



INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS

Open Access, Refereed Journal Multi Disciplinary
Peer Reviewed Edition :

www.ijlra.com

DISCLAIMER

No part of this publication may be reproduced or copied in any form by any means without prior written permission of Managing Editor of IJLRA. The views expressed in this publication are purely personal opinions of the authors and do not reflect the views of the Editorial Team of IJLRA.

Though every effort has been made to ensure that the information in Volume 2 Issue 7 is accurate and appropriately cited/referenced, neither the Editorial Board nor IJLRA shall be held liable or responsible in any manner whatsoever for any consequences for any action taken by anyone on the basis of information in the Journal.

Copyright © International Journal for Legal Research & Analysis

IJLRA

EDITORIAL TEAM

EDITORS



Megha Middha

Megha Middha, Assistant Professor of Law in Mody University of Science and Technology, Lakshmangarh, Sikar

Megha Middha, is working as an Assistant Professor of Law in Mody University of Science and Technology, Lakshmangarh, Sikar (Rajasthan). She has an experience in the teaching of almost 3 years. She has completed her graduation in BBA LL.B (H) from Amity University, Rajasthan (Gold Medalist) and did her post-graduation (LL.M in Business Laws) from NLSIU, Bengaluru. Currently, she is enrolled in a Ph.D. course in the Department of Law at Mohanlal Sukhadia University, Udaipur (Rajasthan). She wishes to excel in academics and research and contribute as much as she can to society. Through her interactions with the students, she tries to inculcate a sense of deep thinking power in her students and enlighten and guide them to the fact how they can bring a change to the society

Dr. Samrat Datta

Dr. Samrat Datta Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Samrat Datta is currently associated with Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Datta has completed his graduation i.e., B.A.LL.B. from Law College Dehradun, Hemvati Nandan Bahuguna Garhwal University, Srinagar, Uttarakhand. He is an alumnus of KIIT University, Bhubaneswar where he pursued his post-graduation (LL.M.) in Criminal Law and subsequently completed his Ph.D. in Police Law and Information Technology from the Pacific Academy of Higher Education and Research University, Udaipur in 2020. His area of interest and research is Criminal and Police Law. Dr. Datta has a teaching experience of 7 years in various law schools across North India and has held administrative positions like Academic Coordinator, Centre Superintendent for Examinations, Deputy Controller of Examinations, Member of the Proctorial Board



Dr. Namita Jain



Head & Associate Professor

School of Law, JECRC University, Jaipur Ph.D. (Commercial Law) LL.M., UGC -NET Post Graduation Diploma in Taxation law and Practice, Bachelor of Commerce.

Teaching Experience: 12 years, AWARDS AND RECOGNITION of Dr. Namita Jain are - ICF Global Excellence Award 2020 in the category of educationalist by I Can Foundation, India. India Women Empowerment Award in the category of "Emerging Excellence in Academics by Prime Time & Utkrisht Bharat Foundation, New Delhi.(2020). Conferred in FL Book of Top 21 Record Holders in the category of education by Fashion Lifestyle Magazine, New Delhi. (2020). Certificate of Appreciation for organizing and managing the Professional Development Training Program on IPR in Collaboration with Trade Innovations Services, Jaipur on March 14th, 2019

Mrs.S.Kalpna

Assistant professor of Law

Mrs.S.Kalpna, presently Assistant professor of Law, VelTech Rangarajan Dr. Sagunthala R & D Institute of Science and Technology, Avadi. Formerly Assistant professor of Law, Vels University in the year 2019 to 2020, Worked as Guest Faculty, Chennai Dr. Ambedkar Law College, Pudupakkam. Published one book. Published 8 Articles in various reputed Law Journals. Conducted 1 Moot court competition and participated in nearly 80 National and International seminars and webinars conducted on various subjects of Law. Did ML in Criminal Law and Criminal Justice Administration. 10 paper presentations in various National and International seminars. Attended more than 10 FDP programs. Ph.D. in Law pursuing.



Avinash Kumar



Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi. He has qualified UGC - NET examination and has been awarded ICSSR - Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and

learning.

ABOUT US

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS

ISSN

2582-6433 is an Online Journal is Monthly, Peer Review, Academic Journal, Published online, that seeks to provide an interactive platform for the publication of Short Articles, Long Articles, Book Review, Case Comments, Research Papers, Essay in the field of Law & Multidisciplinary issue. Our aim is to upgrade the level of interaction and discourse about contemporary issues of law. We are eager to become a highly cited academic publication, through quality contributions from students, academics, professionals from the industry, the bar and the bench. INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS ISSN 2582-6433 welcomes contributions from all legal branches, as long as the work is original, unpublished and is in consonance with the submission guidelines.

ENFORCEMENT OF SECURITY INTEREST (SARFAESI)
(NON-PERFORMING ASSETS, RECONSTRUCTION OF
ASSETS, SECURITIZATION, FINANCIAL INSTITUTIONS,
CHARGE, HYPOTHECATION)

AUTHORED BY - YASHVARDHAN SADANI

ABSTRACT

The implementation of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act has significantly contributed to the resolution in reference to Non-Performing Assets (NPAs) and the maintenance of monetary stability within the banking and financial sectors in India. This analysis explores the efficacy and critiques of the Act in relation to its stated goals and the potential consequences it has on borrowers and lenders alike. Moreover, this article undertakes an examination of current advancements and modifications to the Act, offering a thorough evaluation of its changing influence on the banking and financial sector in India.

INTRODUCTION

The SARFAESI Act allows for the enforcement of security without court intervention. The preceding legislation has expanded the implementation of the concept of security reconstruction. The Act's intent is comparable to Article 9 of the Uniform Commercial Code¹, or UCC, of the United States, which pertains to the regulation of secured transactions². The SARFAESI Act grants banks the authority to seize the borrower's property, except agricultural land, without the need for court proceedings. The applicability of the SARFAESI Act of 2002 is limited to secured loans that provide banks the authority to enforce their rights pertaining to collateral, including hypothecation, mortgages, pledges, and other like instruments.

¹ U.C.C. § 9(2010)

² Article 9. (n.d.). Michigan Gov. Retrieved September 7, 2023, from http://www.michigan.gov/documents/article9_18815_7.pdf

ANALYSIS

The establishment of the SARFAESI Act 2002, which aimed to enhance the accessibility of the process for collecting non-performing loans from borrowers, was proposed by the Narasimham Committee II. Non-performing assets (NPAs) are credit facilities that have been defaulted upon, and they serve as indicators of a bank's performance and financial stability. The SARFAESI Act of 2002 grants banks and financial institutions the authority to reclaim their Non-Performing Assets (NPA) without requiring judicial involvement. The legislation outlines many prerequisites that must be fulfilled before a secured creditor may exercise their rights. These factors include the loan being secured³, therefore designating the financial institution or bank as a secured creditor, and the debt being categorized as a non-performing asset (NPA) by the banks or financial company⁴. The overdue dues amount to INR 1,00,000 (one lakh) or more⁵. In any scenario where the outstanding balance is under twenty percent of the initial loan amount plus the corresponding interest, and in cases where the asset being used as collateral is not agricultural property⁶, the security interest will be enforced.

By using the powers granted by the SARFAESI Act, banks can exercise authority in seizing collateral, liquidating non-performing assets, and alleviating the burden caused by such assets. Under the SARFAESI Act, there exist three distinct approaches for the retrieval of Non-Performing Assets (NPAs), which are enumerated as follows:

- Ensuring the Protection of Financial Assets: According to Section 2(z)⁷, Securitization refers to the procedure by which a securitization company (SC/RC) obtains financial assets from an originator. According to Section 3 of the SARFAESI Act⁸, Securitization Companies (SC) and Asset Reconstruction Companies are authorized to issue security receipts in exchange for monetary funds or other forms of remuneration.
- Restoration of a Financial Asset: Assets Reconstruction companies (ARCs) purchase non-performing assets (NPAs) from banks and employ strategies to recover the outstanding loan

³ SARFAESI Act, 2002, S. 13(1), Acts of Parliament no. 54, 2002(India).

⁴ SARFAESI Act, 2002, S. 13(2), Acts of Parliament no. 54, 2002(India).

⁵ SARFAESI Act, 2002, S. 31(h), Acts of Parliament no. 54, 2002(India).

⁶ SARFAESI Act, 2002, S. 31(j), Acts of Parliament no. 54, 2002(India).

⁷ SARFAESI Act, 2002, S. 2(z), Acts of Parliament no. 54, 2002(India).

⁸ SARFAESI Act, 2002, S. 3, Acts of Parliament no. 54, 2002(India).

balance from the debtors.⁹ The aforementioned techniques include measures such as effectively managing the borrower's business, implementing managerial alterations, conducting a sale or lease of the borrower's assets via a takeover, restructuring the borrower's company operations, postponing the repayment of the borrower's obligations, and seizing assets that have been pledged as collateral.¹⁰ ARCs will allocate the funds obtained through this procedure to facilitate the restoration and improvement of the business's management structure.

- The enforcement of security: The third phrase in the preamble grants secured creditors, such as securitization or reconstruction businesses, the authority to enforce security interests without the need for a court ruling. The right continues to exist notwithstanding the provisions outlined in Sections 69 or 69A of the Transfer of Property Act of 1882¹¹. Nevertheless, the right may only be invoked if a borrower, who is indebted to a secured creditor pursuant to a security arrangement, either i) fails to fulfill their obligations regarding the secured debt or any of its installments, or ii) has had their debt categorized as a non-performing asset.

The SARFAESI Act permits banks to pursue creditor security via hypothecation, mortgage, or assignment in the event of nonpayment. If the account becomes NPA, the secured lender, bank/Fl, may notify the creditor that all obligations are due immediately.

Prior to the enactment of the Execution of Security Interest Laws Act, leveraged creditors could only repossess the borrower's collateral and not the entire business. After the modification, a secured creditor may acquire managerial authority over the borrower's corporate entity. As soon as the debtor satisfies his or her obligation to pay both interest and principal, the account will no longer be considered delinquent.

Once the outstanding debts have been settled, the account transitions into a standard asset and ceases to be classified as an NPA. The case of *Sravan Dall Mill P. Ltd. v. Central Bank* serves to reinforce the notion which is erroneous to assume that a nonperformance is invariably a nonperforming asset and that a secured creditor is incapable of exercising their rights over the

⁹ *United Bank of India Vs Satyawati Tandon* (AIR 2010 SC 3413)

¹⁰ **Lalit Kumar Jain v. U.O.I, 2021 SCC Online SC 396**

¹¹ TOP Act, 1882, S. 69, 69A, Acts of Parliament, 1882(India).

secured asset as stipulated in Section 13 of the SARFAESI Act once the nonperforming asset transitions into an executing asset or an ordinary asset.

- ***SARFAESI Act of 2002-Exempt Assets***

The SARFAESI Act does not extend its protection to the assets enumerated below. Money or negotiable instruments distributed in accordance with the Sale of Goods Act. Any arrangement in which a security interest has not yet been established, including leases, contingent sales, and other arrangements. The issue at hand relates to the unpaid-seller rights specified in Section 47¹². An immovable property that is exempt from the requirements enumerated in Section 60 of the CPC¹³ for the sale or attachment thereof.

CONCLUSION

The SARFAESI Act has accelerated the process by financial institutions recover collateralized assets. The utilization of the Act has eliminated the need for banks to seek judicial intervention to reclaim collateral, thereby removing several obstacles from the recovery process. During the 2009-2010 fiscal year, a sizable number of banks displayed significant signs of asset quality improvement. As of March 31, 2010, the non-performing assets (NPA) of 28 Indian institutions totaled 2.04%, a significant decrease from December 31, 2009, when they totaled 2.2%.¹⁴

- **SUGGESTIONS:**

Although has been instrumental in empowering banks and financial institutions to combat the NPA problem, it is not without its share of controversies. Striking an equilibrium between safeguarding the interests of borrowers and lenders while preserving financial stability continues to be a challenge. To address these issues and assure the equitable and efficient enforcement of security interests in the banking industry, the Act must be amended and continuously monitored.

¹² Sale of Goods Act, 1930, S. 47, Acts of Parliament, 1930(India).

¹³ Civil Procedure Code, 1908, S. 60, Acts of Parliament, 1908(India).

¹⁴ <http://drt-india.blogspot.com/2010/05/banks-show-signs-of-asset-quality.html> (last visited on 07-09-2023).

REFERENCES

1. Rhea Manchanda, Sarfaesi Act, 2002: A Glimpse and Its Impact on NPA, 5 INDIAN J.L. & LEGAL Rsch. 1 (2023).
2. Reshma A., Enforcement of Security Under the Sarfaesi Act, 4 NUALS L.J. 136 (2010).
3. Conflicting Rights of Secured Creditors and Tenants Under the SARFAESI Act- Ambiguity Resolved: A Critical Analysis, (2018) 8 GJLDP (October) 62
4. Phases and Dimensions of Non-Performing Assets in Indian Banking System : Legal Response, 3.2 RFMLR (2016) 136
5. <https://www.drat.tn.nic.in/Docu/Securitisatation-Act.pdf>
6. <https://www.thehindubusinessline.com/money-and-%20rec>
7. https://www.worldwidejournals.com/paripex/fileview/April_2019_1554470864_8011_330.pdf
8. The Securitisation and Reconstruction Act — Looking Beneath the Surface, (2010) 9 SCC J-49

