The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002

Act 54 of 2002. 61 sections. Bare Act with the official footnotes.

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Every section online, with the old and new law side by side and exam questions: https://www.lawmaker.in/bare-acts/sarfaesi-act-2002

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[17th December, 2002.]

[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.]

BE it enacted by Parliament in the Fifty-third Year of the Republic of India as follows:-

CHAPTER I PRELIMINARY

Section 1. Short title, extent and commencement

(1) This Act may be called the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.

(2) It extends to the whole of India.

(3) It shall be deemed to have come into force on the 21st day of June, 2002.

Section 2. Definitions

(1) In this Act, unless the context otherwise requires,-

(a) "Appellate Tribunal" means a Debts Recovery Appellate Tribunal established under sub-section (1) of section 8 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993);

(b) "asset reconstruction" means acquisition by any [1][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;

[2][(ba) "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;]

(c) "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

[3][(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;

(d) "banking company" shall have the meaning assigned to it in clause (c) of section 5 of the Banking Regulation Act, 1949 (10 of 1949);

(e) "Board" means the Securities and Exchange Board of India established under section 3 of the Securities and Exchange Board of India Act, 1992 (15 of 1992);

(f) "borrower" means [4][any person who, or a pooled investment vehicle as defined in clause (da) of section 2 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956) which,] 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 [5][and includes a person who, or a pooled investment vehicle which,] becomes borrower of a [6][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 [7][or who has raised funds through issue of debt securities];

(g) "Central Registry" means the registry set up or cause to be set up under sub-section (1) of section 20;

[7][(ga) "company" means a company as defined in clause (20) of section 2 of the Companies Act, 2013 (18 of 2013);]

(h) "corresponding new bank" shall have the meaning assigned to it in clause (da) of section 5 of the Banking Regulation Act, 1949 (10 of 1949);

[8][(ha) "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-

(i) unpaid portion of the purchase price of any tangible asset given on hire or financial lease or conditional sale or under any other contract;

(ii) 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;]

(i) "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);

[7][(ia) "debt securities" means debt securities listed in accordance with the regulations made by the Board under the Securities and Exchange Board of India Act,1992 (15 of 1992);]

[9][(j) "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;] (k) "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 [10][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;]

(l) "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

[10][(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;

(m) "financial institution" means-

(i) a public financial institution within the meaning of section 4A of the Companies Act, 1956 (1 of 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 (51 of 1993);

(iii) the International Finance Corporation established under the International Finance Corporation (Status, Immunities and Privileges) Act, 1958 (42 of 1958);

[10][(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;

[10][(ma) "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;]

(n) "hypothecation" means a charge in or upon any movable property, existing or future, created by a borrower in favour of a secured creditor without delivery of possession of the movable property to such creditor, as a security for financial assistance and includes floating charge and crystallisation of such charge into fixed charge on movable property;

[11][(na) "negotiable document" means a document, which embodies a right to delivery of tangible assets and satisfies the requirements for negotiability under any law for the time being in force including warehouse receipt and bill of lading;]

(o) "non-performing asset" means an asset or account of a borrower, which has been classified by a bank or financial institution as sub-standard, [12][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];

(p) "notification" means a notification published in the Official Gazette;

(q) "obligor" means a person liable to the originator, whether under a contract or otherwise, to pay a financial asset or to discharge any obligation in respect of a financial asset, whether existing, future, conditional or contingent and includes the borrower;

(r) "originator" means the owner of a financial asset which is acquired by a [13][asset reconstruction company] for the purpose of securitisation or asset reconstruction;

(s) "prescribed" means prescribed by rules made under this Act;

(t) "property" means-

(i) immovable property;

(ii) movable property;

(iii) any debt or any right to receive payment of money, whether secured or unsecured;

(iv) receivables, whether existing or future;

(v) intangible assets, being know-how, patent, copyright, trade mark, licence, franchise or any other business or commercial right of similar nature[11][as may be prescribed by the Central Government in consultation with Reserve Bank];

(u) "[14][qualified buyer]" means a financial institution, insurance company, bank, state financial corporation, state industrial development corporation, [12][trustee or [13][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 (15 of 1992) or regulations made thereunder,[11][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; [15]* * * * * (w) "Registrar of Companies" means the Registrar defined in clause (40) of section 2 of the Companies Act, 1956 (1 of 1956);

(x) "Reserve Bank" means the Reserve Bank of India constituted under section 3 of the Reserve Bank of India Act, 1934 (2 of 1934);

(y) "scheme" means a scheme inviting subscription to security receipts proposed to be issued by a [16][asset reconstruction company] under that scheme;

(z) "securitisation" means acquisition of financial assets by any [16][asset reconstruction company] from any originator, whether by raising of funds by such [16][asset reconstruction company] from [17][qualified buyers] by issue of security receipts representing undivided interest in such financial assets or otherwise;

[15]* * * * *

(zb) "security agreement" means an agreement, instrument or any other document or arrangement under which security interest is created in favour of the secured creditor including the creation of mortgage by deposit of title deeds with the secured creditor;

(zc) "secured asset" means the property on which security interest is created;

[18][(zd) "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 [19][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.]

(ze) "secured debt" means a debt which is secured by any security interest;

[20][(zf) "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;] (zg) "security receipt" means a receipt or other security, issued by a [21][asset reconstruction company] to any [22][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;

(zh) "sponsor" means any person holding not less than ten per cent. of the paid-up equity capital of a [21][asset reconstruction company];

(zi) "State Bank of India" means the State Bank of India constituted under section 3 of the State Bank of India Act, 1955 (23 of 1955);

(zj) "subsidiary bank" shall have the meaning assigned to it in clause (k) of section 2 of the State Bank of India (Subsidiary Banks) Act, 1959 (38 of 1959). (2) Words and expressions used and not defined in this Act but defined in the Indian Contract Act, 1872 (9 of 1872) or the Transfer of Property Act, 1882 (4 of 1882) or the Companies Act, 1956 (1 of 1956) or the Securities and Exchange Board of India Act, 1992 (15 of 1992) shall have the same meanings respectively assigned to them in those Acts.

[1] Subs. by s. 3, ibid., for "securitisation company or reconstruction company" (w.e.f. 1-9-2016).

[2] Ins. by s. 4, ibid. (w.e.f. 1-9-2016).

[3] Ins. by Act 1 of 2013, s. 2 (w.e.f. 15-1-2013).

[4] Subs. by Act 13 of 2021, s. 162, for "any person who" (w.e.f. 1-4-2021).

[5] Subs. by s. 162, ibid., for "and includes a person who" (w.e.f. 1-4-2021).

[6] Subs. by Act 44 of 2016, s. 3, for "securitisation company or reconstruction company" (w.e.f. 1-9-2016).

[7] Ins. by s. 4, ibid. (w.e.f. 1-9-2016).
[8] Subs. by s. 4, ibid., for clause (ha) (w.e.f. 1-9-2016).
[9] Subs. by s. 4, ibid., for clause (j) (w.e.f. 1-9-2016).
[10] Ins. by Act 44 of 2016, s. 4 (w.e.f. 1-9-2016).
[11] Ins. by Act 44 of 2016, s. 4 (w.e.f. 1-9-2016).
[12] Subs. by Act 30 of 2004, s. 2, for certain words (w.e.f. 11-11-2004).
[13] Subs. by Act 44 of 2016, s. 3, for "securitisation company or reconstruction company" (w.e.f. 1-9-2016).
[14] Subs. by s. 3, ibid., for "qualified institutional buyer" (w.e.f. 1-9-2016).
[15] Omitted by Act 44 of 2016, s. 4 (w.e.f. 1-9-2016).
[16] Subs. by s. 3, ibid., for "securitisation company or reconstruction company" (w.e.f. 1-9-2016).
[17] Subs. by s. 3, ibid., for "qualified institutional buyers" (w.e.f. 1-9-2016).
[18] Subs. by s. 4, ibid., for clause (zd) (w.e.f. 1-9-2016).
[19] Subs. by Act 13 of 2021, s. 162, for "the Board appointed by any company" (w.e.f. 1-4-2021).
[20] Subs. by Act 44 of 2016, s. 4, for clause (zf) (w.e.f. 1-9-2016).
[21] Subs. by Act 44 of 2016, s. 3, for "securitisation company or reconstruction company" (w.e.f. 1-9-2016).
[22] Subs. by s. 3, ibid., for "qualified institutional buyer" (w.e.f. 1-9-2016).

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

Section 3. Registration of [1][asset reconstruction companies]

(1) No [2][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

[3][(b) having net owned fund of not less than two 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 [1][asset reconstruction companies]:

Provided further that a [2][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.

(2) Every [2][asset reconstruction company] shall make an application for registration to the Reserve Bank in such form and manner as it may specify.

(3) The Reserve Bank may, for the purpose of considering the application for registration of a [2][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 [2][asset reconstruction company], or otherwise, that the following conditions are fulfilled, namely:-

(a) that the [2][asset reconstruction company] has not incurred losses in any of the three preceding financial years;

(b) that such [4][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 [5][qualified buyers] or other persons;

(c) that the directors of [4][asset reconstruction company] have adequate professional experience in matters related to finance, securitisation and reconstruction;

[6]* * * * *

(e) that any of its directors has not been convicted of any offence involving moral turpitude;

[7][(f) 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;]

(g) that [4][asset reconstruction company] has complied with or is in a position to comply with prudential norms specified by the Reserve Bank;

[8][(h) that [4][asset reconstruction company] has complied with one or more conditions specified in the guidelines issued by the Reserve Bank for the said purpose.]

(4) The Reserve Bank may, after being satisfied that the conditions specified in sub-section (3) are fulfilled, grant a certificate of registration to the [9][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.

(5) 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.

(6) Every [4][asset reconstruction company] shall obtain prior approval of the Reserve Bank for any substantial change in its management [10][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 a [11][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 [12][change affecting the sponsorship in the company by way of transfer of shares or] amalgamation or transfer of the business of the company.

[1] Subs. bys. 3, ibid., for "securitisation companies or reconstruction companies" (w.e.f. 1-9-2016).
[2] Subs. by Act 44 of 2016, s. 3, for "securitisation company or reconstruction company" (w.e.f. 1-9-2016).
[3] Subs. by s. 5, ibid., for clause (b) (w.e.f. 1-9-2016).
[4] Subs. by Act 44 of 2016, s. 3, for "securitisation company or reconstruction company" (w.e.f. 1-9-2016).
[5] Subs. bys. 3, ibid., for "qualified institutional buyers" (w.e.f. 1-9-2016).
[6] Omitted by s. 5, ibid. (w.e.f. 1-9-2016).
[7] Subs. by s. 5, ibid., for clause (f) (w.e.f. 1-9-2016).
[8] Ins. by Act 30 of 2004, s. 3 (w.e.f. 11-11-2004).
[9] Subs. by Act 44 of 2016, s. 3, for "securitisation company or the reconstruction company" (w.e.f. 1-9-2016).
[10] Ins. by s. 5, ibid. (w.e.f. 1-9-2016).
[11] Subs. by s. 3, ibid., for "securitisation company or a reconstruction company" (w.e.f. 1-9-2016).
[12] Ins. by s. 5, ibid. (w.e.f. 1-9-2016).

Section 4. Cancellation of certificate of registration

(1) The Reserve Bank may cancel a certificate of registration granted to a [1][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 [2][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 [3][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 [4][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.

(2) A [3][asset reconstruction company] aggrieved by the order of [5]*** cancellation of certificate of registration may prefer an appeal, within a period of thirty days from the date on which [6][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.

(3) A [3][asset reconstruction company], which is holding investments of [7][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 a [3][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.

[1] Subs. by s. 3, ibid., for "securitisation company or a reconstruction company" (w.e.f. 1-9-2016).
[2] Subs. by Act 44 of 2016, s. 3, for "qualified institutional buyer" (w.e.f. 1-9-2016).
[3] Subs. by s. 3, ibid., for "securitisation company or reconstruction company" (w.e.f. 1-9-2016).
[4] Subs. by s. 3, ibid., for "securitisation company or the reconstruction company" (w.e.f. 1-9-2016).
[5] The words "rejection of application for registration or" omitted by Act 30 of 2004, s. 4 (w.e.f. 11-11-2004).
[6] Subs. bys. 4, ibid., for "such order of rejection or cancellation" (w.e.f. 11-11-2004).
[7] Subs. by Act 44 of 2016, s. 3, for "qualified institutional buyers" (w.e.f. 1-9-2016).

Section 5. Acquisition of rights or interest in financial assets

(1) Notwithstanding anything contained in any agreement or any other law for the time being in force, any [1][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.

[2][(1A) 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 (2 of 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.]

(2) If the bank or financial institution is a lender in relation to any financial assets acquired under sub-section (1) by the [3][asset reconstruction company], such [4][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.

[2][(2A) 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).]

(3) 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 [4][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, [4][asset reconstruction company], as the case may be, had been a party thereto or as if they had been issued in favour of [4][asset reconstruction company], as the case may be.

(4) 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 (1 of 1986) 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 [4][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 [4][asset reconstruction company], as the case may be.

[5][(5) On acquisition of financial assets under sub-section (1), the [4][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 [4][asset reconstruction company] in such pending suit, appeal or other proceedings.]

[1] Subs. by s. 3, ibid., for "securitisation company or reconstruction company" (w.e.f. 1-9-2016).
[2] Ins. by Act 44 of 2016, s. 6 (w.e.f. 1-9-2016).

[3] Subs. by s. 3, ibid., for "securitisation company or the reconstruction company" (w.e.f. 1-9-2016).
[4] Subs. by s. 3, ibid., for "securitisation company or reconstruction company" (w.e.f. 1-9-2016).
[5] Ins. by Act 1 of 2013, s. 3 (w.e.f. 15-1-2013).

Section 5A. Transfer of pending applications to any one of Debts Recovery Tribunals in certain cases

[1][(1) If any financial asset, of a borrower acquired by a [2][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 [2][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.

(2) 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.

(3) Notwithstanding anything contained in the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 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.

(4) 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 (51 of 1993) shall, accordingly, apply to such execution.]

[1] Ins. by Act 30 of 2004, s. 5 (w.e.f. 11-11-2004).
[2] Subs. by Act 44 of 2016, s. 3, for "securitisation company or reconstruction company" (w.e.f. 1-9-2016).

Section 6. Notice to obligor and discharge of obligation of such obligor

(1) The bank or financial institution may, if it considers appropriate, give a notice of acquisition of financial assets by any [1][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.

(2) 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 [1][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.

(3) 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 [1][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 [1][asset reconstruction company], as the case may be, or its agent duly authorised in this behalf.

[1] Subs. by Act 44 of 2016, s. 3, for "securitisation company or reconstruction company" (w.e.f. 1-9-2016).

Section 7. Issue of security by raising of receipts or funds by [1][asset reconstruction company]

(1) Without prejudice to the provisions contained in the Companies Act, 1956 (1 of 1956), the Securities Contracts (Regulation) Act, 1956 (42 of 1956) and the Securities and Exchange Board of India Act, 1992 (15 of 1992), any [1][asset reconstruction company], may, after acquisition of any financial asset under sub-section (1) of section 5, offer security receipts to qualified institute buyers [2][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.

(2) A [3][asset reconstruction company] may raise funds from the [4][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 [5][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.

[6][(2A) (a) 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 [3][asset reconstruction company], and the

[3][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 [4][qualified buyers] holding the security receipts or from whom the funds are raised.

(b) The provisions of the Indian Trusts Act, 1882 (2 of 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.]

(3) In the event of non-realisation under sub-section (2) of financial assets, the [4][qualified buyers] of a [3][asset reconstruction company], holding security receipts of not less than seventy-five per cent. of the total value of the [7][security receipts issued under a scheme by such company], shall be entitled to call a meeting of all the [4][qualified buyers] and every resolution passed in such meeting shall be binding on the company.

(4) The [4][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 [3][asset reconstruction company], as the case may be.

[1] Subs. by Act 44 of 2016, s. 3, for "securitisation company or reconstruction company" (w.e.f. 1-9-2016).
[2] Subs. by s. 7, ibid., for "(other than by offer to public)" (w.e.f. 1-9-2016).
[3] Subs. by Act 44 of 2016, s. 3, for "securitisation company or reconstruction company" (w.e.f. 1-9-2016).
[4] Subs. by s. 3, ibid., for "qualified institutional buyers" (w.e.f. 1-9-2016).
[5] Subs. by s. 3, ibid., for "qualified institutional buyer" (w.e.f. 1-9-2016).
[6] Ins. by Act 30 of 2004, s. 6 (w.e.f. 11-11-2004).
[7] Subs. by s. 6, ibid., for "security receipts issued by such company" (w.e.f. 11-11-2004).

Section 8. Exemption from registration of security receipt

Notwithstanding anything contained in sub-section (1) of section 17 of the Registration Act, 1908 (16 of 1908),-

(a) any security receipt issued by the [1][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.

[1] Subs. by Act 44 of 2016, s. 3, for "securitisation company or reconstruction company" (w.e.f. 1-9-2016).

Section 9. Measures for assets reconstruction

[1][(1)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.

(2) 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.

(3) 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).]

[1] Subs. by Act 44 of 2016, s. 8, for section 9 (w.e.f. 1-9-2016).

Section 10. Other functions of [1][asset reconstruction company]

(1) Any [1][asset reconstruction company] registered under section 3 may-

(a) act as an agent for any bank or financial institution for the purpose of recovering their dues from the borrower on payment of such fee or charges as may be mutually agreed upon between the parties;

(b) act as a manager referred to in clause (c) of sub-section (4) of section 13 on such fee as may be mutually agreed upon between the parties;

(c) act as receiver if appointed by any court or tribunal:

Provided that no [1][asset reconstruction company] shall act as a manager if acting as such gives rise to any pecuniary liability.

(2) Save as otherwise provided in sub-section (1), no [1][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 a [1][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, "[2][asset reconstruction company]" or "[3][asset reconstruction company]" does not include its subsidiary.

[1] Subs. by Act 44 of 2016, s. 3, for "securitisation company or reconstruction company" (w.e.f. 1-9-2016).
[2] Subs. by s. 3, ibid., for "securitisation company" (w.e.f. 1-9-2016).
[3] Subs. by s. 3, ibid., for "reconstruction company" (w.e.f. 1-9-2016).

Section 11. Resolution of disputes

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 [1][asset reconstruction company] or [2][qualified buyer], such dispute shall be settled by conciliation or arbitration as provided in the Arbitration and Conciliation Act, 1996 (26 of 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.

[1] Subs. by Act 44 of 2016, s. 3, for "securitisation company or reconstruction company" (w.e.f. 1-9-2016).
[2] Subs. by s. 3, ibid., for "qualified institutional buyer" (w.e.f. 1-9-2016).

Section 12. Power of Reserve Bank to determine policy and issue directions

(1) 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 [1][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 [1][asset reconstruction company], it is necessary or expedient so to do, it may determine the policy and give directions to all or any [1][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 [2][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.

(2) Without prejudice to the generality of the power vested under sub-section (1), the Reserve Bank may give directions to any [2][asset reconstruction company] generally or to a class of [3][asset reconstruction companies] or to any [2][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 [2][asset reconstruction company];

[4][(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.]

[1] Subs. by Act 44 of 2016, s. 3, for "securitisation company or reconstruction company" (w.e.f. 1-9-2016).
[2] Subs. by Act 44 of 2016, s. 3, for "securitisation company or reconstruction company" (w.e.f. 1-9-2016).
[3] Subs. by s. 3, ibid., for "securitisation companies or reconstruction companies" (w.e.f. 1-9-2016).
[4] Ins. by s. 9, ibid. (w.e.f. 1-9-2016).

Section 12A. Power of Reserve Bank to call for statements and information

[1][The Reserve Bank may at any time direct a [2][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 [2][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.]

[1] Ins. by Act 30 of 2004, s. 7 (w.e.f. 11-11-2004).
[2] Subs. by Act 44 of 2016, s. 3, for "securitisation company or reconstruction company" (w.e.f. 1-9-2016).

Section 12B. Power of Reserve Bank to carry out audit and inspection

[1][(1) 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.

(2) 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).

(3) 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.

(4) 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.]

[1] Ins. by Act 44 of 2016, s. 10 (w.e.f. 1-9-2016).

CHAPTER III ENFORCEMENT OF SECURITY INTEREST

Section 13. Enforcement of security interest

(1) 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.

(2) 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).

[1][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.]

(3) 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][(3A) 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 [3][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.]

(4) 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;

[4][(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.

(5) 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.

[5][(5A) 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.

(5B) 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.

(5C) The provisions of section 9 of the Banking Regulation Act, 1949 (10 of 1949) shall, as far as may be, apply to the immovable property acquired by secured creditor under sub-section (5A).]

(6) 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.

(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.

[6][(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.]

(9) [7][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 [8][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 (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 proviso 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 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 (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 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 [8][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.

(10) 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.

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

(12) 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.

(13) 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.

State Amendment

Jammu and Kashmir and Ladakh (UTs).-

Amendment of section 13.-In sub-section (3A), in proviso thereto, omit "or the Court of District Judge under section 17A".

[Vide Order No. 3807(E) dated 26th October, 2020, the Union Territory of Jammu and Kashmir Reorganisation (Adaptation of Central Laws) Third Order, 2020 (w.e.f. 26-10-2020) and Vide Union Territory of Ladakh Reorganisation (Adaptation of Central Laws) Order, 2020, notification No. S.O. 3774(E), dated (23-10-2020).]

[1] Ins. by Act 44 of 2016, s. 11 (w.e.f. 1-9-2016).
[2] Ins. by Act 30 of 2004, s. 8 (w.e.f. 11-11-2004).
[3] Subs. by Act 1 of 2013, s. 5, for "within one week" (w.e.f. 15-1-2013).
[4] Subs. by Act 30 of 2004, s. 8, for clause (b) (w.e.f. 11-11-2004).
[5] Ins. by Act 1 of 2013, s. 5 (w.e.f. 15-1-2013).
[6] Subs. by Act 44 of 2016, s. 11, for sub-section (8) (w.e.f. 1-9-2016).
[7] Subs. by Act 31 of 2016, s. 251 and the Seventh Schedule, for "In the case of" (w.e.f. 15-11-2016).
[8] Subs. by Act 1 of 2013, s. 5, for "three-fourth" (w.e.f. 15-1 -2013).

Section 14. Chief Metropolitan Magistrate or District Magistrate to assist secured creditor in taking possession of secured asset

(1) 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:

[1][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[2][within a period of thirty days from the date of application]:

[2][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.]

[3][(1A) The District Magistrate or the Chief Metropolitan Magistrate may authorise any officer subordinate to him,-

(i) to take possession of such assets and documents relating thereto; and

(ii) to forward such assets and documents to the secured creditor.]

(2) 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.

(3) No act of the Chief Metropolitan Magistrate or the District Magistrate [2][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.

[1] Ins. by Act 1 of 2013, s. 6 (w.e.f. 15-1-2013).
[2] Ins. by Act 44 of 2016, s. 12 (w.e.f. 1-9-2016).
[3] Ins. by Act 1 of 2013, s. 6 (w.e.f. 15-1-2013).

Section 15. Manner and effect of take over of management

(1) [1][When the management of business of a borrower istaken over by a [2][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 (1 of 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.

(2) 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 (1 of 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. (3) Where the management of the business of a borrower, being a company as defined in the Companies Act, 1956 (1 of 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. (4) 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.

[3][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.]

[1] Subs. by Act 30 of 2004, s. 9, for "When the management of business of a borrower is taken over by a secured creditor" (w.e.f. 11-11-2004).
[2] Subs. by Act 44 of 2016, s. 3, for "securitisation company or reconstruction company" (w.e.f. 1-9-2016).
[3] Ins. by Act 44 of 2016, s. 13 (w.e.f. 1-9-2016).

Section 16. No compensation to directors for loss of office

(1) 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.

(2) 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.

Section 17. [1]Application against measures to recover secured debts

(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,[2][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:

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

[4][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.]

[5][(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.]

[6][(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.

[7][(3) 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.] (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.

[8][(4A) 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 (4 of 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.]

(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).

(6) 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.

(7) 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 thereunder.]

[1] Subs. by s. 14, ibid., for "Right to appeal" (w.e.f. 1-9-2016).

[2] Subs. by Act 30 of 2004, s. 10, for "may prefer an appeal" (w.e.f. 21-6-2002).
[3] Ins. by s. 10, ibid. (w.e.f. 21-6-2002).
[4] Ins. bys. 10, ibid. (w.e.f. 11-11-2004).
[5] Ins. by Act 44 of 2016, s. 14 (w.e.f. 1-9-2016).
[6] Subs. by Act 30 of 2004, s.10, for sub-sections (2) and (3) (w.e.f. 11-11-2004).
[7] Subs. by Act 44 of 2016, s. 14,for sub-section (3) (w.e.f. 1-9-2016).
[8] Ins. by Act 44 of 2016, s. 14 (w.e.f. 1-9-2016).

Section 17A. Making of application to Court of District Judge in certain cases

[Making of application to Court of District Judge in certain cases.] Omitted by the Jammu and Kashmir Reorganization (Adaptation of Central Laws) Order, 2020, vide notification No. S.O. 1123(E) dated (18-3-2020) and Vide Union Territory of Ladakh Reorganisation (Adaptation of Central Laws) Order, 2020, notification No. S.O. 3774(E), dated (23-10-2020).

Section 18. Appeal to Appellate Tribunal

(1) Any person aggrieved, by any order made by the Debts Recovery Tribunal[1][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.

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

[3][Provided further that no appeal shall be entertained unless the borrower has deposited with the Appellate Tribunal fifty per cent. 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 per cent. of debt referred to in the second proviso.]

(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 Institutions Act, 1993 (51 of 1993) and rules made thereunder.

[1] Subs. by Act 30 of 2004, s. 12, for "under section 17, may prefer an appeal" (w.e.f. 21-6-2002).
[2] Ins. by s. 12, ibid. (w.e.f. 21-6-2002).
[3] Ins. by s. 12, ibid. (w.e.f. 11-11-2004).

Section 18A. Validation of fees levied

[1][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.

[1] Ins. by s. 13, ibid. (w.e.f. 11-11-2004).

Section 18B. Appeal to High Court in certain cases

[Appeal to High Court in certain cases.] Omitted by the Jammu and Kashmir Reorganization (Adaptation of Central Laws) Order, 2020, vide notification No. S.O. 1123(E) dated (18-3-2020) and Vide Union Territory of Ladakh Reorganisation (Adaptation of Central Laws) Order, 2020, notification No. S.O. 3774(E), dated (23-10-2020).

Section 18C. Right to lodge a caveat

[1][(1) 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 18or 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.

(2) 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). (3) 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.

(4) 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.

(5) 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.]

State Amendment

Jammu and Kashmir (UT).-

Amendment of section 18(C)-(i) in sub-section (1), omit "or section 17A", "or section 18B", "or the court of District Judge" and "or the High Court"; and

(ii) in sub-section (3), omit "or the court of District Judge" and "or the High Court". [Vide Order No. 3807(E) dated 26th October, 2020, the Union Territory of Jammu and Kashmir Reorganisation (Adaptation of Central Laws) Third Order, 2020 (w.e.f. 26-10-2020) Ladakh (UT).-

Amendment of section 18(C)-

(a) In sub-section (1), omit,-

(i) "or section 17A" and "or section 18B"; and

(ii) "or the court of District Judge" and "or the High Court" whenever they occur;

(b) in sub-section (3) omit "or the court of District Judge" and "or the High Court". [Vide Union Territory of Ladakh Reorganisation (Adaptation of Central Laws) Order, 2020, notification No. S.O. 3774(E), dated (23-10-2020).]

[1] Ins. by Act 1 of 2013, s. 7 (w.e.f. 15-1-2013).

Section 19. Right of borrower to receive compensation and costs in certain cases

[1][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 [2][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.]

State Amendment

Union Territory of Jammu and Kashmir

Amendment of section 19.-(i) Omit "or the Court of District Judge", occurring at both the places;

(ii) Omit "or section 17A" occurring at both the places;

(iii) Omit "or the High Court;

(iv) Omit "or section 18A" occurring at both the places; and

(v) Omit "or the High Court referred to in section 18B" occurring at the end. Insertion of new section:-After section 19, insert-

19A. Transfer of Pending Applications.-All the pending applications before the court of District Judge and the High Court under sections 17A and 18B respectively, shall stand transferred to the Tribunal and the Appellate Tribunal, as the case may be.

[Vide Order No. 3807(E) dated 26th October, 2020, the Union Territory of Jammu and Kashmir Reorganisation (Adaptation of Central Laws) Third Order, 2020 (w.e.f. 26-10-2020)].

Union Territory of Ladakh- Section 19.-In section 19,-

(i) omit "or the court of District Judge", "or the High Court" and "or the High Court referred to in section 18B";

(ii) omit "or section 17A" and "or section 18A". [Vide Union Territory of Ladakh Reorganisation (Adaptation of Central Laws) Order, 2020, notification No. S.O. 3774(E), dated (23-10-2020).]

[1] Subs. by Act 30 of 2004, s. 14, for section 19 (w.e.f. 11-11-2004).

[2] Subs. by Act 44 of 2016, s. 15, for "concerned borrowers, such borrower" (w.e.f. 1-9-2016).

CHAPTER IV CENTRAL REGISTRY

Section 20. Central Registry

(1) 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.

(2) 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.

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

(4) 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 (16 of 1908), the Companies Act, 1956 (1 of 1956), the Merchant Shipping Act, 1958 (44 of 1958), the Patents Act, 1970 (39 of 1970), the Motor Vehicles Act, 1988 (49 of 1988), and the Designs Act, 2000 (16 of 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.

Section 20A. Integration of registration systems with Central Registry

[1][(1) The Central Government may, for the purpose of providing a Central database, in consultation with State Governments or other authorities operating registration system for recording rights over any property or creation, modification or satisfaction of any security interest on such property, integrate the registration records of such registration systems with the records of Central Registry established under section 20, in such manner as may be prescribed.

Explanation.-For the purpose of this sub-section, the registration records includes records of registration under the Companies Act, 2013 (18 of 2013), the Registration Act, 1908 (16 of 1908), the Merchant Shipping Act, 1958 (44 of 1958), the Motor Vehicles Act, 1988 (59 of 1988), the Patents Act, 1970 (39 of 1970), the Designs Act, 2000 (16 of 2000) or other such records under any other law for the time being in force.

(2) The Central Government shall after integration of records of various registration systems referred to in sub-section (1) with the Central Registry, by notification, declare the date of integration of registration systems and the date from which such integrated records shall be available; and with effect from such date, security interests over properties which are registered under any registration system referred to in sub-section (1) shall be deemed to be registered with the Central Registry for the purposes of this Act.

[1] Ins. by Act 44 of 2016, s. 16 (w.e.f. 1-9-2016).

Section 20B. Delegation of powers

The Central Government may, by notification, delegate its powers and functions under this Chapter, in relation to establishment, operations and regulation of the Central Registry to the Reserve Bank, subject to such terms and conditions as may be prescribed.]

Section 21. Central Registrar

(1) 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.

(2) 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.

Section 22. Register of securitisation, reconstruction and security interest transactions

(1) For the purposes of this Act, a record called the Central Register shall be kept at the head office of the Central Registry for entering the particulars of the transactions relating to-

(a) securitisation of financial assets;

(b) reconstruction of financial assets; and

(c)creation of security interest.

(2) Notwithstanding anything contained in sub-section (1), it shall be lawful for the Central Registrar to keep the

records wholly or partly in computer, floppies, diskettes or in any other electronic form subject to such safeguards as may be prescribed.

(3) Where such register is maintained wholly or partly in computer, floppies, diskettes or in any other electronic form, under sub-section (2), any reference in this Act to entry in the Central Register shall be construed as a reference to any entry as maintained in computer or in any other electronic form.

(4) The register shall be kept under the control and management of the Central Registrar.

Section 23. Filing of transactions of securitisation, reconstruction and creation of security interest

[1][(1)] The particulars of every transaction of securitisation, asset reconstruction or creation of security interest shall be filed, with the Central Registrar in the manner and on payment of such fee as may be prescribed [2]***:

[3]* * * * *

[4][Provided [5]*** that the Central Government may, by notification, require registration of all transactions of securitisation, or asset reconstruction or creation of security interest which are subsisting on or before the date of establishment of the Central Registry under sub-section (7) of section 20 within such period and on payment of such fees as may be prescribed.]

[6][(2) The Central Government may, by notification, require the registration of transaction relating to different types of security interest created on different kinds of property with the Central Registry.

(3) The Central Government may, by rules, prescribe forms for registration for different types of security interest under this section and fee to be charged for such registration.]

[1] Section 23 numbered as sub-section (1) by Act 44 of 2016, s. 17 (w.e.f. 24-1-2020).
[2] The certain words omitted by s. 17, ibid. (w.e.f. 24-1-2020).
[3] The proviso omitted by s. 17, ibid. (w.e.f. 24-1-2020).
[4] Ins. by Act 1 of 2013, s.8 (w.e.f. 15-5-2013).
[5] The word "further" omitted by Act 44 of 2016, s. 17 (w.e.f. 24-1-2020).
[6] Ins. by s. 17, ibid. (w.e.f. 24-1-2020).

Section 24. Modification of security interest registered under this Act

Whenever the terms or conditions, or the extent or operation of any security interest registered under this Chapter are or is [1][asset reconstruction company] or the secured creditors, as the case may be, to send to the Central Registrar, the particulars of such modification, and the provisions of this Chapter as to registration of a security interest shall apply to such modification modified, it shall be the duty of the [2][asset reconstruction company] or the of such security interest.

[1] Subs. by Act 44 of 2016, s. 3, for "reconstruction company" (w.e.f. 1-9-2016).
[2] Subs. by s. 3, ibid., for "securitisation company" (w.e.f. 1-9-2016).

Section 25. [1][Asset reconstruction company] or secured creditors to report satisfaction of security interest

(1) The [1][asset reconstruction company] or the secured creditors as the case may be, shall give intimation to the Central Registrar of the payment or satisfaction in full, of any security interest relating to the [2][asset reconstruction company] or the secured creditors and requiring registration under this Chapter, within thirty days from the date of such payment or satisfaction.

[3][(1A) On receipt of intimation under sub-section (1), the Central Registrar shall order that a memorandum of satisfaction shall be entered in the Central Register.]

(2) [4][If the concerned borrower gives an intimation to the Central Registrar for not recording the payment or satisfaction referred to in sub-section (1), the Central Registrar shall on receipt of such intimation], cause a notice to be sent to the [5][asset reconstruction company] or the secured creditors calling upon it to show cause within a time not exceeding fourteen days specified in such notice, as to why payment or satisfaction should not be recorded as intimated to the Central Registrar.

(3) If no cause is shown, the Central Registrar shall order that a memorandum of satisfaction shall be entered in the Central Register.

(4) If cause is shown, the Central Registrar shall record a note to that effect in the Central Register, and shall inform the borrower that he has done so.

[1] Subs. by s. 3, ibid., for "securitisation company or reconstruction company" (w.e.f. 1-9-2016).
[2] Subs. by s. 3, ibid., for "securitisation company or the reconstruction company" (w.e.f. 1-9-2016).
[3] Ins. by Act 30 of 2004, s. 15 (w.e.f. 11-11-2004).

[4] Subs. by s. 15, ibid., for "The Central Registrar shall, on receipt of such intimation" (w.e.f. 11-11-2004).
[5] Subs. by Act 44 of 2016, s. 3, for "securitisation company" (w.e.f. 1-9-2016).

Section 26. Right to inspect particulars of securitisation, reconstruction and security interest transactions

(1) The particulars of securitisation or reconstruction or security interest entered in the Central register of such transactions kept under section 22 shall be open during the business hours for inspection by any person on payment of such fees as may be prescribed.

(2) The Central Register referred to in sub-section (1) maintained in electronic form shall also be open during the business hours for the inspection of any person through electronic media on payment of such fees as may be prescribed.

Section 26A. Rectification by Central Government in matters of registration, modification and satisfaction, etc

[1][(1) The Central Government, on being satisfied-

(a) that the omission to file with the Registrar the particulars of any transaction of securitisation, asset reconstruction or security interest or modification or satisfaction of such transaction or; the omission or mis-statement of any particular with respect to any such transaction or modification or with respect to any satisfaction or other entry made in pursuance of section 23 or section 24 or section 25 of the principal Act was accidental or due to inadvertence or some other sufficient cause or it is not of a nature to prejudice the position of creditors; or

(b) that on other grounds, it is just and equitable to grant relief,

may, on the application of a secured creditor or [2][asset reconstruction company] or any other person interested on such terms and conditions as it may seem to the Central Government just and expedient, direct that the time for filing of the particulars of the transaction for registration or modification or satisfaction shall be extended or, as the case may require, the omission or mis-statement shall be rectified.

(2) Where the Central Government extends the time for the registration of transaction of security interest or securitisation or asset reconstruction or modification or satisfaction thereof, the order shall not prejudice any rights acquired in respect of the property concerned or financial asset before the transaction is actually registered.]

[1] Ins. by Act 1 of 2013, s. 9 (w.e.f. 15-1-2013).
[2] Subs. by Act 44 of 2016, s. 3, for "securitisation company or reconstruction company" (w.e.f. 1-9-2016).

CHAPTER IVA

Section 26B. Registration by secured creditors and other creditors

(1) The Central Government may by notification, extend the provisions of Chapter IV relating to Central Registry to all creditors other than secured creditors as defined in clause (zd) of sub-section (1) of section 2, for creation, modification or satisfaction of any security interest over any property of the borrower for the purpose of securing due repayment of any financial assistance granted by such creditor to the borrower.

(2) From the date of notification under sub-section (1), any creditor including the secured creditor may file particulars of transactions of creation, modification or satisfaction of any security interest with the Central Registry in such form and manner as may be prescribed.

(3) A creditor other than the secured creditor filing particulars of transactions of creation, modification and satisfaction of security interest over properties created in its favour shall not be entitled to exercise any right of enforcement of securities under this Act.

(4) Every authority or officer of the Central Government or any State Government or local authority, entrusted with the function of recovery of tax or other Government dues and for issuing any order for attachment of any property of any person liable to pay the tax or Government dues, shall file with the Central Registry such attachment order with particulars of the assessee and details of tax or other Government dues from such date as may be notified by the Central Government, in such form and manner as may be prescribed.

(5) If any person, having any claim against any borrower, obtains orders for attachment of property from any court or other authority empowered to issue attachment order, such person may file particulars of such attachment orders with Central Registry in such form and manner on payment of such fee as may be prescribed.

Section 26C. Effect of the registration of transactions, etc

(1) Without prejudice to the provisions contained in any other law, for the time being in force, any registration of transactions of creation, modification or satisfaction of security interest by a secured creditor or other creditor or filing of attachment orders under this Chapter shall be deemed to constitute a public notice from the date and time of filing of particulars of such transaction with the Central Registry for creation, modification or satisfaction of such security interest or attachment order, as the case may be.

(2) Where security interest or attachment order upon any property in favour of the secured creditor or any other creditor are filed for the purpose of registration under the provisions of Chapter IV and this Chapter, the claim of such secured creditor or other creditor holding attachment order shall have priority over any subsequent security interest created upon such property and any transfer by way of sale, lease or assignment or licence of such property or attachment order subsequent to such registration, shall be subject to such claim:

Provided that nothing contained in this sub-section shall apply to transactions carried on by the borrower in the ordinary course of business.

Section 26D. Right of enforcement of securities

Notwithstanding anything contained in any other law for the time being in force, from the date of commencement of the provisions of this Chapter, no secured creditor shall be entitled to exercise the rights of enforcement of securities under Chapter III unless the security interest created in its favour by the borrower has been registered with the Central Registry.

Section 26E. Priority to secured creditors

Notwithstanding anything contained in any other law for the time being in force, after the registration of security interest, the debts due to any secured creditor shall be paid in priority over all other debts and all revenues, taxes, cesses and other rates payable to the Central Government or 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 (31 of 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.]

CHAPTER V

Section 27. Penalties

If a default is made-

(a) in filing under section 23, the particulars of every transaction of any securitisation or asset reconstruction or security interest created by a [1][asset reconstruction company] or secured creditors; or

(b) in sending under section 24, the particulars of the modification referred to in that section; or

(c) in giving intimation under section 25, every company and every officer of the company or the secured creditors and every officer of the secured creditor who is in default shall be punishable with fine which may extend to five thousand rupees for every day during which the default continues:

[2][Provided that provisions of this section shall be deemed to have been omitted from the date of coming into force of the provisions of this Chapter and section 23 as amended by the Enforcement of Security Interest and Recovery of Debts Laws and Miscellaneous Provisions (Amendment) Act, 2016 (44 of 2016).]

[1] Subs. by Act 44 of 2016, s. 3, for "securitisation company or reconstruction company" (w.e.f. 1-9-2016).
[2] Ins. by s. 19, ibid. (w.e.f. 24-1-2020).

Section 28. Penalties for non-compliance of direction of Reserve Bank

[Penalties for non-compliance of direction of Reserve Bank.] Omitted by the Enforcement of Security Interest and Recovery of Debts Laws and Miscellaneous Provisions (Amendment) Act, 2016(44 of 2016) s. 20 (w.e.f. 1-9-2016).

Section 29. Offences

If any person contravenes or attempts to contravene or abets the contravention of the provisions of this Act or of any rules made thereunder, he shall be punishable with imprisonment for a term which may extend to one year, or with fine, or with both.

Section 30. Cognizance of offences

[1][(1) No court shall take cognizance of any offence punishable under section 27 in relation to non-compliance with the provisions of section 23, section 24 or section 25 or under section 28 or section 29 or any other provisions of the Act, except upon a complaint in writing made by an officer of the Central Registry or an officer of the Reserve Bank, generally or specially authorised in writing in this behalf by the Central Registrar or, as the case may be, the Reserve Bank.

(2) No court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under this Act.]

[1] Subs. by Act 1 of 2013, s. 10, for section 30 (w.e.f. 15-1-2013).

Section 30A. Power of adjudicating authority to impose penalty

[1][(1) Where any asset reconstruction company or any person fails to comply with any direction issued by the Reserve Bank under this Act the adjudicating authority may, by an order, impose on such company or person in default, a penalty not exceeding one crore rupees or twice the amount involved in such failure where such amount is quantifiable, whichever is more, and where such failure is a continuing one, a further penalty which may extend to one lakh rupees for every day, after the first, during which such failure continues.

(2) For the purpose of imposing penalty under sub-section (1), the adjudicating authority shall serve a notice on the asset reconstruction company or the person in default requiring such company or person to show cause why the amount specified in the notice should not be imposed as a penalty and a reasonable opportunity of being heard shall be given to such person.

(3) Any penalty imposed under this section shall be payable within a period of thirty days from the date of issue of notice under sub-section (2).

(4) Where the asset reconstruction company fails to pay the penalty within the specified period under sub-section (3), the adjudicating authority shall, by an order, cancel its registration:

Provided that an opportunity of being heard shall be given to such asset reconstruction company before cancellation of registration.

(5) No complaint shall be filed against any person in default in any court pertaining to any failure under sub-section (1) in respect of which any penalty has been imposed and recovered by the Reserve Bank under this section.

(6) Where any complaint has been filed against a person in default in the court having jurisdiction no proceeding for imposition of penalty against that person shall be taken under this section.

Explanation.-For the purposes of this section and sections 30B, 30C and 30D,-

(i) "adjudicating authority" means such officer or a committee of officers of the Reserve Bank, designated as such from time to time, by notification, by the Central Board of Reserve Bank;

(ii) "person in default" means the asset reconstruction company or any person which has committed any failure, contravention or default under this Act and any person incharge of such company or such other person, as the case may be, shall be liable to be proceeded against and punished under section 33 for such failure or contravention or default committed by such company or person.

[1] Ins. by Act 44 of 2016, s. 21 (w.e.f. 1-9-2016).

Section 30B. Appeal against penalties

A person in default, aggrieved by an order passed under sub-section (4) of section 30A, may, within a period of thirty days from the date on which such order is passed, prefer an appeal to the Appellate Authority:

Provided that the Appellate Authority 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 such period.

Section 30C. Appellate Authority

(1) The Central Board of Reserve Bank may designate such officer or committee of officers as it deems fit to exercise the power of Appellate Authority.

(2) The Appellate Authority shall have power to pass such order as it deems fit after providing a reasonable opportunity of being heard to the person in default.

(3) The Appellate Authority may, by an order stay the enforcement of the order passed by the adjudicating authority under section 30A, subject to such terms and conditions, as it deems fit.

(4) Where the person in default fails to comply with the terms and conditions imposed by order under sub-section (3)

without reasonable cause, the Appellate Authority may dismiss the appeal.

Section 30D. Recovery of penalties

(1) Any penalty imposed under section 30A shall be recovered as a "recoverable sum" and shall be payable within a period of thirty days from the date on which notice demanding payment of the recoverable sum is served upon the person in default and, in the case of failure of payment by such person within such period, the Reserve Bank may, for the purpose of recovery,-

(a) debit the current account, if any, of the person in default maintained with the Reserve Bank or by liquidating the securities, if any, held to the credit of such person in the books of the Reserve Bank;

(b) issue a notice to the person from whom any amount is due to the person in default, requiring such person to deduct from the amount payable by him to the person in default, such amount equivalent to the amount of the recoverable sum, and to make payment of such amount to the Reserve Bank.

(2) Save as otherwise provided in sub-section (4), a notice issued under clause (b) of sub-section (1) shall be binding on every person to whom it is issued, and, where such notice is issued to a post office, bank or an insurance company, it shall not be necessary to produce any pass book, deposit receipt, policy or any other document for the purpose of any entry or endorsement thereof before payment is made, notwithstanding any rule, practice or requirement to the contrary.

(3) Any claim in respect of any amount, arising after the date of issue of notice under sub-section (1) shall be void as against the demand contained in such notice.

(4) Any person, to whom the notice is sent under sub-section (1), objects to such notice by a statement on oath that the sum demanded or any part thereof is not due to the person in default or that he does not hold any money for or on account of the person in default, then nothing contained in this section shall be deemed to require, such person to pay such sum or part thereof, as the case may be.

(5) Where it is found that statement made by the person under sub-section (4) is false in material particulars, such person shall be personally liable to the Reserve Bank to the extent of his own liability to the person in default on the date of the notice, or to the extent of the recoverable sum payable by the person in default to the Reserve Bank, whichever is less.

(6) The Reserve Bank may, at any time, amend or revoke any notice issued under sub-section (1) or extend the time for making the payment in pursuance of such notice.

(7) The Reserve Bank shall grant a receipt for any amount paid to it in compliance with a notice issued under this section and the person so paying shall be fully discharged from his liability to the person in default to the extent of the amount so paid.

(8) Any person discharging any liability to the person in default after the receipt of a notice under this section shall be personally liable to the Reserve Bank-

(a) to the extent of his own liability to the person in default so discharged; or

(b) to the extent of the recoverable sum payable by the person in default to the Reserve Bank,

whichever is less.

(9) Where the person to whom the notice is sent under this section, fails to make payment in pursuance thereof to the Reserve Bank, he shall be deemed to be the person in default in respect of the amount specified in the notice and action or proceedings may be taken or instituted against him for the realisation of the amount in the manner provided in this section.

(10) The Reserve Bank may enforce recovery of recoverable sum through the principal civil court having jurisdiction in the area where the registered office or the head office or the principal place of business of the person in default or the usual place of residence of such person is situated as if the notice issued by the Reserve Bank were a decree of the Court.

(11) No recovery under sub-section (10) shall be enforced, except on an application made to the principal civil court by an officer of the Reserve Bank authorised in this behalf certifying that the person in default has failed to pay the recoverable sum.]

CHAPTER VI MISCELLANEOUS

Section 31. Provisions of this Act not to apply in certain cases

The provisions of this Act shall not apply to-

(a) a lien on any goods, money or security given by or under the Indian Contract Act, 1872 (9 of 1872) or the Sale of Goods Act, 1930 (3 of 1930) or any other law for the time being in force;

(b) a pledge of movables within the meaning of section 172 of the Indian Contract Act, 1872 (9 of 1872);

(c) creation of any security in any aircraft as defined in clause (1) of section 2 of the Aircraft Act, 1934 (24 of 1934);

(d) creation of security interest in any vessel as defined in clause (55) of section 3 of the Merchant Shipping Act, 1958 (44 of 1958);

[1]* * * * *

(f) any rights of unpaid seller under section 47 of the Sale of Goods Act, 1930 (3 of 1930);

(g) [2][any properties not liable to attachment (excluding the properties specifically charged with the debt recoverable under this Act)]or sale under the first proviso to sub-section (1) of section 60 of the Code of Civil Procedure, 1908 (5 of 1908);

(h) any security interest for securing repayment of any financial asset not exceeding one lakh rupees;

(i) any security interest created in agricultural land;

(j) any case in which the amount due is less than twenty per cent. of the principal amount and interest thereon.

[1] Omitted by Act 44 of 2016, s. 22 (w.e.f. 1-9-2016).

[2] Subs. by Act 30 of 2004, s. 17, for "any properties not liable to attachment" (w.e.f. 11-11-2004).

Section 31A. Power to exempt a class or classes of banks or financial institutions

[1][(1)The Central Government may, by notification in the public interest, direct that any of the provisions of this Act,-

(a) shall not apply to such class or classes of banks or financial institutions; or

(b) shall apply to the class or classes of banks or financial institutions with such exceptions, modifications and adaptations, as may be specified in the notification.

[2][(2) A copy of every notification proposed to be issued under sub-section (1), shall be laid in draft before each House of Parliament, while it is in session, for a total period of thirty days, and if, both Houses agree in disapproving the issue of notification or both Houses agree in making any modification in the notification, the notification shall not be issued or, as the case may be, shall be issued only in such modified form as may be agreed upon by both the Houses.

(3) In reckoning any such period of thirty days as is referred to in sub-section (2), no account shall be taken of any period during which the House referred to in sub-section (2) is prorogued or adjourned for more than four consecutive days.

(4) The copies of every notification issued under this section shall, as soon as may be after it has been issued, be laid before each House of Parliament.]]

[1] Ins. by Act 1 of 2013, s. 11 (w.e.f. 15-1-2013).

[2] Subs. by Act 44 of 2016, s. 23, for sub-section (2) (w.e.f. 1-9-2016).

Section 32. Protection of action taken in good faith

No suit, prosecution or other legal proceedings shall lie against [1][the Reserve Bank or the Central Registry or any secured creditor or any of its officers] for anything done or omitted to be done in good faith under this Act.

[1] Subs. by Act 44 of 2016, s. 24, for "any secured creditor or any of his officers or manager exercising any of the rights of the secured creditor or borrower" (w.e.f. 1-9-2016).

Section 33. Offences by companies

(1) Where an offence under this Act has been committed by a company, every person who at the time the offence was committed was incharge of, and was responsible to, the company, for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a

company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

Explanation.-For the purposes of this section,-

(a) "company" means any body corporate and includes a firm or other association of individuals; and

(b) "director", in relation to a firm, means a partner in the firm.

Section 34. Civil court not to have jurisdiction

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 to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act or under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993).

Section 35. The provisions of this Act to override other laws

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.

Section 36. Limitation

No secured creditor shall be entitled to take all or any of the measures under sub-section (4) of section 13, unless his claim in respect of the financial asset is made within the period of limitation prescribed under the Limitation Act, 1963 (36 of 1963).

Section 37. Application of other laws not barred

The provisions of this Act or the rules made thereunder shall be in addition to, and not in derogation of, the Companies Act, 1956 (1 of 1956), the SecuritiesContracts (Regulation) Act, 1956 (42 of 1956), the Securities and Exchange Board of India Act,

(15 of 1992), the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993) or any other law for the time being in force.

Section 38. Power of Central Government to make rules

(1) The Central Government may, by notification and in the Electronic Gazette as defined in clause (s) of section 2 of the Information Technology Act, 2000 (21 of 2000), make rules for carrying out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:-

[1][(a) other business or commercial rights of similar nature under clause (t) of section 2;]

[2][(aa)] the form and manner in which an application may be filed under sub-section (10) of section 13;

(b) the manner in which the rights of a secured creditor may be exercised by one or more of his officers under sub-section (12) of section 13;

[3][(ba) the fee for making an application to the Debts Recovery Tribunal under sub-section (1) of section 17;

(bb) the form of making an application to the Appellate Tribunal under sub-section (6) of section 17;

(bc) the fee for preferring an appeal to the Appellate Tribunal under sub-section (1) of section 18;]

[1][(bca) the manner of integration of records of various registration systems with the records of Central Registry under sub-section (1) of section 20A;

(bcb) the terms and conditions of delegation of powers by the Central Government to the Reserve Bank under section 20B;]

(c) the safeguards subject to which the records may be kept under sub-section (2) of section 22;

(d) the manner in which the particulars of every transaction of securitisation shall be filed under section 23 and fee for filing such transaction;

[4][(da) the form for registration of different types of security interests and fee thereof under sub-section (3) of section 23;]

(e) the fee for inspecting the particulars of transactions kept under section 22 and entered in the Central Register

under sub-section (1) of section 26;

(f) the fee for inspecting the Central Register maintained in electronic form under sub-section (2) of section 26;

[4][(fa) the form and the manner for filing particulars of transactions under sub-section (2) of section 26B;

(fb) the form and manner of filing attachment orders with the Central Registry and the date under sub-section (4) of section 26B;

(fc) the form and manner of filing particulars of attachment order with the Central Registry and the fee under sub-section (5) of section 26B;]

(g) any other matter which is required to be, or may be, prescribed, in respect of which provision is to be, or may be, made by rules.

(3) Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

[1] Ins. by Act 44 of 2016, s. 25 (w.e.f. 1-9-2016).
[2] Clause (a) renumbered as clause (aa) by s. 25, ibid. (w.e.f. 1-9-2016).
[3] Ins. by Act 30 of 2004, s. 18 (w.e.f. 11-11-2004).
[4] Ins. by Act 44 of 2016, s. 25 (w.e.f. 1-9-2016).

Section 39. Certain provisions of this Act to apply after Central Registry is set up or cause to be set up

The provisions of sub-sections (2), (3) and (4) of section 20 and sections 21, 22, 23, 24, 25, 26 and 27 shall apply after the Central Registry is set up or cause to be set up under sub-section (1) of section 20.

Section 40. Power to remove difficulties

(1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act as may appear to be necessary for removing the difficulty:

Provided that no order shall be made under this section after the expiry of a period of two years from the commencement of this Act.

(2) Every order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament.

Section 41. Amendments to certain enactments

The enactments specified in the Schedule shall be amended in the manner specified therein.

Section 42. Repeal and saving

(1) The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (Second) Ordinance, 2002 (Ord. 3 of 2002) is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the said Ordinance shall be deemed to have been done or taken under the corresponding provisions of this Act.

Schedules

The Schedules are not reproduced in this PDF. Each is in the official file, at the page given:

THE SCHEDULE (official file, page 38)

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