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INTERPLAY BETWEEN SARFAESI ACT AND NPA

AUTHORED BY - K. AASHIKA

INTERPLAY BETWEEN SARFAESI ACT AND NPA

The RBI's existing policy on NPA classification is given by the following prudential norms.

An asset, including a leased asset becomes non-performing when it ceases to generate income for the bank. A 'non-performing asset' (NPA) was defined as a credit facility in respect of which the interest and / or instalment of principal has remained 'past due' for a specified period of time.

The specified period was reduced in a phased manner as under:

Year ending March 31	Specified period
1993	Four quarters
1994	Three quarters
1995 Onwards	Two quarters

The following are the extracts from an RBI publication titled Banking Developments and Policy Perspectives 1998-99.

To address the problem of accumulated NPAs, the first Narasimham Committee suggested the setting up of an Asset Reconstruction Fund, but this suggestion could not be implemented. Reiterating this arrangement, the second Narasimham Committee suggested the setting up of an Asset Reconstruction Company (ARC). The ARC, which would take over all loan assets in the doubtful and loss categories, would issue to the banks NPA swap bonds representing the realizable value of the assets transferred, provided the stamp duties are not excessive.

The international experience with such arrangements has, however, been mixed. In India, progress in setting up of ARCs, is yet to be seen partly because the Debt Recovery Act and other relevant legislations are yet to be strengthened. Besides, the ARCs could engender moral hazard problems. It is, therefore, necessary to attempt to make Debt Recovery Tribunals (DRTs) more effective in their operation. More importantly, Debt Recovery

Systems need to be improved across the board to ensure efficiency of the financial sector.

QUOTE

“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 (51 of 1993).

UNQUOTE

1. DEFAULT IN CONNECTION WITH THE NPA GUIDELINES OF THE RBI

The definition of default has been connected in this definition with the NPA treatment as per the directions or guidelines of the RBI. The RBI has issued guidelines for NPA classification for banks¹, as also for non-banking financial institutions. There are numerous differences between the NPA definition applicable to finance companies and banks. Therefore, the appropriate NPA guidelines need to be applied to see if the contract has become an NPA.

1.2. ELEMENTS OF DEFAULT

There are 4 important elements for establishing a default under this definition:

- (a) The borrower must be a “borrower” within the definition of this legislation. The definition of borrower is connected with two other definitions – financial assistance, and bank / financial institution. In other words, the counterparty to the financial assistance must be a borrower on the one hand and a bank or financial institutions on the other, and the relation that connects the two should be one of a financial assistance.
- (b) The financial assistance must be secured.
- (c) There must have been a non-payment of principal, interest or any other sum payable by the borrower. For example, a borrower may have been called upon to pay inspection charges, service charges or such other sums. The issue is, Can there be a “default”. The default must be such which can render the account an NPA. In terms of the NPA guidelines applicable to both banks and non-banking financial institutions, an account is not treated as an

¹ Ajith, P. R. (2016). SARFAESI Act, 2002 - An Effective Tool for NPAs Recovery. International Journal of Management and Social Science Research Review, 1(29) 220-224.

NPA except on account of default of interest or principal.

- (d) The definition of NPA is not related to the magnitude of the default, but its length. So, if the default has continued for a period which renders the account of the borrower an NPA, the borrower can be said to be have defaulted. NPA classification, under the RBI norms, leads to de-recognition of income and cessation of accrual – which is an accounting event. There is an accounting dimension of an NPA classification. In accordance with the directions or guidelines issued by the Reserve Bank implies that the NPA classification is based on the RBI directives.

A number of banks, particularly international banks have stricter internal NPA recognition norms. Several international lending agencies also require NPAs to be recorded based on a shorter time-frame of default than under the RBI norms. However, for the purpose of recognizing a “default” under this definition, it is only a default as per the RBI directives. A lender cannot narrow down the period of “default” by any of his own internal procedures for recognizing a default.²

- (D) **“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
 - (vi) any financial assistance.

(E) Accounting standards:

² Government of India, “The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest”, Ordinance, New Delhi.

Accounting standards contain the definition of “financial assets” as the accounting standards on accounting for financial instruments relate to financial assets and financial liabilities. A financial asset is thus defined under IAS 39: “A financial asset” is any asset that is:

- (i) cash,
- (ii) a contractual right to receive cash or another financial asset from another enterprise,
- (iii) A contractual right to exchange financial instruments with another enterprise under conditions that are potentially favourable.
- (iv) An equity instrument of another enterprise.

(F) **“Reconstruction Company”**: Reconstruction company means a company formed and registered under the Companies Act, 1956 (1 of 1956) for the purpose of asset reconstruction.

(G) **“Reserve Bank”**: Reserve Bank means the Reserve Bank of India constituted under section 3 of the Reserve Bank of India Act, 1934 (2 of 1934).

(H) **“Scheme”**: Scheme means a scheme inviting subscription to security receipts proposed to be issued by a securitization company or reconstruction company under that scheme.

(I) **“Securitisation”**: Securitisation means acquisition of financial assets by any securitization company or reconstruction company from any originator, whether by raising of funds by such securitization company or reconstruction company from qualified institutional buyers by issue of security receipts representing undivided interest in such financial assets or otherwise.

The central feature of securitization is therefore, the fact there is a segregation of assets and issuance of securities which are either collateralized by such assets or represent beneficial interest in such assets.

There are several cases where there is a segregation of assets, but there is no creation of

securities -, for example if A transfers financial assets to B, that is the end of the story. B's acquiring financial asset is not securitization – it is a loan or portfolio transfer. A securitization implies creation of securities premised on such assets – because the central theme in securitization is the conversion of a financial relation into a financial product, viz, a security.

2. RECOVERY OF DEBT DUE TO BANKS AND FIS ACT, 1993

Banks & FI were fronting considerable complications to recover credits & enforcement of securities, which were making a large amount of capital being choked. Under this consideration, a committee was formed in 1981, under the supervision of the Shri T. Tiwari advised curative procedures as well as changes in law & conception of superior courts for recovering debts of the Banks & FIs by following a warm method. To fulfill this purpose, the RDDDBFI bill was announced, which was supposed to offer the formation of tribunals, appellate tribunals, settlement & repossession of debts of Banks & FIs. On August 27, 1993, with the consent of the president and acceptance by both the houses of parliament, this bill had become an Act. It came into power on June 24, 1993. The provisions of this Act are applicable if the amount due is less than 10 Lac rupees. Two types of agencies (DRTs & DRATs) can be founded under this Act, and both the agencies worked under the provision of the RDDDBFI Act 1993.



Recovery Agencies under the RDDDBFI Act, 1993 Debt Recovery Tribunals

It was established under section 38 of the RDDDBFI Act 1993. The main objective of DRT is receiving due applications from Banks & FIs against their defaulting borrowers, and according to this purpose, rules have been outlined and reported under the RDDDBFI Act, 1993. Total thirty-three tribunals have been described by the central Government in the following regions:

Allahabad, Dehradun, Jabalpur, Lucknow, Patna, Ranchi, Chennai-3, Bangaluru-2, Coimbatore, Ernakulum-2, Madurai, Delhi-3, Chandigar-3, Jaipur, Kolkata-3, Cuttack, Guwahati, Hyderabad-

2, Siliguri, Visakhapatnam, *Mumbai-3*, Ahmedabad-2, Aurangabad, Pune & Nagpur.

3. DEBT RECOVERY APPELLATE TRIBUNAL

This tribunal is similarly founded as per an outcome of the RDDBFI Act, 1993. It is responsible for all issues related to the recovery of dues in India. 5 DRATs in India are currently presented. These are in Chennai, Mumbai, Kolkata, Delhi, and Allahabad. After submitting 755 of the claim due to the lender or the determined amount by DRT, anyone can appeal against DRT's decision within forty-five days from the verdict's issue date.

3.1. THE SECURITIZATION ACT, 2002

The enactment of this Act was expected to be an elixir to the problematic NPAs. Debt recovery turned to be a materialistic thing as defaulting borrowers started answering positively, those who were not answering earlier. The banks' recovery management policies and RBI norms achieved the goals with settlements, and debts recoveries have started bucketing in. This Act helps in setting up Asset Reconstruction Companies, which support reconstruction and securitization of NPAs. In the cases where borrowers did not make responses within 60-day from notices, attainment of seizure, or possession order of the securities has been initiated according to the provisions of the Act by banks.

3.2. INSOLVENCY AND BANKRUPTCY CODE (IBC), 2016

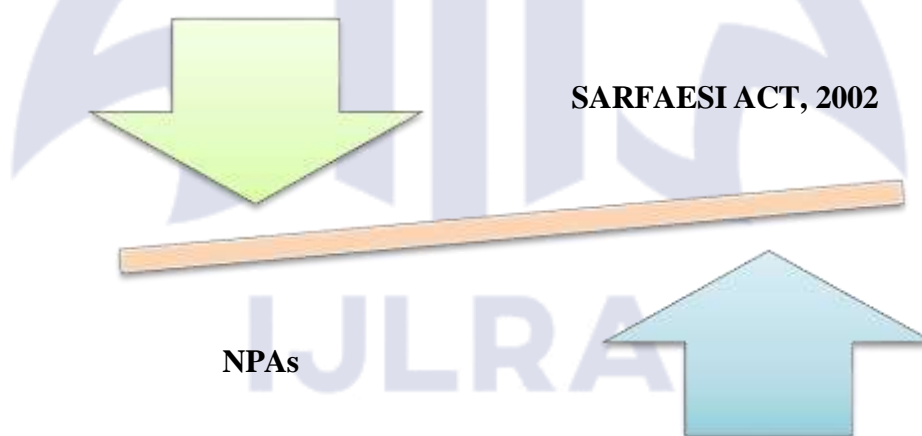
Ministry of Finance constituted the 'Bankruptcy Law Reforms Committee' (BLRC) to draft IBC, 2016, under which corporate debtors and individual/partnership units both can be undertaken to resolve insolvency processes. When an application for insolvency proceedings is given to National Company Law Tribunal (NCLT), the Insolvency resolution process starts. The authority of defaulting debtors over the management will be shifted to the insolvency professional, who is appointed by NCLT. In this way asset stripping on the part of the company's sponsors can be avoided and empowers the creditors to supervise the business. A creditors committee is formed to make a collective decision by the resolution professionals and this committee recommends the liquidation or revitalization plan within the stipulated time bound of 180 days. The corporate debtor and all its creditors are bound to the decisions of the

committee of creditors.³

3.3 THE SECURITIZATION ACT, 2002

Before 1993, the Companies Act, 1956, was the only option; the banks & FIs have to recover debt, which used to take years to resolve the problem of NPA. In 1993, to recover NPAs of banks & FI Act was introduced to give a pace to NPAs recovery procedure. But soon, lots of cases got piled up for resolution, and again, the recovery procedures started getting delayed to solve.

Banks and FIs got empowered to improve recovery, manage problems of liquidity, conversion of long-term assets in marketable securities, bring about difficulties of liquidity and asset-liability disparity by applying powers of the Act to lessen NPAs, take-over of securities, and sell them by adopting recovery methods. In 2002, The SARFAESI Act was promulgated to recovery the NPAs of the banking & FI sector. This Act was result-oriented and, at the same time, gives superpower to Banks & FIs to fight with increasing NPAs.



The Act got conception with the constitution of the Andhyarrjina committee and Narasimhan committee I and II by the central Govt. to examine reforms of the banking sector and well-thought-out the requirement for making changes in the legal system related to these areas. The councils proposed making one more enactment of securitization for authorizing banks and FIs to occupy the secured assets and to trade them lacking any kind of interference of the courts.

³ Unny, Mukand.P. (2010). A Study on the Effectiveness of Remedies Available For Banks in a Debt Recovery Tribunal - A Case Study on Ernakulam DRT, Working Paper Series, Centre for Public Policy Research, pp.1-35.

On June 21, 2002, following the recommendations of panels, the president proclaimed “the securitization and reconstruction of financial assets and enforcement of security interest ordinance, 2002”. A bill was presented in the house of people to substitute this ordinance with an enactment, but at that time the parliament was not in session so it couldn't be passed. The president was aware that he needs to make a prompt move in existing conditions to give consistent impact to the arrangement of said ordinance to manage the recreation of financial assets, securitization, enforcement of security interest, and for matter associated in addition to that.

The president, by using the power deliberated by the Indian constitution, promulgated the SARFAESI ordinance on 21st August 2002. The SARFAESI bill was presented in the parliament to substitute this ordinance by an Act. On December 17, 2002, The SARFAESI Bill, with the consent of the president, passed by both the Houses of Parliament. It came on the Statutes Book as “THE SECURITIZATION AND RECONSTRUCTION OF FINANCIAL ASSETS AND ENFORCEMENT OF SECURITY INTEREST ACT, 2002 (54 of 2002).”

OBJECTIVES AND FEATURES OF THE ACT

The requirement for the Act stands up due to strengthen banks and FIs for recovering bad loans from borrowers since long. The setting up of an innovative entity for managing transactions of securitization and reconstruction were sturdily suggested by Verma Committee and Narasimhan Committee I & II and there were mainly three Objectives behind the foundation of this Act, which are as follow:

- The Act controls the financial assets' transactions of reconstruction and securitization.
- The Act controls the enforcement of the security interest and for matters related to it.
- The Act authorizes the banks to alter or possession of management or even take over the securities of the borrowers and trade or rent out the securities.

The Act comprises many features to facilitate fast and effective management of NPAs, which can be enlisted as below:

- If an account gets defaulter, the banks and FIs can lead a notice to the borrower to set off all debts within 60 days from getting that notice. If the borrower fails to do that, then the Secured Creditor may start the proceeding to take possess secured assets according to provisions of the Act to recover the loan amount.

- If Sale proceeds do not compensate, the full amount of the banks and FIs, as claimed in that case, can appeal to a Court or the DRT to recover the remaining quantity from the borrower.
 - Banks and FIs can, sale the secured assets or take Action against the guarantorsto perform any of the measures.
 - If the borrower is a business entity, then banks and FIs can possess the management and can appoint directors by publishing an advertisement in a newspaper, in the local language, of that zone in which the company is located.
 - Once when the borrower receives the notice for possession, he cannot isolate the security in question.
 - Banks can sell and package advances through securitization, and these advances may be operated among banks as bonds or shares.
 - Application of the provisions of the Act cannot be implemented in the following cases:
 - Agricultural land-related security interest is not covered under provisions of the Act.
 - If the due amount of the principle or interest is less than 20% for the debt, then provisions of the Act do not apply to this.
 - If financial assets' security interest is not exceeding Rs.1 lakh, then it is not covered under the Act.
 - Pledge of transportable assets within the Indian Contract Act, 1872.
 - If a contract or provisional hire purchase, sale, or lease is made by two parties in which no security interest has been formed.
- After taking the possession of the security by banks or FIs, the borrower is given the right to appeal and can file before the DRT within forty-five days from the possession of the property date. If again, the borrower is not satisfied with the decision of the DRT and can appeal to DRAT within thirty days since having DRT's order. But with every appeal, the borrower needs to pay some amount as prescribed for the procedure to check dilatory or frivolous appeals. The Act orders that no command will be approved in respect of rights talked by or under this Act by overthrowing the dominion of the Civil Courts.

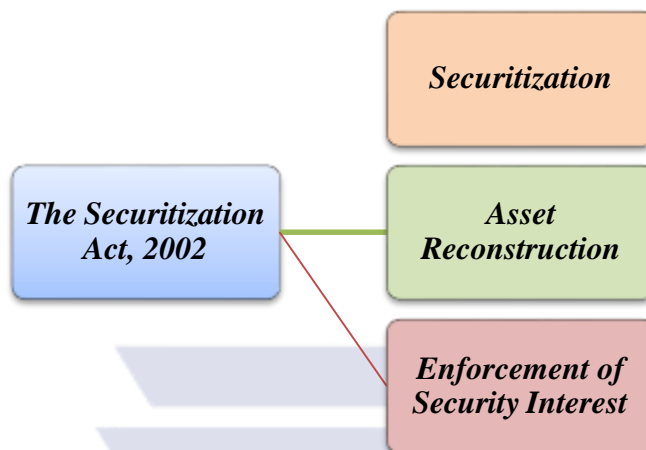
HIGHLIGHTS OF THE PROVISIONS

The Securitization Act, 2002, encompasses provisions to deliver the following facilities to manage the recovery of NPAs:

- Regulation and registration of RCs by the RBI,
- Enabling securitization of financial assets of FIs or banks without or with the benefits of fundamental securities,
- Enabling smooth transference of financial assets from banks or FIs to the SC for acquiring financial assets by the issue of debentures or the same nature,
- Authorizing SCs/ RCs to increase reserves by the issue of security receipts to QIBs,
- Enabling the reconstruction of financial assets acquired with the help of rules that are projected to be discussed with the banks and FIs,
- Announcement of an SC or RC listed as a public financial institution with the RBI for the Companies Act, 1956,
- Defining security interest as a security that was given to FIs or banks for due repayment of any financial assistance, including mortgage and charge on the motionless property,
- Authorizing FIs and banks to detach securities offered for financial assistance and to lease, trade, or possess the management in the occurrence of circumvention,
- Empowering the secured creditor to apply their rights to appoint its officers authorized according to the directions made by the central Government,
- Empowering borrowers with the right to appeal against the order of any bank or FI to the related DRT and an additional appeal to the DRAT,
- Formation of a central registry for the registration of businesses involving asset reconstruction, creation of security interest, and securitization by the central Govt,
 - Implementation of the projected regulation to FIs and banks and enablement of the central Govt. to outspread the implementation of the projected regulation to NBFC and other institutions.

METHODS OF RECOVERY UNDER THE ACT

The Securitization Act, 2002, is featured to endorse frame-up of ARCs to cope up with accumulating NPAs with the banks and FIs. This Act offers three methods for the recovery of NPAs, which are as follow:



Securitization

In this method, financial assets get pooled and repackaged to convert into marketable securities so that they can be invested. The custody of secured assets of the debtor can be possessed by the securitization company for that the following steps can be initiated:

- a. Procure financial assets from the bank,
- b. Obtain funds from QIBs by issuing security receipts for procuring the financial assets,
- c. Raise funds in a set way, and
- d. Take custody of secured assets, which is coupled with financial assets.

Asset Reconstruction

In this method, NPAs get converted into performing assets. Reconstruction of the assets ought to be performed according to regulations of RBI, and the Act provides the following apparatuses for assets reconstruction:

- a. Authorize or altering the management of the company of the debtor,
- b. Auction or rent whole or a part of the company of the debtor,
- c. Reprogramming debts payment due to debtor,
- d. In force security interest,
- e. Settle down debts due to the debtor,
- f. Take over secured assets.

Enforcement of Security Interests

In this method, the bank or FI is given the power to issue a notice to defaulter the client for payment of the debt in 60 days since the date on which notice is issued. If the defaulter goes amiss to fulfill the notice, the FIs or bank may enforce security interests and take a step as:

- a. Occupy the secured asset,
- b. Auction or rent or allocate the right over the secured assets,
- c. designate Manager to bring about the secured asset,
- d. Request debtors to recompense if any sum is due to the borrower.

Enforcement of security interest: Notwithstanding anything contained in section 69 or section 69A of the Transfer of property Act, 1882 (4 of 1882), any security interest created in favour of any secured creditor may be enforced, without the intervention of court or tribunal, by such creditor in accordance with the provisions of this Act. The relevant sections are extracted hereunder:

1. 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). 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.
2. 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 realizing the secured asset;
 - b. Take over the management of secured assets of the borrower including right to transfer by way of lease, assignment or sale and realize the secured asset;
 - c. Appoint any person (hereafter referred 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 asset 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.
3. 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.
4. Any transfer of secured asset after taking possession there of or take over of management, under sub-section (4), by the secured creditor or by the manager on behalf of the secured creditors 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 the secured asset.
5. 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 creditors, have been properly incurred by him or any expenses incidental thereto, shall be recoverable from that 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.
6. If the dues of the secured creditor together with all costs, charges and expenses incurred by him are tendered to the secured creditor at any time before the date fixed for sale or transfer, that secured asset shall not be sold or transferred by the secured creditor, and no further step shall be taken by him for transfer or sale of that secured asset.
7. 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 excise 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 three-fourth 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 realized from the sale of secured asset shall be distributed in accordance with the provisions of section 529A of the Companies Act, 1956 (1 of 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 provision to sub-section (1) of section 529 of the Companies Act, 1956 (1 of 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 the liquidator referred to second provision shall intimate that secured creditor the workmen's dues in accordance with the provisions of section 529A of the Companies Act, 1956 (1 of 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 asset after depositing the amount of such estimated 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.

- a) "record date" means the date agreed upon by the secured creditors representing not less than three fourth in value of the amount outstanding

onsuch 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.
8. 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.
9. 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 measures specified in clause (a) to (d) of sub-section (4) in relation to the secured creditor’s assets under this Act.
10. The rights of secured creditor under this Act may be exercised by one or more of his officers authorized in this behalf in such manner as may be prescribed.
11. 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 secured creditor.
12. Chief metropolitan magistrate or District magistrate to assist secured creditor in taking possession of secured asset:
 - (1) where the possession of any secured asset 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 asset, 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 creditors.
- (2) For the purpose of securing compliance with the provisions of sub-section (1), the chief metropolitan magistrate or the district magistrate make take or cause to be taken such steps and use, or cause to be used such force, as may, in his opinion, be necessary.
- (3) No act of the chief metropolitan magistrate or the district magistrate done in pursuance of this section shall be called in question in any court or before any authority.

Right to appeal; 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 authorized officer, may prefer an appeal to the Debts Recovery Tribunal having jurisdiction in the matter within forty-five days from the date on which such measures had been taken.

- (2) Where an appeal is preferred by a borrower, such appeal shall not be entertained by the Debts Recovery Tribunal unless the borrower has deposited with the Debts Recovery Tribunal seventy-five percent of the amount claimed in the notice referred in sub-section (2) of section 13: provided that the Debts Recovery Tribunal may, for reasons to be recorded in writing, waive or reduce the amount to be deposited under this section.
- (3) save as otherwise provided in this Act, the Debts Recovery Tribunal shall, as far as may be, dispose of the appeal in accordance with the provisions of the Recovery of Debts due to Bank and Financial Institutions Act, 1993 (51 of 1993) and rules made thereunder.

Appeal to Appellate Tribunal:

- 1) Any person aggrieved by any order made by the Debts Recovery Tribunal under section 17 may prefer an appeal to an Appellate Tribunal within thirty days from the date of

receipt of the order of Debts Recovery Tribunal.

- 2) 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 Institution Act, 1993 (51 of 1993) and rules made thereunder.

Right of the borrower to receive compensation and costs in certain cases if the Debts Recovery Tribunal or the Appellate Tribunal, as the case may be, on an appeal filed under section 17 or section 18, holds the possession of secured assets by the secured creditor as wrongful and directs the secured creditor to return such secured assets to the concerned borrower, such borrower shall be entitled to payment of such compensation and costs as may be determined by such Tribunal or Appellate Tribunal.

AMENDMENTS IN THE ACT

The Securitization Act, 2002, has been amended 3 times till March 31 2019 for enhancing its effectiveness and efficiency in the recovery of NPAs. And the details of the amendment are as following:

Amendment Act 30 of 2004

This amendment was initiated because of considering some verdict of the Hon'ble SC, dampening the borrowers to delay the settlement of debts and authorizing the banks or FIs to recuperate their debts promptly. To amend the Act for these reasons, On November 11, 2004, "the enforcement of security interest and recovery of debt laws Ordinance, 2004", was propagated. The main highlights of the amendment were as following:

- i.** The Bank or FI needs to ponder any objection elevated or presentation created by the borrower and to communicate in writing about it within 1 week of acceptance of such a source of communication to take over the security of the borrower.
- ii.** The borrower is enabled to file an appeal before the DRT after depositing a part of the due amount, as mentioned by them.
- iii.** DRTs are made to deposit and dispose of application as quickly as possible and given a time bond of 60 days to avoid delay.
- iv.** Pending applications can be transferred to any of the DRTs in special cases.
- v.** Person distressed, by any instruction given by the DRT, can file an appeal to the
- vi.** DRAT after depositing 50% of the debt due to the appellate tribunal.

- vii. The bank or FI can withdraw the application with DRT to take action under the Securitization Act, 2002.

Amendment Act 1 of 2013

This amendment provides for the following, namely: -

- i. The borrower company can convert any part of debt into shares, and this conversion shall be valid all time,
- ii. The Multi-State co-operative banks are included in the bank's description.
- iii. The FI or bank can respond to the borrower within 15 days' instead of 7 days.
- iv. Empower the banks or FIs are empowered to take possession of the immovable property from the defaulting borrower.
- v. Any person or bank can case a caveat to be heart by DRT before granting any stay.
- vi. Record keeping of the transaction of reconstruction, creation of security interest, or securitization in the central registry is provided.

Amendment Act 44 of 2016

This amendment is projected to enable investment leading to higher economic growth, suit charging credit, and development and augment ease of doing business. And it includes:

- i. Registration and integration provision of the registration system is made available to frame Central database, which contains matters related to property rights' security interest.
- ii. To cope up with changing the business environment, RBI is provided powers to regulate ARCs.
- iii. The banks and FIs are got exempted from assignment stamp duty of loan in favor of ARCs.
- iv. enabling the non-industrial investor to invest in security receipts;
- v. Secured creditors are debenture trustees.
- vi. Secured Assets are provided with a specific timeline for possession.
- vii. Secured creditors are given first importance to the repayment of debts.