured creditor and in such case the secured creditor may retain the sale proceeds of the secured assets after depositing the amount of such estimate dues with the liquidator:

Provided also that in case the secured creditor deposits the estimated amount of workmen's dues, such creditor shall be liable to pay the balance of the workmen's dues or entitled to receive the excess amount, if any, deposited by the secured creditor with the liquidator:

Provided also that the secured creditor shall furnish an undertaking to the liquidator to pay the balance of the workmen's dues, if any.

Explanation.—For the purposes of this sub-section,—

- a. “record date” means the date agreed upon by the secured creditors representing not less than sixty per cent in value of the amount outstanding on such date;
- b. “amount outstanding” shall include principal, interest and any other dues payable by the borrower to the secured creditor in respect of secured asset as per the books of account of the secured creditor.

Sub-clause 10 states that, where dues of the secured creditor are not fully satisfied with the sale proceeds of the secured assets, the secured creditor may file an application in the form and manner as may be prescribed to the Debts Recovery Tribunal having jurisdiction or a competent court, as the case may be, for recovery of the balance amount from the borrower.

Sub-clause 11 states that, without prejudice to the rights conferred on the secured creditor under or by this section, secured creditor shall be entitled to proceed against the guarantors or sell the pledged assets without first taking any of the measured specifics in clauses (a) to (d) of sub-section (4) in relation to the secured assets under this Act.

The rights of a secured creditor under this Act may be exercised by one or more of his officers authorised in this behalf in such manner as may be prescribed.

No borrower shall, after receipt of notice referred to in sub-section (2), transfer by way of sale, lease or otherwise (other than in the ordinary course of his business) any of his secured assets referred to in the notice, without prior written consent of the secured creditor.

It may be noted that-

Default means –

- (i) non-payment of any debt or any other amount payable by the borrower to any secured creditor consequent upon which the account of such borrower is classified as non-performing asset in the books of account of the secured creditor; or
- (ii) non-payment of any debt or any other amount payable by the borrower with respect to debt securities after notice of ninety days demanding payment of dues served upon such borrower by the debenture trustee or any other authority in whose favour security interest is created for the benefit of holders of such debt securities; [Section 2(1)(j)]

Security interest means right, title or interest of any kind, other than those specified in section 31, upon property created in favour of any secured creditor and includes—

- (i) any mortgage, charge, hypothecation, assignment or any right, title or interest of any kind, on tangible asset, retained by the secured creditor as an owner of the property, given on hire or financial lease or conditional sale or under any other contract which secures the obligation to pay any unpaid portion of the purchase price of the asset or an obligation incurred or credit provided to enable the borrower to acquire the tangible asset; or
- (ii) such right, title or interest in any intangible asset or assignment or licence of such intangible asset which secures the obligation to pay any unpaid portion of the purchase price of the intangible asset or the obligation incurred or any credit provided to enable the borrower to acquire the intangible asset or licence of intangible asset. [Section 2(1)(zf)]

Chief Metropolitan Magistrate or District Magistrate to assist secured creditor in taking possession of secured asset

Where the possession of any secured assets is required to be taken by the secured creditor or if any of the secured assets is required to be sold or transferred by the secured creditor under the provisions of this Act, the secured creditor may, for the purpose of taking possession or control of any such secured assets, request, in writing, the Chief Metropolitan Magistrate or the District Magistrate within whose jurisdiction any such secured asset or other documents relating thereto may be situated or found, to take possession thereof, and the Chief Metropolitan Magistrate or as the case may be, the District Magistrate shall, on such request being made to him—

- (a) take possession of such asset and documents relating thereto; and
- (b) forward such asset and documents to the secured creditor:

Provided that any application by the secured creditor shall be accompanied by an affidavit duly affirmed by the authorised officer of the secured creditor, declaring that—

- i. the aggregate amount of financial assistance granted and the total claim of the Bank as on the date of filing the application;

- ii. the borrower has created security interest over various properties and that the Bank or Financial Institution is holding a valid and subsisting security interest over such properties and the claim of the Bank or Financial Institution is within the limitation period;
- iii. the borrower has created security interest over various properties giving the details of properties referred to in sub-clause (ii) above;
- iv. the borrower has committed default in repayment of the financial assistance granted aggregating the specified amount;
- v. consequent upon such default in repayment of the financial assistance the account of the borrower has been classified as a non-performing asset;
- vi. affirming that the period of sixty days notice as required by the provisions of sub-section (2) of section 13, demanding payment of the defaulted financial assistance has been served on the borrower;
- vii. the objection or representation in reply to the notice received from the borrower has been considered by the secured creditor and reasons for non-acceptance of such objection or representation had been communicated to the borrower;
- viii. the borrower has not made any repayment of the financial assistance in spite of the above notice and the Authorised Officer is, therefore, entitled to take possession of the secured assets under the provisions of sub-section (4) of section 13 read with section 14 of the principal Act;
- ix. that the provisions of this Act and the rules made thereunder had been complied with:

Provided further that on receipt of the affidavit from the Authorised Officer, the District Magistrate or the Chief Metropolitan Magistrate, as the case may be, shall after satisfying the contents of the affidavit pass suitable orders for the purpose of taking possession of the secured assets within a period of thirty days from the date of application:

Provided also that if no order is passed by the Chief Metropolitan Magistrate or District Magistrate within the said period of thirty days for reasons beyond his control, he may, after recording reasons in writing for the same, pass the order within such further period but not exceeding in aggregate sixty days.

Provided also that the requirement of filing affidavit stated in the first proviso shall not apply to proceeding pending before any District Magistrate or the Chief Metropolitan Magistrate, as the case may be, on the date of commencement of this Act.

The District Magistrate or the Chief Metropolitan Magistrate may authorise any officer subordinate to him,—

- a) to take possession of such assets and documents relating thereto; and
- b) to forward such assets and documents to the secured creditor.

For the purpose of securing compliance with the provisions of sub-section (1), the Chief Metropolitan Magistrate or the District Magistrate may take or cause to be taken such steps and use, or cause to be used, such force, as may, in his opinion, be necessary.

No act of the Chief Metropolitan Magistrate or the District Magistrate any officer authorised by the Chief Metropolitan Magistrate or District Magistrate done in pursuance of this section shall be called in question in any court or before any authority.

It may be noted that-

Financial assistance means any loan or advance granted or any debentures or bonds subscribed or any guarantees given or letters of credit established or any other credit facility extended by any bank or financial institution including funds provided for the purpose of acquisition of any tangible asset on hire or financial lease or conditional sale or under any other contract or obtaining assignment or licence of any intangible asset or purchase of debt securities. [Section 2(1)(k)]

Financial lease means a lease under any lease agreement of tangible asset, other than negotiable instrument or negotiable document, for transfer of lessor's right therein to the lessee for a certain time in consideration of payment of agreed amount periodically and where the lessee becomes the owner of the such assets at the expiry of the term of lease or on payment of the agreed residual amount, as the case may be. [Section 2(1)(ma)]

Secured creditor means—

- (i) any bank or financial institution or any consortium or group of banks or financial institutions holding any right, title or interest upon any tangible asset or intangible asset as specified in clause (l);
- (ii) debenture trustee appointed by any bank or financial institution; or
- (iii) an asset reconstruction company whether acting as such or managing a trust set up by such asset reconstruction company for the securitisation or reconstruction, as the case may be; or
- (iv) debenture trustee registered with the Board and appointed for secured debt securities; or
- (v) any other trustee holding securities on behalf of a bank or financial institution, in whose favour security interest is created by any borrower for due repayment of any financial assistance. [Section 2(1)(zd)]

Manner and effect of takeover of management

When the management of business of a borrower is taken over by an asset reconstruction company under clause (a) of section 9 or, as the case may be, by a secured creditor under clause (b) of sub-section (4) of section 13, the secured creditor may, by publishing a notice in a newspaper published in English language and in a newspaper published in an Indian language in circulation in the place where the principal office of the borrower is situated, appoint as many persons as it thinks fit—

- a) in a case in which the borrower is a company as defined in the Companies Act, 1956, to be the directors of that borrower in accordance with the provisions of that Act; or
- b) in any other case, to be the administrator of the business of the borrower.

On publication of a notice under sub-section (1),—

- a) in any case where the borrower is a company as defined in the Companies Act, 1956, all persons holding office as directors of the company and in any other case, all persons holding any office having power of superintendence, direction and control of the business of the borrower immediately before the publication of the notice under sub-section (1), shall be deemed to have vacated their offices as such;
- b) any contract of management between the borrower and any director or manager thereof holding office as such immediately before publication of the notice under sub-section (1), shall be deemed to be terminated;
- c) the directors or the administrators appointed under this section shall take such steps as may be necessary to take into their custody or under their control all the property, effects and actionable claims to which the business of the borrower is, or appears to be, entitled and all the property and effects of the business of the borrower shall be deemed to be in the custody of the directors or administrators, as the case may be, as from the date of the publication of the notice;
- d) the directors appointed under this section shall, for all purposes, be the directors of the company of the borrower and such directors or as the case may be, the administrators appointed under this section, shall alone be entitled to exercise all the powers of the directors or as the case may be, of the persons exercising powers of superintendence, direction and control, of the business of the borrower whether such powers are derived from the memorandum or articles of association of the company of the borrower or from any other source whatsoever.

Where the management of the business of a borrower, being a company as defined in the Companies Act, 1956, is taken over by the secured creditor, then, notwithstanding anything contained in the said Act or in the memorandum or articles of association of such borrower,—

- a) it shall not be lawful for the shareholders of such company or any other person to nominate or appoint any person to be a director of the company;
- b) no resolution passed at any meeting of the shareholders of such company shall be given effect to unless approved by the secured creditor;
- c) no proceeding for the winding up of such company or for the appointment of a receiver in respect thereof shall lie in any court, except with the consent of the secured creditor.

Where the management of the business of a borrower had been taken over by the secured creditor, the secured creditor shall, on realisation of his debt in full, restore the management of the business of the borrower to him.

Provided that if any secured creditor jointly with other secured creditors or any asset reconstruction company or financial institution or any other assignee has converted part of its debt into shares of a borrower company and thereby acquired controlling interest in the borrower company, such secured creditors shall not be liable to restore the management of the business to such borrower. (Section 15)

No compensation to directors for loss of office

Notwithstanding anything to the contrary contained in any contract or in any other law for the time being in force, no managing director or any other director or a manager or any person in charge of management of the business of the borrower shall be entitled to any compensation for the loss of office or for the premature termination under this Act of any contract of management entered into by him with the borrower.

Nothing contained in sub-section (1) shall affect the right of any such managing director or any other director or manager or any such person in charge of management to recover from the business of the borrower, moneys recoverable otherwise than by way of such compensation.

Application against measures to recover secured debts

As per section 17(1), any person (including borrower), aggrieved by any of the measures referred to in sub-section (4) of section 13 taken by the secured creditor or his authorised officer under this Chapter, may make an application along with such fee, as may be prescribed, to the Debts Recovery Tribunal having jurisdiction in the matter within forty- five days from the date on which such measure had been taken:

Provided that different fees may be prescribed for making the application by the borrower and the person other than the borrower.

Explanation.—For the removal of doubts, it is hereby declared that the communication of the reasons to the borrower by the secured creditor for not having accepted his representation or objection or the likely action of the secured creditor at the stage of communication of reasons to the borrower shall not entitle the person (including borrower) to make an application to the Debts Recovery Tribunal under this sub-section.

As per section 17(1A), an application under sub-section (1) shall be filed before the Debts Recovery Tribunal within the local limits of whose jurisdiction—

- a) the cause of action, wholly or in part, arises;
- b) where the secured asset is located; or
- c) the branch or any other office of a bank or financial institution is maintaining an account in which debt claimed is outstanding for the time being.

As per section 17(2), the Debts Recovery Tribunal shall consider whether any of the measures referred to in sub-section (4) of section 13 taken by the secured creditor for enforcement of security are in accordance with the provisions of this Act and the rules made thereunder.

If, the Debts Recovery Tribunal, after examining the facts and circumstances of the case and evidence produced by the parties, comes to the conclusion that any of the measures referred to in sub-section (4) of section 13, taken by the secured creditor are not in accordance with the provisions of this Act and the rules made thereunder, and require restoration of the management or restoration of possession, of the secured assets to the borrower or other aggrieved person, it may, by order,—

- a) declare the recourse to any one or more measures referred to in sub-section (4) of section 13 taken by the secured creditor as invalid; and
- b) restore the possession of secured assets or management of secured assets to the borrower or such other aggrieved person, who has made an application under sub-section (1), as the case may be; and
- c) pass such other direction as it may consider appropriate and necessary in relation to any of the recourse taken by the secured creditor under sub-section (4) of section 13.

As per section 17(4), if, the Debts Recovery Tribunal declares the recourse taken by a secured creditor under sub-section (4) of section 13, is in accordance with the provisions of this Act and the rules made thereunder, then, notwithstanding anything contained in any other law for the time being in force, the secured creditor shall be entitled to take recourse to one or more of the measures specified under sub-section (4) of section 13 to recover his secured debt.

Where –

- i. any person, in an application under sub-section (1), claims any tenancy or leasehold rights upon the secured asset, the Debt Recovery Tribunal, after examining the facts of the case and evidence produced by the parties in relation to such claims shall, for the purposes of enforcement of security interest, have the jurisdiction to examine whether lease or tenancy,—
 - a) has expired or stood determined; or
 - b) is contrary to section 65A of the Transfer of Property Act, 1882; or
 - c) is contrary to terms of mortgage; or
 - d) is created after the issuance of notice of default and demand by the Bank under sub- section (2) of section 13 of the Act; and
- ii. the Debt Recovery Tribunal is satisfied that tenancy right or leasehold rights claimed in secured asset falls under the sub-clause (a) or sub-clause (b) or sub-clause (c) or sub-clause (d) of clause (i), then notwithstanding anything to the contrary contained in any other law for the time being in force, the Debt Recovery Tribunal may pass such order as it deems fit in accordance with the provisions of this Act.

As per section 17(5), any application made under sub-section (1) shall be dealt with by the Debts Recovery Tribunal as expeditiously as possible and disposed of within sixty days from the date of such application:

Provided that the Debts Recovery Tribunal may, from time to time, extend the said period for reasons to be recorded in writing, so, however, that the total period of pendency of the application with the Debts Recovery Tribunal, shall not exceed four months from the date of making of such application made under sub-section (1).

If the application is not disposed of by the Debts Recovery Tribunal within the period of four months as specified in sub-section (5), any part to the application may make an application, in such form as may be prescribed, to the Appellate Tribunal for directing the Debts Recovery Tribunal for expeditious disposal of the application pending before the Debts Recovery Tribunal and the Appellate Tribunal may, on such application, make an order for expeditious disposal of the pending application by the Debts Recovery Tribunal.

Save as otherwise provided in this Act, the Debts Recovery Tribunal shall, as far as may be, dispose of the application in accordance with the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993) and the rules made there under.

Appeal to Appellate Tribunal

Section 18 provides for Appeal to Appellate Tribunal. It states that any person aggrieved, by any order made by the Debts Recovery Tribunal under section 17, may prefer an appeal along with such fee, as may be prescribed to the Appellate Tribunal within thirty days from the date of receipt of the order of Debts Recovery Tribunal.

Provided that different fees may be prescribed for filing an appeal by the borrower or by the person other than the borrower:

Provided further that no appeal shall be entertained unless the borrower has deposited with the Appellate Tribunal fifty percent of the amount of debt due from him, as claimed by the secured creditors or determined by the Debts Recovery Tribunal, whichever is less:

Provided also that the Appellate Tribunal may, for the reasons to be recorded in writing, reduce the amount to not less than twenty-five percent of debt referred to in the second proviso.

Save as otherwise provided in this Act, the Appellate Tribunal shall, as far as may be, dispose of the appeal in accordance with the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 and rules made thereunder.

Validation of fees levied

Any fee levied and collected for preferring, before the commencement of the Enforcement of Security Interest and Recovery of Debts Laws (Amendment) Act, 2004, an appeal to the Debts Recovery Tribunal or the Appellate Tribunal under this Act, shall be deemed always to have been levied and collected in accordance with law as if the amendments made to sections 17 and 18 of this Act by sections 10 and 12 of the said Act were in force at all material times.

Right to lodge a caveat

Section 18C states that where an application or an appeal is expected to be made or has been made under sub-section (1) of section 17 or section 17A or sub-section (1) of section 18 or section 18B, the secured creditor or any person claiming a right to appear before the Tribunal or the Court of District Judge or the Appellate Tribunal or the High Court, as the case may be, on the hearing of such application or appeal, may lodge a caveat in respect thereof.

Where a caveat has been lodged under sub-section (1),—

- (a) the secured creditor by whom the caveat has been lodged (hereafter in this section referred to as the caveator) shall serve notice of the caveat by registered post, acknowledgement due, on the person by whom the application has been or is expected to be made under sub-section (1);
- (b) any person by whom the caveat has been lodged (hereafter in this section referred to as the caveator) shall serve notice of the caveat by registered post, acknowledgement due, on the person by whom the application has been or is expected to be made under sub-section (1).

Where after a caveat has been lodged under sub-section (1), any application or appeal is filed before the Tribunal or the court of District Judge or the Appellate Tribunal or the High Court, as the case may be, the Tribunal or the District Judge or the Appellate Tribunal or the High Court, as the case may be, shall serve a notice of application or appeal filed by the applicant or the appellant on the caveator.

Where a notice of any caveat has been served on the applicant or the Appellant, he shall periodically furnish the caveator with a copy of the application or the appeal made by him and also with copies of any paper or document which has been or may be filed by him in support of the application or the appeal.

Where a caveat has been lodged under sub-section (1), such caveat shall not remain in force after the expiry of the period of ninety days from the date on which it was lodged unless the application or appeal referred to in sub-section (1) has been made before the expiry of the said period.

Right of borrower to receive compensation and costs in certain cases

If the Debts Recovery Tribunal or the Court of District Judge, on an application made under section 17 or section 17A or the Appellate Tribunal or the High Court on an appeal preferred under section 18 or section 18A, holds that the possession of secured assets by the secured creditor is not in accordance with the provisions of this Act and rules made thereunder and directs the secured creditors to return such secured assets to the concerned borrowers or any other aggrieved person, who has filed the application under section 17 or section 17A or appeal under section 18 or section 18A, as the case may be, the borrower or such other person shall be entitled to the payment of such compensation and costs as may be determined by such Tribunal or Court of District Judge or Appellate Tribunal or the High Court referred to in section 18B.

CENTRAL REGISTRY

Central Registry

Under section 20, the Central Government may, by notification, set up or cause to be set up from such date as it may specify in such notification, a registry to be known as the Central Registry with its own seal for the purposes of registration of transaction of securitisation and reconstruction of financial assets and creation of security interest under this Act.

The head office of the Central Registry shall be at such place as the Central Government may specify and for the purpose of facilitating registration of transactions referred to in sub-section (1), there may be established at such other places as the Central Government may think fit, branch offices of the Central Registry.

The Central Government may, by notification, define the territorial limits within which an office of the Central Registry may exercise its functions.

The provisions of this Act pertaining to the Central Registry shall be in addition to and not in derogation of any of the provisions contained in the Registration Act, 1908, the Companies Act, 1956, the Merchant Shipping Act, 1958, the Patents Act, 1970, the Motor Vehicles Act, 1988, and the Designs Act, 2000 or any other law requiring registration of charges and shall not affect the priority of charges or validity thereof under those Acts or laws.

Central Registrar

The Central Government may, by notification, appoint a person for the purpose of registration of transactions relating to securitisation, reconstruction of financial assets and security interest created over properties, to be known as the Central Registrar.

The Central Government may appoint such other officers with such designations as it thinks fit for the purpose of discharging, under the superintendence and direction of the Central Registrar, such functions of the Central Registrar under this Act as he may, from time to time, authorise them to discharge.

RECOVERY OF DEBTS DUE TO BANKS AND FINANCIAL INSTITUTIONS ACT, 1993

Establishment of Tribunal and Appellate Tribunal

Establishment of Tribunal

Section 3 provides for establishment of Tribunal. It states that, the Central Government shall, by notification, establish one or more Tribunals, to be known as the Debts Recovery Tribunal, to exercise the jurisdiction, powers and authority conferred on such Tribunal by or under this Act.

The Central Government shall by notification establish such number of Debts Recovery Tribunals and its benches as it may consider necessary, to exercise the jurisdiction, powers and authority of the Adjudicating Authority conferred on such Tribunal by or under the Insolvency and Bankruptcy Code, 2016.

The Central Government shall also specify, in the notification referred to in sub-section (1), the areas within which the Tribunal may exercise jurisdiction for entertaining and deciding the applications filed before it.

Composition of Tribunal

A Tribunal shall consist of one person only hereinafter referred to as the Presiding Officer to be appointed, by notification, by the Central Government.

Notwithstanding anything contained in sub-section (1), the Central Government may—

- (a) authorise the Presiding Officer of any other Tribunal established under any other law for the time being in force to discharge the function of the Presiding Officer of a Debt Recovery Tribunal under this Act in addition to his being the Presiding Officer of that Tribunal; or
- (b) authorise the judicial Member holding post as such in any other Tribunal, established under any other law for the time being in force, to discharge the functions of the Presiding Officer of Debts Recovery Tribunal under this Act, in addition to his being the judicial Member of that Tribunal.

JURISDICTION, POWERS AND AUTHORITY OF TRIBUNALS

Jurisdiction, powers and authority of Tribunals

According to Section 17, tribunal shall exercise, on and from the appointed day, the jurisdiction, powers and authority to entertain and decide applications from the banks and financial institutions for recovery of debts due to such banks and financial institutions.

Without prejudice to sub-section (1),—

- (a) the Tribunal shall exercise, on and from the date to be appointed by the Central Government, the jurisdiction, powers and authority to entertain and decide applications under Part III of Insolvency and Bankruptcy Code, 2016 (31 of 2016).
- (b) the Tribunal shall have circuit sittings in all district headquarters.

An Appellate Tribunal shall exercise, on and from the appointed day, the jurisdiction, powers and authority to entertain appeals against any order made, or deemed to have been made, by a Tribunal under this Act.

Without prejudice to sub-section (2), the Appellate Tribunal shall exercise, on and from the date to be appointed by the Central Government, the jurisdiction, powers and authority to entertain appeals against the order made by the Adjudicating Authority under Part III of the Insolvency and Bankruptcy Code, 2016.

PROCEDURE OF TRIBUNALS

Where a bank or a financial institution has to recover any debt from any person, it may make an application to the Tribunal within the local limits of whose jurisdiction—

- (a) the branch or any other office of the bank or financial institution is maintaining an account in which debt claimed is outstanding, for the time being; or
- (aa) the defendant, or each of the defendants where there are more than one, at the time of making the application, actually and voluntarily resides, or carries on business, or personally works for gain; or
- (b) any of the defendants, where there are more than one, at the time of making the application, actually and voluntarily resides, or carries on business, or personally works for gain; or
- (c) the cause of action, wholly or in part, arises:

Provided that the bank or financial institution may, with the permission of the Debts Recovery Tribunal, on an application made by it, withdraw the application, whether made before or after the Enforcement of Security Interest and Recovery of Debts Laws (Amendment) Act, 2004 (30 of 2004) for the purpose of taking action under

the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, if no such action had been taken earlier under that Act:

Provided further that any application made under the first proviso for seeking permission from the Debts Recovery Tribunal to withdraw the application made under sub-section (1) shall be dealt with by it as expeditiously as possible and disposed of within thirty days from the date of such application:

Provided also that in case the Debts Recovery Tribunal refuses to grant permission for withdrawal of the application filed under this sub-section, it shall pass such orders after recording the reasons therefor.

Every bank being, multi-State co-operative bank referred to in sub-clause (vi) of clause (d) of section 2, may, at its option, opt to initiate proceedings under the Multi-State Co-operative Societies Act, 2002, to recover debts, whether due before or after the date of commencement of the Enforcement of the Security Interest and Recovery of Debts Laws (Amendment) Act, 2012, from any person instead of making an application under this Chapter.

In case, a bank being, multi-State co-operative bank referred to in sub-clause (vi) of clause (d) of section 2 has filed an application under this Chapter and subsequently opts to withdraw the application for the purpose of initiating proceeding under the Multi-State Co-operative Societies Act, 2002 to recover debts, it may do so with the permission of the Tribunal and every such application seeking permission from the Tribunal to withdraw the application made under sub-section (1A) shall be dealt with by it as expeditiously as possible and disposed of within thirty days from the date of such application:

Provided that in case the Tribunal refuses to grant permission for withdrawal of the application filed under this sub-section, it shall pass such orders after recording the reasons therefor.

Section 19(2) states that where a bank or a financial institution, which has to recover its debt from any person, has filed an application to the Tribunal under sub-section (1) and against the same person another bank or financial institution also has claim to recover its debt, then, the later bank or financial institution may join the applicant bank or financial institution at any stage of the proceedings, before the final order is passed, by making an application to that Tribunal.

Section 19(3) states that every application under sub-section (1) or sub-section (2) shall be in such form, and shall be accompanied with true copies of all documents relied on in support of the claim along with such fee, as may be prescribed:

Provided that the fee may be prescribed having regard to the amount of debt to be recovered:

Provided further that nothing contained in this sub-section relating to fee shall apply to cases transferred to the Tribunal under sub-section (1) of section 31.

Explanation.—For the purposes of this section, documents includes statement of account or any entry in banker's book duly certified under the Bankers' Books Evidence Act, 1891.

Section 19(3A) states that every applicant in the application filed under sub-section (1) or sub-section (2) for recovery of debt, shall—

- (a) state particulars of the debt secured by security interest over properties or assets belonging to any of the defendants and the estimated value of such securities;
- (b) if the estimated value of securities is not sufficient to satisfy the debt claimed, state particulars of any other properties or assets owned by any of the defendants, if any; and
- (c) if the estimated value of such other assets is not sufficient to recover the debt, seek an order directing the defendant to disclose to the Tribunal particulars of other properties or assets owned by the defendants.

If any application filed before the Tribunal for recovery of any debt is settled prior to the commencement of the hearing before that Tribunal or at any stage of the proceedings before the final order is passed, the applicant may be granted refund to the fees paid by him at such rates as may be prescribed.

On receipt of application under sub-section (1) or sub-section (2), the Tribunal shall issue summons with following directions to the defendant—

- (a) to show cause within thirty days of the service of summons as to why relief prayed for should not be granted;
- (b) direct the defendant to disclose particulars of properties or assets other than properties and assets specified by the applicant under clauses (a) and (b) of sub-section (3A); and
- (c) to restrain the defendant from dealing with or disposing of such assets and properties disclosed under clause (c) of sub-section (3A) pending the hearing and disposal of the application for attachment of properties.

Notwithstanding anything contained in section 65A of the Transfer of Property Act, 1882 (4 of 1882), the defendant, on service of summons, shall not transfer by way of sale, lease or otherwise except in the ordinary course of his business any of the assets over which security interest is created and other properties and assets specified or disclosed under sub-section (3A), without the prior approval of the Tribunal:

Provided that the Tribunal shall not grant such approval without giving notice to the applicant bank or financial institution to show cause as to why approval prayed for should not be granted:

Provided further that defendant shall be liable to account for the sale proceeds realised by sale of secured assets in the ordinary course of business and deposit such sale proceeds in the account maintained with the bank or financial institution holding security interest over such assets.

Section 19(5) states that,

- (i) the defendant shall within a period of thirty days from the date of service of summons, present a written statement of his defence including claim for set-off under sub-section (6) or a counter-claim under sub-section (8), if any, and such written statement shall be accompanied with original documents or true copies thereof with the leave of the Tribunal, relied on by the defendant in his defence:

Provided that where the defendant fails to file the written statement within the said period of thirty days, the Presiding Officer may, in exceptional cases and in special circumstances to be recorded in writing, extend the said period by such further period not exceeding fifteen days to file the written statement of his defence;

- (ii) where the defendant makes a disclosure of any property or asset pursuant to orders passed by the Tribunal, the provisions of sub-section (4A) of this section shall apply to such property or asset;
- (iii) in case of non-compliance of any order made under clause (ii) of sub-section (4), the Presiding Officer may, by an order, direct that the person or officer who is in default, be detained in civil prison for a term not exceeding three months unless in the meantime the Presiding Officer directs his release:

Provided that the Presiding Officer shall not pass an order under this clause without giving an opportunity of being heard to such person or officer.

Explanation.—For the purpose of this section, the expression ‘officer who is in default’ shall mean such officer as defined in clause (60) of section 2 of the Companies Act, 2013.

On receipt of the written statement of defendant or on expiry of time granted by the Tribunal to file the written statement, the Tribunal shall fix a date of hearing for admission or denial of documents produced by the parties to the proceedings and also for continuation or vacation of the interim order passed under sub-section (4).

Where a defendant makes an admission of the full or part of the amount of debt due to a bank or financial institution, the Tribunal shall order such defendant to pay the amount, to the extent of the admission within a period of thirty days from the date of such order failing which the Tribunal may issue a certificate in accordance with the provisions of sub-section (22) to the extent of the amount of debt due admitted by the defendant.

Section 19(6) states that, where the defendant claims to set-off against the applicant's demand any ascertained sum of money legally recoverable by him from such applicant, the defendant may, at the first hearing of the application, but not afterwards unless permitted by the Tribunal, present a written statement containing the particulars of the debt the debt sought to be set-off along with original documents and other evidence relied on in support of claim of set-off in relation to any ascertained sum of money, against the applicant.

The written statement shall have the same effect as a plaint in a cross-suit so as to enable the Tribunal to pass a final order in respect both of the original claim and of the set-off.

Section 19(8) states that, a defendant in an application may, in addition to his right of pleading a set-off under sub-section (6), set up, by way of counter-claim against the claim of the applicant, any right or claim in respect of a cause of action accruing to the defendant against the applicant either before or after the filing of the application but before the defendant has delivered his defence or before the time limited for delivering his defence has expired, whether such counter-claim is in the nature of a claim for damages or not.

A counter-claim under sub-section (8) shall have the same effect as a cross-suit so as to enable the Tribunal to pass a final order on the same application, both on the original claim and on the counter-claim.

The applicant shall be at liberty to file a written statement in answer to the counter-claim of the defendant within such period as may be prescribed.

Every application under sub-section (3) or written statement of defendant under sub-section (5) or claim of set-off under sub-section (6) or a counter-claim under sub-section (8) by the defendant, or written statement by the applicant in reply to the counter-claim, under sub-section (10) or any other pleading whatsoever, shall be supported by an affidavit sworn in by the applicant or defendant.

Provided that if there is any evidence of witnesses to be led by any party, the affidavits of such witnesses shall be filed simultaneously by the party with the application or written statement or replies filed under sub-section (10A).

If any of the facts or pleadings in the application or written statement are not verified in the manner provided under sub-section (10A), a party to the proceedings shall not be allowed to rely on such facts or pleadings as evidence or any of the matters set out therein.

Where a defendant sets up a counter-claim in the written statement and in reply to such claim the applicant contends that the claim thereby raised ought not to be disposed of by way of counter-claim but in an independent action, the Tribunal shall decide such issue along with the claim of the applicant for recovery of the debt.

Where, at any stage of the proceedings, the Tribunal on an application made by the applicant along with particulars of property to be attached and estimated value thereof, or otherwise is satisfied, that the defendant, with intent to obstruct or delay or frustrate the execution of any order for the recovery of debt that may be passed against him,—

- (i) is about to dispose of the whole or any part of his property; or
- (ii) is about to remove the whole or any part of his property from the local limits of the jurisdiction of the Tribunal; or
- (iii) is likely to cause any damage or mischief to the property or affect its value by misuse or creating third party interest,

the Tribunal may direct the defendant, within a time to be fixed by it, either to furnish security, in such sum as may be specified in the order, to produce and place at the disposal of the Tribunal, when required, the said property or the value of the same, or such portion thereof as may be sufficient to satisfy the certificate for the recovery of the debt, or to appear and show cause why he should not furnish security.

It also states that, where the defendant fails to show cause why he should not furnish security, or fails to furnish the security required, within the time fixed by the Tribunal, the Tribunal may order the attachment of the whole or such portion of the properties claimed by the applicant as the properties secured in his favour or otherwise owned by the defendant as appears sufficient to satisfy any certificate for the recovery of debt.

The Tribunal may also in the order direct the conditional attachment of the whole or any portion of the property specified under sub-section (13).

If an order of attachment is made without complying with the provisions of sub-section (13), such attachment shall be void.

In the case of disobedience of an order made by the Tribunal under sub-sections (12), (13) and (18) or breach of any of the terms on which the order was made, the Tribunal may order the properties of the person guilty of such disobedience or breach to be attached and may also order such person to be detained in the civil prison for a term not exceeding three months, unless in the meantime the Tribunal directs his release.

Where it appears to the Tribunal to be just and convenient, the Tribunal may, by order—

- (a) appoint a receiver of any property, whether before or after grant of certificate for recovery of debt;
- (b) remove any person from the possession or custody of the property;
- (c) commit the same to the possession, custody or management of the receiver;
- (d) confer upon the receiver all such powers, as to bringing and defending suits in the courts or filing and defending applications before the Tribunal and for the realisation, management, protection, preservation and improvement of the property, the collection of the rents and profits thereof, the application and disposal of such rents and profits, and the execution of documents as the owner himself has, or such of those powers as the Tribunal thinks fit; and
- (e) appoint a Commissioner for preparation of an inventory of the properties of the defendant or for the sale thereof.

Where a certificate of recovery is issued against a company as defined under the Companies Act, 2013 and such company is under liquidation, the Tribunal may by an order direct that the sale proceeds of secured assets of such company be distributed in the same manner as provided in section 326 of the Companies Act, 2013 or under any other law for the time being in force.

The Tribunal may, after giving the applicant and the defendant, an opportunity of being heard, in respect of all claims, set-off or counter-claim, if any, and interest on such claims, within thirty days from the date of conclusion of the hearings, pass interim or final order as it deems fit which may include order for payment of interest from the date on which payment of the amount is found due up to the date of realisation or actual payment.

Where it is proved to the satisfaction of the Tribunal that the claim of the applicant has been adjusted wholly or in part by any lawful agreement or compromise in writing and signed by the parties or where the defendant has repaid or agreed to repay the claim of the applicant, the Tribunal shall pass orders recording such agreement, compromise or satisfaction of the claim.

While passing the final order under sub-section (20), the Tribunal shall clearly specify the assets of the borrower which security interest is created in favour of any bank or financial institution and direct the Recovery Officers to distribute the sale proceeds of such assets as provided in sub-section (20AB).

Notwithstanding anything to the contrary contained in any law for the time being in force, the proceeds from sale of secured assets shall be distributed in the following orders of priority, namely:—

- (i) the costs incurred for preservation and protection of secured assets, the costs of valuation, public notice for possession and auction and other expenses for sale of assets shall be paid in full;
- (ii) debts owed to the bank or financial institution.

Explanation.—For the purposes of this sub-section, it is hereby clarified that on or after the commencement of the Insolvency and Bankruptcy Code, 2016, in cases where insolvency and bankruptcy proceedings are pending in respect of secured assets of the borrower, the distribution of proceeds from the sale of secured assets shall be subject to the order of priority as provided in that Code.

As per sub-clause 21, the Tribunal shall send a copy of its final order and the recovery certificate, to the applicant and defendant. The applicant and the defendant may obtain copy of any order passed by the Tribunal on payment on such fee as may be prescribed.

The Presiding Officer shall issue a certificate of recovery along with the final order, under sub-section (20), for payment of debt with interest under his signature to the Recovery Officer for recovery of the amount of debt specified in the certificate.

Any recovery certificate issued by the Presiding Officer under sub-section (22) shall be deemed to be decree or order of the Court for the purposes of initiation of winding up proceedings against a company registered under the Companies Act, 2013 or Limited Liability Partnership registered under the Limited Liability Partnership Act, 2008 or insolvency proceedings against any individual or partnership firm under any law for the time being in force, as the case may be.

Where the Tribunal, which has issued a certificate of recovery, is satisfied that the property is situated within the local limits of the jurisdiction of two or more Tribunals, it may send the copies of the certificate of recovery for execution to such other Tribunals where the property is situated:

Provided that in a case where the Tribunal to which the certificate of recovery is sent for execution finds that it has no jurisdiction to comply with the certificate of recovery, it shall return the same to the Tribunal which has issued it.

The application made to the Tribunal under sub-section (1) or sub-section (2) shall be dealt with by it as expeditiously as possible and every effort shall be made by it to complete the proceedings in two hearings, and] to dispose of the application finally within one hundred and eighty days from the date of receipt of the application.

The Tribunal may make such orders and give such directions as may be necessary or expedient to give effect to its orders or to prevent abuse of its process or to secure the ends of justice.

Filing of recovery applications, documents and written statements in electronic form

Section 19A provides that notwithstanding anything to the contrary contained in this Act, and without prejudice to the provisions contained in section 6 of the Information Technology Act, 2000, the Central Government may by rules provide that from such date and before such Tribunal and Appellate Tribunal, as may be notified,—

- (a) application or written statement or any other pleadings and the documents to be annexed thereto required to be filed shall be submitted in the electronic form and authenticated with digital signature of the applicant, defendant or any other petitioner in such form and manner as may be prescribed;
- (b) any summons, notice or communication or intimation as may be required to be served or delivered under this Act, may be served or delivered by transmission of pleadings and documents by electronic form and authenticated in such manner as may be prescribed.

Any interim or final order passed by the Tribunal or Appellate Tribunal displayed on the website of such Tribunal or Appellate Tribunal shall be deemed to be a public notice of such order and transmission of such order by electronic mail to the registered address of the parties to the proceeding shall be deemed to be served on such party.

The Central Government may by rules provide that the electronic form for the purpose specified in this section shall be exclusive, or in the alternative or in addition to the physical form, therefor.

The Tribunal or the Appellate Tribunal notified under sub-section (1), for the purpose of adopting electronic filing, shall maintain its own website or common website with other Tribunals and Appellate Tribunal or such other universally accessible repositories of electronic information and ensure that all orders or directions issued by the Tribunal or Appellate Tribunal are displayed on the website of the Tribunal or Appellate Tribunal, in such manner as may be prescribed.

Explanation.—For the purpose of this section,—

- a) ‘digital signature’ means the digital signature as defined under clause (p) of section 2 of the Information Technology Act, 2000;
- b) ‘electronic form’ with reference to an information or a document means the electronic form as defined under clause (r) of section 2 of the Information Technology Act, 2000.

Under Section 19A, the application made to Tribunal for exercising the powers of the Adjudicating Authority under the Insolvency and Bankruptcy Code, 2016 shall be dealt with in the manner as provided under that Code.

Appeal to the Appellate Tribunal

Section 20 provides for appeal to Appellate Tribunal. It states that save as provided in sub-section (2), any person aggrieved by an order made, or deemed to have been made, by a Tribunal under this Act, may prefer an appeal to an Appellate Tribunal having jurisdiction in the matter.

No appeal shall lie to the Appellate Tribunal from an order made by a Tribunal with the consent of the parties.

Every appeal under sub-section (1) shall be filed within a period of thirty days from the date on which a copy of the order made, or deemed to have been made, by the Tribunal is received by him and it shall be in such form and be accompanied by such fee as may be prescribed:

Provided that the Appellate Tribunal may entertain an appeal after the expiry of the said period of thirty days if it is satisfied that there was sufficient cause for not filing it within that period.

On receipt of an appeal under sub-section (1), or under sub-section (1) of section 181 of the Insolvency and Bankruptcy Code, 2016, the Appellate Tribunal may, after giving the parties to the appeal, an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or setting aside the order appealed against.

The Appellate Tribunal shall send a copy of every order made by it to the parties to the appeal and to the concerned Tribunal.

The appeal filed before the Appellate Tribunal under sub-section (1) shall be dealt with by it as expeditiously as possible and endeavour shall be made by it to dispose of the appeal finally within six months from the date of receipt of the appeal.

Deposit of amount of debt due, on filing appeal

According to Section 21, where an appeal is preferred by any person from whom the amount of debt is due to a bank or a financial institution or a consortium of banks or financial institutions, such appeal shall not be entertained by the Appellate Tribunal unless such person has deposited with the Appellate Tribunal fifty percent of the amount of debt so due from him as determined by the Tribunal under section 19:

Provided that the Appellate Tribunal may, for reasons to be recorded in writing, reduce the amount to be deposited by such amount which shall not be less than twenty-five percent of the amount of such debt so due to be deposited under this section.

Procedure and powers of the Tribunal and the Appellate Tribunal

The Tribunal and the Appellate Tribunal shall not be bound the procedure laid down by the Code of Civil Procedure, 1908, but shall be guided by the principles of natural justice and, subject to the other provisions of this Act and of any rules, the Tribunal and the Appellate Tribunal shall have powers to regulate their own procedure including the places at which they shall have their sittings.

The Tribunal and the Appellate Tribunal shall have, for the purposes of discharging their functions under this Act, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, while trying a suit, in respect of the following matters, namely:—

summoning and enforcing the attendance of any person and examining him on oath;

requiring the discovery and production of documents;

receiving evidence on affidavits;

issuing commissions for the examination of witnesses or documents;

reviewing its decisions;

dismissing an application for default or deciding it ex parte;

setting aside any order of dismissal of any application for default or any order passed by it ex parte;

any other matter which may be prescribed.

Any proceeding before the Tribunal or the Appellate Tribunal shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228, and for the purposes of section 196, of the Indian Penal and the Tribunal or the Appellate Tribunal shall be deemed to be a civil court for all the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973.

For the purpose of proof of any entry in the 'bankers' books', the provisions of the Bankers' Books Evidence Act, 1891 shall apply to all the proceedings before the Tribunal or Appellate Tribunal.

Uniform procedure for conduct of proceedings

According to Section 22A, The Central Government may, for the purpose of this Act, by rules, lay down uniform procedure consistent with the provisions of this Act for conducting the proceedings before the Tribunals and Appellate Tribunals.

Right to legal representation and Presenting Officers

Section 23 states that, a bank or a financial institution making an application to a Tribunal or an appeal to an Appellate Tribunal may authorise one or more legal practitioners or any of its officers to act as Presenting Officers and every person so authorised by it may present its case before the Tribunal or the Appellate Tribunal.

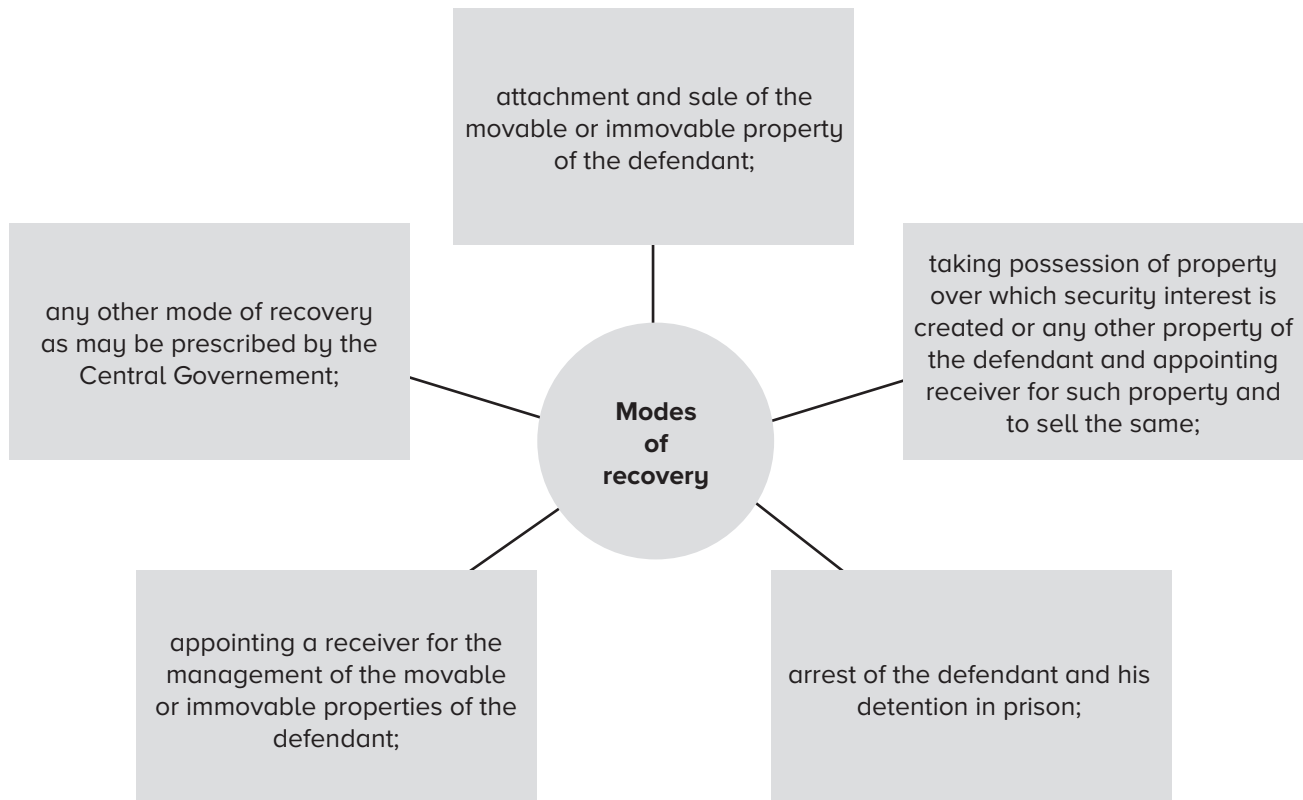
The defendant may either appear in person or authorise one or more legal practitioners or any of his or its officers to present his or its case before the Tribunal or the Appellate Tribunal.

RECOVERY OF DEBT DETERMINED BY TRIBUNAL

Chapter V deals with Recovery of Debt Determined by Tribunal

Modes of recovery of debts

Section 25 provides for modes of recovery of debts. It states that the Recovery Officer shall, on receipt of the copy of the certificate under sub-section (7) of section 19, proceed to recover the amount of debt specified in the certificate by one or more of the following modes, namely:—



Validity of certificate and amendment thereof

According to section 26, it shall not be open to the defendant to dispute before the Recovery Officer the correctness of the amount specified in the certificate, and no objection to the certificate on any other ground shall also be entertained by the Recovery Officer.

Notwithstanding the issue of a certificate to a Recovery Officer, the Presiding Officer shall have power to withdraw the certificate or correct any clerical or arithmetical mistake in the certificate by sending intimation to the Recovery Officer.

The Presiding Officer shall intimate to the Recovery Officer any order withdrawing or cancelling a certificate or any correction made by him under sub-section (2).

Stay of proceedings under certificate and amendment or withdrawal thereof

Section 27, states that notwithstanding that a certificate has been issued to the Recovery Officer for the recovery of any amount, the Presiding Officer, may by an order, grant time for payment of the amount, provided the defendant makes a down payment of not less than twenty-five per cent of the amount specified in the recovery certificate and gives an unconditional undertaking to pay the balance within a reasonable time, which is acceptable to the applicant bank or financial institution holding recovery certificate.

The Recovery Officer shall, after receipt of the order passed under sub-section (1), stay the proceedings until the expiry of the time so granted.

Where defendant agrees to pay the amount specified in the Recovery Certificate and proceeding are stayed by the Recovery Officer, the defendant shall forfeit right to file appeal against the orders of the Tribunal.

Where the defendant commits any default in payment of the amount under sub-section (1), the stay of recovery proceedings shall stand withdrawn and the Recovery Officer shall take steps for recovery of remaining amount of debt due and payable.

Where a certificate for the recovery of amount has been issued, the Presiding Officer shall keep the Recovery Officer informed of any amount paid or time granted for payment, subsequent to the issue of such certificate to the Recovery Officer.

Where the order giving rise to a demand of amount for recovery of debt has been modified in appeal, and, as a consequence thereof the demand is reduced, the Presiding Officer shall stay the recovery of such part of the amount of the certificate as pertains to the said reduction for the period for which the appeal remains pending.

Where a certificate for the recovery of debt has been received by the Recovery Officer and subsequently the amount of the outstanding demands is reduced or enhanced as a result of an appeal, the Presiding Officer shall, when the order which was the subject matter of such appeal has become final and conclusive, amend the certificate or withdraw it, as the case may be.

Other modes of recovery

According to Section 28(1), where a certificate has been issued to the Recovery Officer under sub-section (7) of section 19, the Recovery Officer may, without prejudice to the modes of recovery specified in section 25, recover the amount of debt by any one or more of the modes provided under this section.

If any amount is due from any person to the defendant, the Recovery Officer may require such person to deduct from the said amount, the amount of debt due from the defendant under this Act and such person shall comply with any such requisition and shall pay the sum so deducted to the credit of the Recovery Officer:

Provided that nothing in this sub-section shall apply to any part of the amount exempt from attachment in execution of a decree of a civil court under section 60 of the Code of Civil Procedure, 1908.

Sub clause 3 states that -

- (i) The Recovery Officer may, at any time or from time to time, by notice in writing, require any person from whom money is due or may become due to the defendant or to any person who holds or may subsequently hold money for or on account of the defendant, to pay to the Recovery Officer either forthwith upon the money becoming due or being held or within the time specified in the notice not being before the money becomes due or is held so much of the money as is sufficient to pay the amount of debt due from the defendant or the whole of the money when it is equal to or less than that amount.
- (ii) A notice under this sub-section may be issued to any person who holds or may subsequently hold any money for or on account of the defendant jointly with any other person and for the purposes of this sub-section, the shares of the joint holders in such amount shall be presumed, until the contrary is proved, to be equal.
- (iii) A copy of the notice shall be forwarded to the defendant at his last address known to the Recovery Officer and in the case of a joint account to all the joint holders at their last addresses known to the Recovery Officer.
- (iv) Save as otherwise provided in this sub-section, every person to whom a notice is issued under this sub-section shall be bound to comply with such notice, and, in particular, where any such notice is issued to a post office, bank, financial institution, or an insurer, it shall not be necessary for any pass book, deposit receipt, policy or any other document to be produced for the purpose of any entry, endorsement or the like to be made before the payment is made notwithstanding any rule, practice or requirement to the contrary.

- (v) Any claim respecting any property in relation to which a notice under this sub-section has been issued arising after the date of the notice shall be void as against any demand contained in the notice.
- (vi) Where a person to whom a notice under this sub-section is sent objects to it by a statement on oath that the sum demanded or the part thereof is not due to the defendant or that he does not hold any money for or on account of the defendant, then, nothing contained in this sub-section shall be deemed to require such person to pay any such sum or part thereof, as the case may be, but if it is discovered that such statement was false in any material particular, such person shall be personally liable to the Recovery Officer to the extent of his own liability to the defendant on the date of the notice, or to the extent of the defendant's liability for any sum due under this Act, whichever is less.
- (vii) The Recovery Officer may, at any time or from time to time, amend or revoke any notice under this sub-section or extend the time for making any payment in pursuance of such notice.
- (viii) The Recovery Officer shall grant a receipt for any amount paid in compliance with a notice issued under this sub-section, and the person so paying shall be fully discharged from his liability to the defendant to the extent of the amount so paid.
- (ix) Any person discharging any liability to the defendant after the receipt of a notice under this sub-section shall be personally liable to the Recovery Officer to the extent of his own liability to the defendant so discharged or to the extent of the defendant's liability for any debt due under this Act, whichever is less.
- (x) If the person to whom a notice under this sub-section is sent fails to make payment in pursuance thereof to the Recovery Officer, he shall be deemed to be a defendant in default in respect of the amount specified in the notice and further proceedings may be taken against him for the realisation of the amount as if it were a debt due from him, in the manner provided in sections 25, 26 and 27 and the notice shall have the same effect as an attachment of a debt by the Recovery Officer in exercise of his powers under section 25.

The Recovery Officer may apply to the court in whose custody there is money belonging to the defendant for payment to him of the entire amount of such money, or if it is more than the amount of debt due, an amount sufficient to discharge the amount of debt so due.

The Recovery Officer may, by order, at any stage of the execution of the certificate of recovery, require any person, and in case of a company, any of its officers against whom or which the certificate of recovery is issued, to declare on affidavit the particulars of his or its assets.

The Recovery Officer may recover any amount of debt due from the defendant by distraint and sale of his movable property in the manner laid down in the Third Schedule to the Income-Tax Act, 1961.

Application of certain provisions of Income-tax Act

The provisions of the Second and Third Schedules to the Income-Tax Act, 1961 and the Income-Tax (Certificate Proceedings) Rules, 1962, as in force from time to time shall, as far as possible, apply with necessary modifications as if the said provisions and the rules referred to the amount of debt due under this Act instead of to the Income-tax:

Provided that any reference under the said provisions and the rules to the "assessee" shall be construed as a reference to the defendant under this Act.

Appeal against the order of Recovery Officer

Notwithstanding anything contained in section 29, any person aggrieved by an order of the Recovery Officer made under this Act may, within thirty days from the date on which a copy of the order is issued to him, prefer an appeal to the Tribunal.

On receipt of an appeal under sub-section (1), the Tribunal may, after giving an opportunity to the appellant to be heard, and after making such inquiry as it deems fit, confirm, modify or set aside the order made by the Recovery Officer in exercise of his powers under sections 25 to 28 (both inclusive).

Deposit of amount of debt due for filing appeal against orders of the Recovery Officer

Section 30A provides for deposit of amount of debt due for filing appeal against orders of the Recovery Officer. It states that where an appeal is preferred against any order of the Recovery Officer, under section 30, by any person from whom the amount of debt is due to a bank or financial institution or consortium of banks or financial institutions, such appeal shall not be entertained by the Tribunal unless such person has deposited with the Tribunal fifty percent of the amount of debt due as determined by the Tribunal.

Transfer of pending cases

Section 31 stipulates that every suit or other proceeding pending before any court immediately before the date of establishment of a Tribunal under this Act, being a suit or proceeding the cause of action whereon it is based is such that it would have been, if it had arisen after such establishment, within the jurisdiction of such Tribunal, shall stand transferred on that date to such Tribunal:

Provided that nothing in this sub-section shall apply to any appeal pending as aforesaid before any court:

Provided further that any recovery proceedings in relation to the recovery of debts due to any multi-State co-operative bank pending before the date of commencement of the Enforcement of Security Interest and Recovery of Debts Laws (Amendment) Act, 2012 under the Multi-State Co-operative Societies Act, 2002, shall be continued and nothing contained in this section shall apply to such proceedings.

Where any suit or other proceeding stands transferred from any court to a Tribunal under sub-section (1),—

- (a) the court shall, as soon as may be after such transfer, forward the records of such suit or other proceeding to the Tribunal; and
- (b) the Tribunal may, on receipt of such records, proceed to deal with such suit or other proceeding, so far as may be, in the same manner as in the case of an application made under section 19 from the stage which was reached before such transfer or from any earlier stage as the Tribunal may deem fit.

Power of Tribunal to issue certificate of recovery in case of decree or order

Section 31A states that where a decree or order was passed by any court before the commencement of the Recovery of Debts Due to Banks and Financial Institutions (Amendment) Act, 2000 and has not yet been executed, then, the decree-holder may apply to the Tribunal to pass an order for recovery of the amount.

On receipt of an application under sub-section (1), the Tribunal may issue a certificate for recovery to a Recovery Officer.

On receipt of a certificate under sub-section (2), the Recovery Officer shall proceed to recover the amount as if it was a certificate in respect of a debt recoverable under this Act.

Priority to secured creditors

Section 31A provides that notwithstanding anything contained in any other law for the time being in force, the rights of secured creditors to realise secured debts due and payable to them by sale of assets over which security interest is created, shall have priority and shall be paid in priority over all other debts and Government dues including revenues, taxes, cesses and rates due to the Central Government, State Government or local authority.

Explanation.—For the purposes of this section, it is hereby clarified that on or after the commencement of the Insolvency and Bankruptcy Code, 2016, in cases where insolvency or bankruptcy proceedings are pending in respect of secured assets of the borrower, priority to secured creditors in payment of debt shall be subject to the provisions of that Code.

Will Insolvency and Bankruptcy Code, 2016 prevails over SARFAESI Act, 2002?

In the case of **Canara Bank v. Sri Chandramoulisvar Spg. Mills (P) Ltd.**, the NCLAT while referring to Supreme Court's verdict in *Innoventive* case has ruled that when two proceedings are initiated, one under the Insolvency and Bankruptcy Code, 2016 (the Code) and the other under the SARFAESI Act, 2002, then the proceeding under the Code shall prevail.

The appeal in the case was preferred by the Financial Creditor i.e. Canara Bank against the NCLT's (National Company law Tribunal) order, whereby the application preferred by Operational Creditor under Section 9 of the Insolvency and Bankruptcy Code, 2016 (application for initiation of corporate insolvency resolution process by operational creditor) against the Corporate Debtor i.e. M/s. Sri Chandra Moulisvar Spinning Mills Private Limited was admitted by the Tribunal. The Appellant's main grievance in the case was that he had already initiated proceedings under the SARFAESI Act, 2002 for recovery against the Corporate Debtor.

The NCLAT in view of the issue involved in the case, made reference to Supreme Court's verdict in the case of *Innoventive Industries Ltd. v. ICICI Bank*, whereby the Apex Court was of the view that if the application under Section 9 is complete and there is no 'existence of dispute' and there is a 'debt' and 'default' then the Adjudicating Authority is bound to admit the application.

Thus, NCLAT upheld NCLT's decision and also noted that such action cannot continue as the Code will prevail over SARFAESI Act, 2002.

LESSON ROUND-UP

- Securitisation is the process of pooling and repackaging of homogenous illiquid financial assets into marketable securities that can be sold to investors.
- The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 is enacted with a view to regulate securitisation and reconstruction of financial assets and enforcement of security interest and for matters connected therewith or incidental thereto.
- The SARFAESI Act, 2002 has empowered the Banks and Financial Institutions with vast power to enforce the securities charged to them. The Banks can now issue notices to the defaulters to pay up the dues and if they fail to do so within 60 days of the date of the notice, the banks can take over the possession of assets like factory, land and building, plant and machinery etc.
- Asset Reconstruction Company' means a company registered with Reserve Bank under section 3 of SARFAESI Act for the purposes of carrying on the business of asset reconstruction or securitisation, or both. Section 3 of SARFAESI Act deals with the Registration of Asset Reconstruction Companies.
- Any security interest created in favour of any secured creditor may be enforced, without the intervention of the Court or Tribunal, by such creditor in accordance with the provisions of this Act.
- Any borrower or any other person aggrieved by the action of the secured creditors can file an appeal to the concerned Debt Recovery Tribunal (DRT).
- Any person aggrieved by the order of DRT, may prefer an appeal to the Appellate Tribunal within thirty days from the date of receipt of the order of Debt Recovery Tribunal.
- Section 31 of the Act contains provisions relating to non-applicability of the Act in certain cases. Section 34 provides that no civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which a Debts Recovery Tribunal or the Appellate Tribunal is empowered by or under this Act.
- Any person who contravenes the provisions of this Act or of any rules made thereunder shall be punishable with imprisonment for a term which may extend to one year, or with fine, or with both.
- Limitation Act, 1963 is applicable to the claims made under this Act. Section 35 provides that the provisions of this Act shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law.

TEST YOURSELF

(These are meant for recapitulation only. Answer to these questions are not to be submitted for evaluation).

1. What is securitization? Mention the reasons behind the enactment of the SARFAESI Act, 2002?
2. Write a note on Asset Reconstruction Companies citing the measures it can take under section 9 of the SARFAESI Act, 2002.
3. What are the provisions relating to assistance of Chief Metropolitan magistrate or District magistrate for taking possession of a secured asset?
4. Mention provisions relating to 'demand notice' under rule 3 of Security Interest (Enforcement) Rules, 2002.
5. Explain the 'Right to lodge a caveat' under SARFAESI Act, 2002.
6. State the salient features of the Recovery of Debts and Bankruptcy Act, 1993.
7. Explain in brief the procedure for making application to the Tribunal under section 19 of the Recovery of Debts and Bankruptcy Act, 1993.
8. Write a note on the powers of the Tribunal and Appellate Tribunal under the Recovery of Debts and Bankruptcy Act, 1993.

LIST OF FURTHER READINGS

- Bare Act - Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, (SARFAESI) 2002 and Recovery of Debts Due to Banks and Financial Institutions Act, 1993 rules and regulations made thereunder.
- Report of the Committee to Review the Working of Asset Reconstruction Companies, September 2021.

OTHER REFERENCES (Including Websites / Video Links)

- <https://rbi.org.in/home.aspx>
- <https://m.rbi.org.in/scripts/PublicationReportDetails.aspx?UrlPage=&ID=1188>