

**THE SECURITISATION AND RECONSTRUCTION OF FINANCIAL  
ASSETS AND ENFORCEMENT OF SECURITY INTEREST ACT, 2002**

(54 OF 2002)

An Act to regulate securitisation and reconstruction of financial assets and enforcement of security interest and for matters connected therewith or incidental thereto.

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

**CHAPTER I**

**PRELIMINARY**

**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.

**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 securitisation company or 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;
- (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
  - (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 any person who has been granted financial assistance by any bank or financial institution or who has given any guarantee or created any mortgage or pledge as security for the financial assistance granted by any bank or financial institution and includes a person who becomes borrower of a securitisation company or reconstruction company consequent upon acquisition by it of any rights or interest of any bank or financial institution in relation to such financial assistance;
- (g) "Central Registry" means the registry set up or cause to be set up under sub-section (1) of section 20;
- (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);
- (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;
- (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);

- (j) "default" means non-payment of any principal debt or interest thereon or any other amount payable by a 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 ;
- (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;
- (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
  - (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);
  - (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;
- (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;
- (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, 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 securitisation company or 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;
- (u) "qualified institutional buyer" means a financial institution, insurance company, bank, state financial corporation, state industrial development corporation, trustee or securitisation company or 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 pension fund or a foreign institutional investor registered under the Securities and Exchange Board of India Act, 1992 (15 of 1992) or regulations made thereunder, or any other body corporate as may be specified by the Board;
- (v) "reconstruction company" means a company formed and registered under the Companies Act, 1956 (1 of 1956) for the purpose of asset reconstruction;
- (w) "Registrar of Companies" means the Registrar as 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 securitisation company or reconstruction company under that scheme;
- (z) "securitisation" means acquisition of financial assets by any securitisation company or reconstruction company from any originator, whether by raising of funds by such securitisation company or reconstruction company from qualified institutional buyers by issue of security receipts representing undivided interest in such financial assets or otherwise;
- (za) "securitisation company" means any company formed and registered under the Companies Act, 1956 (1 of 1956) for the purpose of securitisation;
- (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;
- (zd) "secured creditor" means any bank or financial institution or any consortium or group of banks or financial institutions and includes—
- (i) debenture trustee appointed by any bank or financial institution; or
  - (ii) securitisation company or reconstruction company, whether acting as such or managing a trust set up by such securitisation company or reconstruction company for the securitisation or reconstruction, as the case may be; or
  - (iii) any other trustee holding securities on behalf of a bank or financial institution,
- in whose favour security interest is created for due repayment by any borrower of any financial assistance;
- (ze) "secured debt" means a debt which is secured by any security interest;
- (zf) "security interest" means right, title and interest of any kind whatsoever upon property, created in favour of any secured creditor and includes any mortgage, charge, hypothecation, assignment other than those specified in section 31;

- (zg) "s ecurity receipt" means a receipt or other s ecurity, issued by a securitisation company or recons truction company to any qualified institutional buyer pursuant to a scheme, evidencing the purchase or acquisition by the holder thereof, of an undivided right, title or interest in the financ ial asset involved in securitisation;
- (zh) "s ponsor" means any person holding not less than ten per cent of the paid-up equity capital of a securitisation company or 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) "s ubsidiary bank " shall have the meaning assigned to it in c lause (k) of section 2 of the State Bank of India (Subs idiary Banks) Act, 1959 (38 of 1959).

(2) Words and expressions used and not defined in this Ac t 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 respec tively assigned to them in those Acts.

## CHAPTER II

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

#### 3. Registration of securitisation companies or reconstruction companies

(1) No securitisation company or reconstruction company shall commence or carry on the business of securitisation or asset reconstruction without--

- (a) obtaining a certific ate of registration granted under this section; and
- (b) having the owned fund of not less than two crore rupees or such other amount not exceeding fifteen per cent of total financial assets acquired or to be acquired by the securitis ation company or reconstruction company, 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 class es of securitisation companies or reconstruction companies:

PROVIDED FURTHER that a securitisation company or 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 c arry 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 securitisation c ompany or 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 securitisation company or reconstruction company to commence or carry on the business of securitisation or asset reconstruc tion, as the case may be, require to be satis fied, by an inspection of records or books of such securitisation company or reconstruction company, or otherwise, that the following c onditions are fulfilled, namely:--

- (a) that the securitisation company or reconstruction company has not incurred losses in any of the three preceding financial years ;
- (b) that such securitisation c ompany or reconstruction company has made adequate arrangements for realisation of the financial assets acquired for the purpose of securitisation or asset reconstruction and shall be able to pay periodical returns and redeem on respective due dates on the investments made in the company by the qualified institutional buyers or other persons;
- (c) that the directors of securitisation company or reconstruction company have adequate profess ional experience in matters related to finance, securitisation and reconstruction;

- (d) that the board of directors of such securitisation company or reconstruction company does not consist of more than half of its total number of directors who are either nominees of any sponsor or associated in any manner with the sponsor or any of its subsidiaries;
- (e) that any of its directors has not been convicted of any offence involving moral turpitude;
- (f) that a sponsor, is not a holding company of the securitisation company or reconstruction company, as the case may be, or, does not otherwise hold any controlling interest in such securitisation company or reconstruction company;
- (g) that securitisation company or reconstruction company has complied with or is in a position to comply with prudential norms specified by the Reserve Bank.
- (h) that securitisation company or 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 securitisation company or the 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 securitisation company or reconstruction company, shall obtain prior approval of the Reserve Bank for any substantial change in its management 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 securitisation company or a 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 amalgamation or transfer of the business of the company.

#### **4. Cancellation of certificate of registration**

(1) The Reserve Bank may cancel a certificate of registration granted to a securitisation company or a reconstruction company, if such company--

- (a) ceases to carry on the business of securitisation or asset reconstruction; or
- (b) ceases to receive or hold any investment from a qualified institutional 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 securitisation company or 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 securitisation company or the 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 securitisation company or reconstruction company aggrieved by the order of cancellation of certificate of registration may prefer an appeal, within a period of thirty days from the date on which such order of cancellation is communicated to it, to the Central Government:

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

(3) A securitisation company or reconstruction company, which is holding investments of qualified institutional 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 securitisation company or 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.

## **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 securitisation company or 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 the 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) If the bank or financial institution is a lender in relation to any financial assets acquired under sub-section (1) by the securitisation company or the reconstruction company, such securitisation company or 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.

(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 securitisation company or 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, securitisation company or reconstruction company, as the case may be, had been a party thereto or as if they had been issued in favour of the securitisation company or 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 securitisation company or reconstruction company, as the case may be, but the suit, appeal or other proceeding may be continued, prosecuted and enforced by or against the securitisation company or reconstruction company, as the case may be.

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

(1) If any financial asset, of a borrower acquired by a securitisation company or 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 securitisation company or 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, 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 shall, accordingly, apply to such execution.

#### **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 securitisation company or 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 have 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 securitisation company or 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 securitisation company or 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 such securitisation company or reconstruction company, as the case may be, or its agent duly authorised in this behalf.

#### **7. Issue of security by raising of receipts or funds by securitisation company or reconstruction company**

(1) Without prejudice to the provisions contained in the Companies Act, 1956 (1 of 1956), Securities Contracts (Regulation) Act, 1956 (42 of 1956), and the Securities and Exchange Board of India Act, 1992 (15 of 1992), any securitisation company or

reconstruction company, may, after acquisition of any financial asset under sub-section (1) of section 5, offer security receipts to qualified institutional buyers (other than by offer to public) for subscription in accordance with the provisions of those Acts.

(2) A securitisation company or reconstruction company may raise funds from the qualified institutional buyers by formulating schemes for acquiring financial assets and shall keep and maintain separate and distinct accounts in respect of each such scheme for every financial asset acquired out of investments made by a qualified institutional 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.

(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 securitisation company or reconstruction company, and the securitisation company or reconstruction company shall hold the assets so acquired or the funds so raised for acquiring the assets, in trust for the benefit of the qualified institutional buyers holding the security receipts or from whom the funds are raised.

(b) The provisions of the Indian Trust Act, 1882 (2 of 1882) shall, except insofar 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 qualified institutional buyers of a securitisation company or reconstruction company, holding security receipts of not less than seventy-five per cent of the total value of the security receipts issued under a scheme by such company, shall be entitled to call a meeting of all the qualified institutional buyers and every resolution passed in such meeting shall be binding on the company.

(4) The qualified institutional 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 securitisation company or reconstruction company, as the case may be.

## **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 securitisation company or 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 insofar 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.

## **9. Measures for assets reconstruction**

Without prejudice to the provisions contained in any other law for the time being in force, a securitisation company or reconstruction company may, for the purposes of asset reconstruction, having regard to the guidelines framed by the Reserve Bank in this behalf, 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.



## **10. Other functions of Securitisation Company or Reconstruction Company**

(1) Any securitisation company or 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 securitisation company or 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 securitisation company or 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 securitisation company or 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, "securitisation company" or "reconstruction company" does not include its subsidiary.

## **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 securitisation company or reconstruction company or qualified institutional buyer, such disputes 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.

## **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 securitisation company or reconstruction company from being conducted in a manner detrimental to the interest of investors or in any manner prejudicial to the interest of such securitisation company or reconstruction company, it is necessary or expedient so to do, it may determine the policy and give directions to all or any securitisation company or 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 securitisation company or 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 securitisation company or reconstruction company generally or to a class of securitisation companies or reconstruction companies or to any securitisation company or 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 securitisation company or reconstruction company.

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

The Reserve Bank may at any time direct a securitisation company or 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 securitisation company or

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.

### **CHAPTER III**

#### **ENFORCEMENT OF SECURITY INTEREST**

#### **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).

(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.

(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 within one week 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;
- (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.

(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.

(8) If the dues of the secured creditor together with all costs, charges and expenses incurred by him are tendered to the secured creditor at any time before the date fixed for sale or transfer, the secured asset shall not be sold or transferred by the secured creditor, and no further step shall be taken by him for transfer or sale of that secured asset.

(9) 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 three-fourth in value of the amount outstanding as on a record date and such action shall be binding on all the secured creditors:

PROVIDED that in the case of a company in liquidation, the amount 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 the liquidator referred to in the second proviso shall intimate the secured creditors 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 estimated dues with the liquidator:

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

PROVIDED ALSO that the secured creditors 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 three-fourth 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 measures specified 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.

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

- (a) take possession of such asset and documents relating thereto; and
- (b) forward such 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 done in pursuance of this section shall be called in question in any court or before any authority.

#### **15. Manner and effect of take over of management**

(1) When the management of business of a borrower is taken over by a securitisation company or 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.

## **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.

## **17. Right to appeal**

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

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

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

(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.

(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 of the business to the borrower or restoration of possession of the secured assets to the borrower, it may by order, declare the recourse to any



one or more measures referred to in sub-section (4) of section 13 taken by the secured creditors as invalid and restore the possession of the secured assets to the borrower or restore the management of the business to the borrower, as the case may be, and pass such order 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.

(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 party 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 and the rules made thereunder.

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

In the case of a borrower residing in the State of Jammu and Kashmir, the application under section 17 shall be made to the Court of District Judge in that State having jurisdiction over the borrower which shall pass an order on such application.

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 shall not entitle the person (including borrower) to make an application to the Court of District Judge under this section.

### **18. Appeal to Appellate Tribunal**

(1) Any person aggrieved, by any order made by the Debts Recovery Tribunal under section 17, may prefer an appeal alongwith such fee, as may be prescribed to the Appellate Tribunal within thirty days from the date of receipt of the order of Debts Recovery Tribunal:

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

PROVIDED FURTHER that no appeal shall be entertained unless the borrower has deposited with the Appellate Tribunal fifty 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.

### **18A. Validation of fees levied**

Any fee levied and collected for preferring, before the commencement of the Enforcement of Security Interest and Recovery of Debts Laws (Amendment) Act, 2004, an appeal to the Debts Recovery Tribunal or the Appellate Tribunal under this Act, shall be deemed always to have been levied and collected in accordance with law as if amendments made to sections 17 and 18 of this Act by sections 11 and 12 of the said Act were in force at all material times.

### **18B. Appeal to High Court in certain cases**

Any borrower residing in the State of Jammu and Kashmir and aggrieved by any order made by the Court of District Judge under section 17A may prefer an appeal, to the High Court having jurisdiction over such Court, within thirty days from the date of receipt of the order of the Court of District Judge:

PROVIDED that no appeal shall be preferred unless the borrower has deposited, with the Jammu and Kashmir High Court, fifty per cent of the amount of the debt due from him as claimed by the secured creditor or determined by the Court of District Judge, whichever is less:

PROVIDED FURTHER that the High Court may, for the reasons to be recorded in writing, reduce the amount to not less than twenty-five per cent. of the debt referred to in the first proviso.

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

If the Debts Recovery Tribunal or the Court of District Judge, on an application made under section 17 or section 17A or the Appellate Tribunal or the High Court on an appeal preferred under section 18 or section 18A, holds that the possession of secured assets by the secured creditor is not in accordance with the provisions of this Act and rules made thereunder and directs the secured creditors to return such secured assets to the concerned borrowers, such borrower 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.

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## **CHAPTER IV**

### **CENTRAL REGISTRY**

#### **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.

(1) 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 (59 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.

#### **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.

## **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.

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

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, within thirty days after the date of such transaction or creation of security, by the securitisation company or reconstruction company or the secured creditor, as the case may be:

PROVIDED that the Central Registrar may allow the filing of the particulars of such transaction or creation of security interest within thirty days next following the expiry of the said period of thirty days on payment of such additional fee not exceeding ten times the amount of such fee.

## **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, modified, it shall be the duty of the securitisation company or the reconstruction company or the secured creditor, 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 of such security interest.

## **25. Securitisation company or reconstruction company or secured creditor to report satisfaction of security interest**

(1) The securitisation company or reconstruction company or the secured creditor, 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 securitisation company or the reconstruction company or the secured creditor and requiring registration under this Chapter, within thirty days from the date of such payment or satisfaction.

(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) 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 securitisation company or reconstruction company or the secured creditor 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.

## **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 fee 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 fee as may be prescribed.

## **CHAPTER V**

### **OFFENCES AND PENALTIES**

## **27. Penalties**

If a default is made--

(a) in filing under section 23, the particulars of every transaction of any securitisation or asset

### **30. Cognizance of offence**

No court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the First Class shall try an offence punishable under this Act.

## **CHAPTER VI**

### **MISCELLANEOUS**

### **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);
- (e) any conditional sale, hire-purchase or lease or any other contract in which no security interest has been created;
- (f) any rights of unpaid seller under section 47 of the Sale of Goods Act, 1930 (3 of 1930);
- (g) 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.



### **32. Protection of action taken in good faith**

No suit, prosecution or other legal proceedings shall lie against any secured creditor or any of his officers or manager exercising any of the rights of the secured creditor or borrower for anything done or omitted to be done in good faith under this Act.

### **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 in charge 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.

### **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).

### **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.

### **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 financial asset is made within the period of limitation prescribed under the Limitation Act, 1963 (36 of 1963).

### **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 Securities Contracts (Regulation) Act, 1956 (42 of 1956), the Securities and Exchange Board of India Act, 1992 (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.

### **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:--

(a) 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;
- (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;
- (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;
- (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;
- (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.

### **39. Certain provisions of this Act to apply after Central Registry is set up or caused 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 caused to be set up under sub-section (1) of section 20.

### **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 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 orders shall be made under this section after the expiry of a period 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.

### **41. Amendments of certain enactments**

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

### **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, any thing done or any action taken under the said Act shall be deemed to have been done or taken under the corresponding provisions of this Act.

## THE SCHEDULE

(Section 41)

Year	Act No.	Short title	Amendment
1956	1	The Companies Act 1956	In section 4 A in sub-section (1) after clause (vi) insert the following:--  "(vii) the securitisation company or the reconstruction company which has obtained a certificate of registration under sub-section (4) of section 3 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act 2002".
1956	42	The Securities Contracts (Regulation) Act 1956.	In section 2 in clause (h) after sub-clause (ib) insert the following:--  " (ic) security receipt as defined in clause (zg) of section 2 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act 2002".
1986	1	The Sick Industrial Companies (Special Provisions) Act 1985.	In section 15 in sub-section (1) after the proviso insert the following:--  "PROVIDED FURTHER that no reference shall be made to the Board for Industrial and Financial Reconstruction after the commencement of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act 2002

where financial assets have been acquired by any securitisation company or reconstruction company under sub-section (1) of section 5 of that Act:

PROVIDED ALSO that on or after the commencement of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act 2002 where a reference is pending before the Board for Industrial and Financial Reconstruction such reference shall abate if the secured creditors representing not less than three-fourth in value of the amount outstanding against financial assistance disbursed to the borrower of such secured creditors have taken any measures to recover their secured debt under sub-section (4) of section 13 of that Act."

## **THE SECURITY INTEREST ENFORCEMENT RULES, 2002**

In exercise of the powers conferred by sub-section (1) and clause (b) of sub-section (2) of section 38 read with sub-sections (4), (10) and (12) of section 13 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (Second) Ordinance, 2002 (Ord. 3 of 2002), the Central Government hereby makes the following rules, namely:--

### **1. Short title and commencement**

- (1) These rules may be called the Security Interest (Enforcement) Rules, 2002.
- (2) They shall come into force from the date of their publication in the Official Gazette.

### **2. Definitions**

In these rules, unless the context otherwise requires,--

- (a) "authorised officer" means an officer not less than a chief manager of a public sector bank or equivalent, as specified by the Board of Directors or Board of Trustees of the secured creditor or any other person or authority exercising powers of superintendence, direction and control of the business or affairs of the secured creditor, as the case may be, to exercise the rights of a secured creditor under the Ordinance\*;
- (b) demand notice means the notice in writing issued by a secured creditor or authorised officer, as the case may be, to any borrower pursuant to sub-section (2) of section 13 of the Ordinance\*;
- (c) "Ordinance" means the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (Second) Ordinance, 2002 (Ord. 3 of 2002)\*;
- (d) "approved valuer" means a valuer as approved by the Board of Directors or Board of Trustees of the secured creditor, as the case may be;
- (e) words and expressions used and not defined in these Rules but defined in the Ordinance\* shall have the meanings respectively assigned to them in the Ordinance\*.

### **3. Demand notice**

(1) The service of demand notice as referred to in sub-section (2) of section 13 of the Ordinance shall be made by delivering or transmitting at the place where the borrower or his agent, empowered to accept the notice or documents on behalf of the borrower, actually and voluntarily resides or carries on business or personally works for gain, by registered post with acknowledgement due, addressed to the borrower or his agent empowered to accept the service or by Speed Post or by courier or by any other means of transmission of documents like fax message or electronic mail service:

PROVIDED that where authorised officer has reason to believe that the borrower or his agent is avoiding the service of the notice or that for any other reason, the service cannot be made as aforesaid, the service shall be effected by affixing a copy of the demand notice on the outer door or some other conspicuous part of the house or building in which the borrower or his agent ordinarily resides or carries on business or personally works for gain and also by publishing the contents of the demand notice in two leading newspapers, one in vernacular language, having sufficient circulation in that locality.

(2) Where the borrower is a body corporate, the demand notice shall be served on the registered office or any of the branches of such body corporate as specified under sub-rule (1).

(3) Any other notice in writing to be served on the borrower or his agent by authorised officer, shall be served in the same manner as provided in this rule.

(4) Where there are more than one borrower, the demand notices shall be served on each borrower.

### **4. Procedure after issue of notice**

If the amount mentioned in the demand notice is not paid within the time specified therein, the authorised officer shall proceed to realise the amount by adopting any one or more of the measures specified in sub-section (4) of section 13 of the Ordinance for taking possession of movable property, namely:--

(1) Where the possession of the secured assets to be taken by the secured creditor are movable property in possession of the borrower, the authorised officer shall take possession of such movable property in the presence of two witnesses after a Panchnama drawn and signed by the witnesses as nearly as possible in Appendix I to these rules.

(2) After taking possession under sub-rule (1) above, the authorised officer shall make or cause to be made an inventory of the property as nearly as possible in the form given in Appendix-II to these rules and deliver or cause to be delivered,



a copy of such inventory to the borrower or to any person entitled to receive on behalf of borrower.

(3) The authorised officer shall keep the property taken possession under sub-rule (1) either in his own custody or in the custody of any person authorised or appointed by him, who shall take as much care of the property in his custody as an owner of ordinary prudence would, under the similar circumstances, take of such property:

PROVIDED that if such property is subject to speedy or natural decay, or the expense of keeping such property in custody is likely to exceed its value, the authorised officer may sell it at once.

(4) The authorised officer shall take steps for preservation and protection of secured assets and insure them, if necessary, till they are sold or otherwise disposed of.

(5) In case any secured asset is:--

(a) a debt not secured by negotiable instrument; or

(b) a share in a body corporate;

- (c) other movable property not in the possession of the borrower except the property deposited in or in the custody of any court or any like authority, the authorised officer shall obtain possession or recover the debt by service of notice as under:--
- (i) in the case of a debt, prohibiting the borrower from recovering the debt or any interest thereon and the debtor from making payment thereof and directing the debtor to make such payment to the authorised officer; or
- (ii) in the case of the shares in a body corporate, directing the borrower to transfer the same to the secured creditor and also the body corporate from not transferring such shares in favour of any person other than the secured creditor. A copy of the notice so sent may be endorsed to the concerned body corporate's Registrar to the issue or share transfer agents, if any;
- (iii) in the case of other movable property (except as aforesaid), calling upon the borrowers and the person in possession to hand over the same to the authorised officer and the authorised officer shall take custody of such movable property in the same manner as provided in sub-rules (1) to (3) above;
- (iv) movable secured assets other than those covered in this rule shall be taken possession of by the authorised officer by taking possession of the documents evidencing title to such secured assets.

## **5. Valuation of movable secured assets**

After taking possession under sub-rule (1) of rule 4 and in any case before sale, the authorised officer shall obtain the estimated value of the movable secured assets and thereafter, if considered necessary, fix in consultation with the secured creditor, the reserve price of the assets to be sold in realisation of the dues of the secured creditor.

## **6. Sale of movable secured assets**

(1) The authorised officer may sell the movable secured assets taken possession under sub-rule (1) of rule 4 in one or more lots by adopting any of the following methods to secure maximum sale price for the assets, to be so sold--

- (a) obtaining quotations from parties dealing in the secured assets or otherwise interested in buying such assets; or
- (b) inviting tenders from the public ; or
- (c) holding public auction; or
- (d) by private treaty.

(2) The authorised officer shall serve to the borrower a notice of thirty days for sale of the movable secured assets, under sub-rule (1):

PROVIDED that if the sale of such secured assets is being effected by either inviting tenders from the public or by holding public auction, the secured creditor shall cause a public notice in two leading newspapers , one in vernacular language, having

sufficient circulation in that locality by setting out the terms of sale, which may include,--

- (a) details about the borrower and the secured creditor;
- (b) description of movable secured assets to be sold with identification marks or numbers, if any, on them;
- (c) reserve price, if any, and the time and manner of payment;
- (d) time and place of public auction or the time after which sale by any other mode shall be completed;
- (e) depositing earnest money as may be stipulated by the secured creditor;
- (f) any other thing which the authorised officer considers it material for a purchaser to know in order to judge the nature and value of movable secured assets .

(3) Sale by any methods other than public auction or public tender, shall be on such terms as may be settled between the parties in writing.

### **7. Issue of certificate of sale**

(1) Where movable secured assets is sold, sale price of each lot shall be paid as per the terms of the public notice or on the terms as may be settled between the parties, as the case may be and in the event of default of payment, the movable secured assets shall be liable to be ordered for sale again.

(2) On payment of sale price, the authorised officer shall issue a certificate of sale in the prescribed form as given in Appendix III to these rules specifying the movable secured assets sold, price paid and the name of the purchaser and thereafter the sale shall become absolute. The certificate of sale so issued shall be prima facie evidence of title of the purchaser.

(3) Where the movable secured assets are those referred in sub-clauses (iii) to (v) of clause (1) of sub-section (1) of section 2 of the Ordinance, the provisions contained in these rules and rule 7 dealing with the sale of movable secured assets shall, mutatis mutandis, apply to such as sets.

### **8. Sale of immovable secured assets**

(1) Where the secured asset is an immovable property, the authorised officer shall take or cause to be taken possession, by delivering a possession notice prepared as nearly as possible in Appendix-IV to these rules, to the borrower and by affixing the possession notice on the outer door or at such conspicuous place of the property.

(2) The possession notice as referred to in sub-rule (1) shall also be published in two leading newspapers, one in vernacular language having sufficient circulation in that locality, by the authorised officer.

(3) In the event of possession of immovable property is actually taken by the authorised officer, such property shall be kept in his own custody or in the custody of any person authorised or appointed by him, who shall take as much care of the property in his custody as an owner of ordinary prudence would, under the similar circumstances, take of such property.

(4) The authorised officer shall take steps for preservation and protection of secured assets and insure them, if necessary, till they are sold or otherwise disposed of.

(5) Before effecting sale of the immovable property referred to in sub-rule (1) of rule 9, the authorised officer shall obtain valuation of the property from an approved valuer and in consultation with the secured creditor, fix the reserve price of the property and may sell the whole or any part of such immovable secured asset by any of the following methods:--

- (a) by obtaining quotations from the persons dealing with similar secured assets or otherwise interested in buying the such assets; or
- (b) by inviting tenders from the public;
- (c) by holding public auction; or

(d) by private treaty.

(6) The authorised officer shall serve to the borrower a notice of thirty days for sale of the immovable secured assets, under sub-rule (5):

PROVIDED that if the sale of such secured asset is being effected by either inviting tenders from the public or by holding public auction, the secured creditor shall cause a public notice in two leading newspapers; one in vernacular language having sufficient circulation in the locality by setting out the terms of sale, which shall include,--

- (a) the description of the immovable property to be sold, including the details of the encumbrances known to the secured creditor;
- (b) the secured debt for recovery of which the property is to be sold;
- (c) reserve price, below which the property may not be sold;
- (d) time and place of public auction or the time after which sale by any other mode shall be completed;
- (e) depositing earnest money as may be stipulated by the secured creditor;
- (f) any other thing which the authorised officer considers it material for a purchaser to know in order to judge the nature and value of the property.

(7) Every notice of sale shall be affixed on a conspicuous part of the immovable property and may, if the authorised officer deems it fit, put on the web-site of the secured creditor on the Internet.

(8) Sale by any method other than public auction or public tender, shall be on such terms as may be settled between the parties in writing.

### **9. Time of sale, issue of sale certificate and delivery of possession, etc.**

(1) No sale of immovable property under these rules shall take place before the expiry of thirty days from the date on which the public notice of sale is published in newspapers as referred to in the proviso to sub-rule (6) or notice of sale has been served to the borrower.

(2) The sale shall be confirmed in favour of the purchaser who has offered the highest sale price in his bid or tender or quotation or offer to the authorised officer and shall be subject to confirmation by the secured creditor:

PROVIDED that no sale under this rule shall be confirmed, if the amount offered by sale price is less than the reserve price, specified under sub-rule (5) of rule 9:

PROVIDED FURTHER that if the authorised officer fails to obtain a price higher than the reserve price, he may, with the consent of the borrower and the secured creditor effect the sale at such price.

(3) On every sale of immovable property, the purchaser shall immediately pay a deposit of twenty-five per cent of the amount of the sale price, to the authorised officer conducting the sale and in default of such deposit, the property shall forthwith be sold again.

(4) The balance amount of purchase price payable shall be paid by the purchaser to the authorised officer on or before the fifteenth day of confirmation of sale of the immovable property or such extended period as may be agreed upon in writing between the parties.

(5) In default of payment within the period mentioned in sub-rule (4), the deposit shall be forfeited and the property shall be resold and the defaulting purchaser shall forfeit all claims to the property or to any part of the sum for which it may be subsequently sold.

(6) On confirmation of sale by the secured creditor and if the terms of payment have been complied with, the authorised officer exercising the power of sale shall issue a certificate of sale of the immovable property in favour of the purchaser in the form given in Appendix-V to these rules.

(7) Where the immovable property sold is subject to any encumbrances, the authorised officer may, if he thinks fit, allow the purchaser to deposit with him the money required to discharge the encumbrances and any interest due thereon

together with such additional amount that may be sufficient to meet the contingencies or further cost, expenses and interest as may be determined by him.

(8) On such deposit of money for discharge of the encumbrances, the authorised officer may issue or cause the purchaser to issue notices to the persons interested in or entitled to the money deposited with him and take steps to make the payment accordingly.

(9) The authorised officer shall deliver the property to the purchaser free from encumbrances known to the secured creditor on deposit of money as specified in sub-rule (7) above.

(10) The certificate of sale issued under sub-rule (6) shall specifically mention that whether the purchaser has purchased the immovable secured asset free from any encumbrances known to the secured creditor or not.

## **10. Appointment of Manager**

(1) The Board of Directors or Board of Trustees, as the case may be, may appoint in consultation with the borrower any person (hereinafter referred to as the Manager) to manage the secured assets the possession of which has been taken over by the secured creditor.

(2) The Manager appointed by the Board of Directors or Board of Trustees, as the case may be, shall be deemed to be an agent of the borrower and the borrower shall be solely responsible for the commission or omission of acts of the Manager unless such commission or omission are due to improper intervention of the secured creditor or the authorised officer.

(3) The Manager shall have power by notice in writing to recover any money from any person who has acquired any of the secured assets from the borrower, which is due or may become due to the borrower.

(4) The Manager shall give such person who has made payment under sub-rule (3) a valid discharge as if he has made payments to the borrower.

(5) The manager shall apply all the monies received by him in accordance with the provisions contained in sub-section (7) of section 13 of the Ordinance.

## **11. Procedure for Recovery of shortfall of secured debt.**

(1) An application for recovery of balance amount by any secured creditor pursuant to sub-section (10) of section 13 of the Ordinance\* shall be presented to the Debts Recovery Tribunal in the form annexed as Appendix-VI to these rules by the authorised officer or his agent or by a duly authorised legal practitioner, to the Registrar of the Bench within whose jurisdiction his case falls or shall be sent by registered post addressed to the Registrar of Debts Recovery Tribunal.

(2) The provisions of the Debts Recovery Tribunal (Procedure) Rules, 1993 made under Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993), shall mutatis mutandis apply to any application filed by under sub-rule (1).

(3) An application under sub-rule (1) shall be accompanied with fee as provided in rule 7 of the Debts Recovery Tribunal (Procedure) Rules, 1993.

## APPENDIX I

[Rule 4(1)]

### PANCHNAMA

Whereas :

We

Sr. No	Name of Panch and Father's/Husband's name	Address	Age	Occupation
--------	---	---------	-----	------------

The above mentioned Panchs on being called by Shri ....., the authorised officer of ..... (name of the Institution), under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (Second) Ordinance, 2002 (Ord. 3 of 2002) and in exercise of the powers under section 13(4) of the said Ordinance\* today entered the premises of Shri/M/s ..... at ....., and demanded the payment of the dues mentioned in the demand notice dated ..... in respect of Loan Account bearing No. and on its non-payment, taken over possession of movable properties as detailed in the inventory attached to this Panchnama between the hours ..... M and ..... M in our presence.

We also hereby state that during take over of possession ..... (to be filled in case of occurrence of any incidence).

Therefore, we declare that the facts of the Panchnama mentioned herein are true and correct to the best of our observations and knowledge.

1. Signature      Date

Time

Name

Address

2. Signature

Name

Address

Drawn before me

Authorised Officer

## APPENDIX II

[Rule 4(2)]

### INVENTORY

Inventory of movables taken possession in Loan Account bearing No. ....  
Inventory of movable properties taken possession of at the premises of Shri/M/s ..... Plot No. .... /Gala No. .... H. No. ...., Street No. .... of ..... under section 13(4) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (Second) Ordinance, 2002 and the Security Interest (Enforcement) Rules, 2002 made thereunder, on this ..... day of ..... 20

..... by Shri ....., authorised officer of ..... (name of the Institution) under the said Ordinance\*, between the hours.....M.

Sr.No	Description of article	Estimated value	Place where kept for safe custody (Name of the person if necessary)
-------	------------------------	-----------------	---

Panchas:

Sr. No. Name and Address of Panch Signatures

Drawn by me today the ..... 20 ..... at ..... M.

Signature of Borrower/Representative

Signature of Authorised Officer

### APPENDIX III

[Rule 7(2)]

#### CERTIFICATE OF SALE

(for movable property)

Whereas

The undersigned being the authorised officer of the ..... (name of the institution) under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (Second) Ordinance, 2002\* and in exercise of the powers conferred under sub-section 12) of section 13 read with rule 8 of the Security Interest (Enforcement) Rules, 2002 has in consideration of the payment of Rs. .... (Rupees ..... ) sold on behalf of the ..... (name of the secured creditor/institution in favour of ..... (purchaser), the following movable property secured in favour of the ..... (name of the secured creditor) by ..... (the names of the borrowers) towards the financial facility ..... (description) offered by ..... (secured creditor). The undersigned acknowledge the receipt of the sale price in full and hand over the delivery and possession of the items listed below.

Description of the movable property.

Sd/-

Authorised Officer

Date :

Place :

### APPENDIX IV

[Rule 8(1)]

#### POSSESSION NOTICE

(for immovable property)





(Enforcement) Rules, 2002 sold on behalf of the ..... (name of the secured creditor/institution) in favour of ..... (purchaser), the immovable property shown in the schedule below secured in favour of the ..... (name of the secured creditor) by ..... (the names of the borrowers) towards the financial facility ..... (description) offered by .... (secured creditor). The undersigned acknowledge the receipt of the sale price in full and handed over the delivery and possession of the scheduled property. The sale of the scheduled property was made free from all encumbrances known to the secured creditor listed below on deposit of the money demanded by the undersigned.

Descrip tion of the Movab le Property

All that part and parcel of the property consisting of Flat No. .... /Plot No. ....  
In Survey No. .... /City or Town Survey No. .... /Khasra No. ....  
Within the registration sub-district ..... and District .....

Bounded :

On the North by

On the South by

On the East by

On the West by

List of encumbrances

1.

2.

Sd/-  
Authoris ed Officer  
(Name of the Institution)

Date :

Place :

**APPENDIX VI**

FORM

[See Rule 11(1)]

APPLICATION UNDER SUB-SECTION (10) OF SECTION 13 OF THE  
SECURITISATION AND RECONSTRUCTION OF FINANCIAL  
ASSETS AND ENFORCEMENT OF SECURITY INTEREST  
(SECOND) ENFORCEMENT OF SECURITY INTEREST  
(SECOND) ORDINANCE, 2002

For use in Office.

Date of filing .....

Date of receipt by post .....

Registration No. ....

Signature  
Registrar

IN THE DEBTS RECOVERY TRIBUNAL

[Name of the place]

BETWEEN

A.B. APPLICANT

AND

C.D.

DEFENDANT

Delete whichever is not applicable.

Details of Application :

1. Particulars of the applicant :

- (i) Name of the applicant :
- (ii) Address of Registered Office:
- (iii) Address for service of all notices:
2. Particulars of the (defendant):
- (i) Name of the (defendant):
- (ii) Office address of the (defendant):
- (iii) Address for service of all notices;
3. Jurisdiction of the Tribunal:
- The applicant declares that the subject-matter of the recovery of debt due falls within the jurisdiction of the Tribunal.
4. Limitation:
- The applicant further declares that the application is within the limitation prescribed in section 24 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993.
5. Facts of the case:
- The facts of the case are given below:--
- (Give here a concise statement of facts in a chronological order, each paragraph containing as nearly as possible a separate issue, fact or otherwise )
6. Details of recoveries made by sale of securities:
- (Give here security wise details of sale/s conducted and realisations, appropriations of sale proceeds towards, costs interest and principal amount and the balance amount to be recovered.)
7. Relief(s) sought:
- In view of the facts mentioned in para 5 above, the applicant prays for the following relief(s):--
- (Specify below the relief(s) sought explaining the ground for relief(s) and the legal provisions (if any relied upon)
8. Interim order, if prayed for :
- Pending final decision on the application, the applicant seeks issue of the following interim order--
- (Give here the nature of the interim order prayed for with reasons.)
9. Matter not pending with any other court, etc:
- The applicant further declares that the matter regarding which this application has been made is not pending before any court of law or any other authority or any other Bench of the Tribunal.
10. Particulars of Bank Draft/Postal Order in respect of the application fee:
- (1) Name of the Bank on which drawn:
- (2) Demand Draft No. :
- or
- (1) Number of Indian Postal Order(s) :
- (2) Name of the issuing Post Office :
- (3) Date of issue of Postal Order(s) :
- (4) Post Office at which payable :
11. Details of Index :
- An index in duplicate containing the details of the documents to be relied upon is enclosed.
- Such documents should include copies of sale certificates or any other documents relating to sale of secured assets and sale proceeds realised.
12. List of enclosures:

VERIFICATION

I ..... I ..... (Name in full and block letters) son/daughter/wife of Shri ..... being the ..... (designation) ..... (name of the company) holding a valid power of attorney from ..... (name of the company) do hereby verify that the contents of paras 1 to 11 are true to my personal knowledge and belief and that I have not suppressed any material facts.

Signature of the applicant

Place :

Date :

To  
The Registrar

-----  
-----

**The Securitisation & Reconstruction of Financial Assets & Enforcement of security  
Interest (removal of Difficulties) order, 2004**

In exercise of the powers conferred by sub-section (1) of section 40 of the said Act, the Central Government hereby makes the following order to make the provisions for levying of the fee for filing of appeals under sections 17 and 18 of the said Act, being not inconsistent with the provisions of the Act, to remove the difficulty, namely:--

**1. Short title and commencement**

(1) This order may be called the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (Removal of Difficulties) Order, 2004.

(2) It shall come into force at once.

**2. Definition**

Debts Recovery Tribunal (Procedure) Rules, 1993 means the Debts Recovery Tribunal (Procedure) Rules, 1993 made under section 9 read with clause (e) of sub-section (2) of section 36 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993.

**3. Fee for filing of an appeal to Debts Recovery Tribunal**

The fee for filing of an appeal to the Debts Recovery Tribunal under sub-section (1) of section 17 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 shall be mutatis mutandis as provided for filing of an application to the Debts Recovery Tribunal under rule 7 of the Debts Recovery Tribunal (Procedure) Rules, 1993.

**4. Fee for filing of an appeal to Debts Recovery Appellate Tribunal**

The fee for filing of an appeal to the Debts Recovery Appellate Tribunal under sub-section (1) of section 18 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 shall be mutatis mutandis as provided for filing of an appeal to the Debts Recovery Appellate Tribunal under Rule 8 of the Debts Recovery Appellate Tribunal (Procedure) Rules, 1994

**MINISTRY OF FINANCE**  
(Department of Economic Affairs)  
**NOTIFICATION**  
New Delhi, the 2<sup>nd</sup> February, 2007

S.O. 103(E) - In exercise of the powers conferred by sub-section (1) and clauses (b), (ba), (bb) and (bc) of sub-section (2) of section 38 read with sections 17, 18 and sub-sections (4), (10) and (12) of Section 13 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002), the Central Government hereby makes the following rules to amend the Security Interest (Enforcement) Rules, 2002, namely:-

1. (1) These rules may be called the Security Interest (Enforcement) Amendment Rules, 2007  
(2) They shall come into force on the date of their publication in the official Gazette
2. (1) In the Security Interest (Enforcement) Rules, 2002 (herein after referred to as 'the said rules') for the word "ordinance" wherever they occur, the word "Act" shall be substituted.

(2) In the said rules, in rule 2, for clause (c) the following clause shall be substituted, namely :-

“ Act’ means the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ( 54 of 2002)’.

3. In the said rules after rule 3, the following rule shall be ( inserted) namely:-

“3A. Reply to Representation of the borrower

(a) After issue of demand notice under sub-section (2) of section 13, if the borrower makes any representation or raises any objection to the notice, the Authorized Officer shall consider such representation or objection and examine whether the same is acceptable or tenable.

(b) If on examining the representation made or objection raised by the borrower, the secured creditor is satisfied that there is a need to make any changes or modifications in the demand notice, he shall modify the notice accordingly and serve a revised notice or pass such other suitable orders as deemed necessary, within seven days from the date of receipt of the representation or objection.

(c) If on examining the representation made or objection raised, the Authorized Officer comes to the conclusion that such representation or objection is not acceptable or tenable, he shall communicate within one week of receipt of such representation or objection, the reasons for non – acceptance of the representation or objection to the borrower”.

4. In the said rules, after rule 11, the following shall be inserted, namely

:

“12 Application to the Tribunal / Appellate Tribunal –

1) Any application to the Debt Recovery Tribunal under sub- section (1) of section 17 Shall be, as nearly as possible, in the form given in Appendix VII to the rules.

2) any application to the Appellate Tribunal under sub - section (6) of section 17 of the Act shall be, as nearly as possible, in the form given in Appendix VIII to the said rules. Any appeal to the Appellate Tribunal under section



18 of the Act shall be, as nearly as possible, in the form given in Appendix IX to the said rules.

“13. Fees for applications and appeals under section 17 and 18 of the Act.

(1) Every application under sub section (1) of section 17 or an appeal to the Appellate Tribunal under sub – section (1) of section 18 shall be accompanied by a fee provided in the sub- rule (2) and such fee may be remitted through a crossed demand draft drawn on a bank or Indian Postal Order in favour of the Registrar of the Tribunal or the Court as the case may be, payable at the place where the Tribunal or the Court is situated.

(2) The amount of fee payable shall be as follows:

**No Nature of Application Amount of Fee payable**

1 Application to a Debt Recovery Tribunal under sub- section (1) of Section 17 against any of the measures referred to in sub- section (4) of section 13	
(a) Where the application is a borrower and the amount of debt due is Rs. 10 Lakhs and above	Rs. 500 for every Rs. 1 Lakh or part thereof
(b) Where the applicant is a borrower and the amount of debt due is Rs. 10 lakhs and above.	Rs. 5000+Rs. 250 for every Rs. 1 lakhs or part thereof in excess of Rs. 10 Lakhs subject to a maximum of Rs. 1,00,000
(c) Where the applicant is an aggrieved party other than the borrower and where the amount of debt due is less than Rs. 10 lakhs	Rs. 125 for every Rupees One lakh or part thereof.
(d) Where the applicant is an aggrieved party other than the borrower and where the amount of debt due is Rs. 10 lakhs and above	Rs. 1250 + Rs. 125 for every Rs. 1 lakh or part thereof in Excess of Rs. 10 Lakhs subject to a maximum of Rs. 50,000/-
(e) Any other application by any person	Rs. 200/-
2 Appeal to the appellate Authority against any order passed by the Debt Recovery Tribunal under section 17	Same fees as provided at Clauses (a)to (e) of serial number 1 of this rule

5. In the said rules:

- (i) in appendix – III, for the words” receipt of the sale price “, the words and letters ‘ of Rs. \_\_\_\_\_ (Rupees \_\_\_\_\_ only) shall be inserted;
- (ii) in appendix V, after the words’ receipt of the sale price”. the words and letters of Rs. \_\_\_\_\_ ( Rupee \_\_\_\_\_only’ shall be inserted;
- (iii) After Appendix VI, the following shall be inserted, namely:-

**APPENDIX – VII**

[See rule 12(1) ]

Application under sub – section (1) of Section 17 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002

For use in Tribunal’s Office

Date of filing -----

Date of receipt by post -----

or

Registration No. -----

Signature

Registrar

In the Debts Recovery Tribunal

(Name of the place)

between

A B Applicant(s)

and

C D Defendant(s)

Delete whichever is not applicable.

Details of application :-

1. Particulars of the applicant:-
  - i. Name of the applicant:
  - ii. Address of Registered Office:
  - iii. Address for service of all notices:
  
2. particulars of the defendant:-
  - i. Name of the defendant:
  - ii. Office address of the defendant:
  - iii. Address for service of all notices:
  
3. Jurisdiction of the Tribunal:-

The applicant declares that the subject matter of this application falls within the jurisdiction of the Tribunal .
  
4. Limitation :

The applicant further declares that this application is filed within the limitation prescribed in sub – section (1) of Section 17 of the Securitisation and Reconstruction of the Financial Assets and Enforcement of Security interest Act. 2002 .
  
5. Facts of the Case:-

The facts of the case are given below:-  
(Give here a concise statement of facts in a chronological order, each paragraph containing as nearly as possible a separate issue, fact or otherwise as to how the applicant is aggrieved)
  
6. Relief(s) sought:-

In view of the facts mentioned in paragraph 5 above the applicant prays for the following relief(s):-  
[specify below the relief(s) sought explaining the ground for relief (s) and the legal provisions (if any) relied upon]
  
7. Interim order. if prayed for :-

pending final decision on the application, the applicant seeks issue of the following Interim order:-  
[Give here the nature of the interim order prayed for with reasons)

8. Matter not pending with any other court. etc.:

The applicant further declares that the matter regarding which this application has been made is not pending before any court of law or any other authority or any other Bench of the Tribunal.

9. Particulars of Bank Draft / Postal

Order in respect of the application fee in terms of rules 13 of these rules:-

- (1) Name of the bank on which drawn:
- (2) Demand draft No.:

or

- (1) Number of Indian Postal order(s):
- (2) Name of the issuing Post Office:
- (3) Date of Issue of Postal Order(s):
- (4) Post Office at which payable:

10. Details of Index:-

An index in duplicate containing the details of the document to be relied upon is enclosed.

11. List of enclosures:-

#### Verification

I.....son/ daughter/wife of  
( Name in full and block letters)

of Shri .....the applicant / for and on behalf of the applicant hereby solemnly verify that the contents of paras 1 to 11 are true to my personal knowledge and belief and that I have not suppressed any material facts.

Signature of the applicant

Place:

Date:

To,

The Registrar

.....

.....

### **APPENDIX – VIII**

[See rule 12(2)]

Application under sub-section (6) of Section 17 Securitisation and  
Reconstruction of Financial Assets and Enforcement of security Interest Act,  
2002

For use in Appellate Tribunal's Office

Date of filing -----

Date of receipt by post -----

Or

Registration No. -----

-----

Signature

Registrar

In the Debts Recovery Appellate Tribunal

(Name of the place)

Between

A                      B                      Applicant(s)

And

C                      D                      Defendant(s)

Delete whichever is not applicable.

Details of application :

1. Particulars of the applicant :-

(i) Name of the applicant :-

(ii) Address of Registered Office :-

(iii) Address for service of all notices :-

2. Particulars of the defendant :-

(i) Name of the defendant :

(ii) Office address of the defendant :

(iii) Address for service of all notices :

3. Jurisdiction of the Appellate Tribunal :-

The applicant declares that the subject matter  
of this application falls within the jurisdiction  
of the Appellate Tribunal.

4. Facts of the case :-

The facts of the case are given below:-

The applicant submits that the applicant /

defendant had filed an application under Sub-section (1) of section 17 of the of the Securitisation and Reconstruction of Financial Assets and Enforcement of security Interest Act, 2002, before the Hon'ble Debt Recovery Tribunal (place) on (date), which was registered as -----, and is still pending. The aforesaid application ought to have been disposed off on or before

5. Relief (s) Sought :-

In view of the facts mentioned in para 5 above, the applicant prays for the following relief(s) :- Direct the Hon'ble Debt Recovery Tribunal (place) to dispose of the said application No.----- at the earliest and / or pass any other suitable order in the interest of justice and equity.

6. Matter not pending with any other court, etc. :-

The applicant further declares that the matter regarding which this application has been made is not pending before any court of law or any other authority or any other Bench of the Tribunal.

7. Details of Index :-

An index in duplicate containing the details of the documents to be relied upon is enclosed.

8. List of enclosures :-

**Verification**

I ----- son / daughter / wife  
(Name in full and block letters)

of Shri ----- the applicant hereby solemnly verify that the contents of paras 1 to 7 are true to my personal knowledge and belief and that I have not suppressed any materials facts.

Place : Signature of the applicant

Date :

To



The Registrar

-----  
-----

## APPENDIX – IX

[See Rule 12(2)]

Appeal under Section 18 of the Securitisation and Reconstruction  
of Financial Assets and Enforcement of Security Interest Act, 2002

For use of Tribunal's office -----  
Date of filing -----  
Date of receipt by post -----  
Registration No. -----  
Signature -----  
Registrar

### IN THE DEBTs RECOVERY APPELLATE TRIBUNAL

(Name of place)

Between

----- Appellant(s) / Judgment – Creditor(s)

and

----- Respondent(s) / Creditor(s)

Details of appeal :

I. Particulars of the Appellant(s)

- (i) Name of the Appellant :
- (ii) Address of the Registered office of the appellant :
- (iii) Address for service of all notices :

II. Particulars of the respondent(s)

- (i) Name(s) of respondent :
- (ii) office address of the respondent :
- (iii) Address for service of all notices :

III. Jurisdiction of the Appellate Tribunal :

The appellant declares that the subject matter of the appeal falls within the jurisdiction of the Appellate Tribunal.

IV. Limitation :

The appellant declares that the appeal is within the limitation prescribed in sub – section (1) of Section 18 of the securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.

V. Facts of the case :

(give here a concise statement of facts and grounds of appeal against the specific order of DRT passed under \* sub-section (3) / sub-section (4) of Section 18 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.

VI. Relief(s) sought :

In view of the facts mentioned in paragraph V above, the appellant prays for the following relief(s)

(Specify below the relief(s) sought explaining the grounds of relief(s) and the legal provisions (if any) relied upon.

VII. Interim order, if prayed for –

Pending final decision on the appeal the appellant seeks issue of the following interim order :

(Give here the nature of the interim order prayed for with reasons)

VIII. Matter not pending with any other court, etc.

The Appellant further declares that the matter regarding which this appeal has been made is not pending before any court of law or any other authority or any other Tribunal(s) .

IX. Particulars of Bank draft / Postal Order in respect of the deposit of debts due in terms of sub- section (1) of Section 18 of the Act:

(1) Name of the bank on which drawn

(2) Demand Draft number

or

(1)Number of Postal Order(s)

(2) Name of Issuing Post Office

(3) Date of Issue of Postal Order(s)

(4) Post Office at Which payable

X. Particulars of bank draft, postal order in respect of the fee paid in terms of rule 13 of these rules.

(1) Name of the Bank on which drawn

(2) Demand draft number

or

(1)Number of Postal Order(s)

(2) Name of Issuing post office

(3) Date of Issue of Postal Order(s)

(4) Post office at which payable

XI. Details of index – An I index in duplicate containing the details of the documents to be relied upon is enclosed.

XII. List of enclosures:

Verification

I \_\_\_\_\_ ( name in full block letters) son /  
daughter / wife of \_\_\_\_\_the appellant do hereby verify that the  
contents of paragraphs I to IX are true to my personal knowledge and belief and  
that I have not suppressed any material facts(s)

Signature of the Appellant

place :

Date:

To,

The Registrar  
Debts Recovery Tribunal