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# Process of Adjudication Under SARFAESI Act 2002

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## ABSTRACT

*With the growing time and numerous factors moving in an economy, the usually synchronised term with banking “adjudication” is the method of delivering or pronouncing judgment or decree in an exceeding course. The statement and object of the much-awaited statute to securitise, regulate and reconstruct the financial assets was brought as a masterpiece by the bicameral Indian legislature to facilitate the adjudication process in a comprehensive and effective manner of the matters covered within its ambit. The act permits the originators to enforce their security interests expeditiously without being required to move court or tribunal, which is consistent with the object of parliament to facilitate the enforcement of security interests by a non-adjudicatory process. It has the remedy to forfeit the residential and business properties to recover loans once the recipient fails to repay their loans. It permits banks to cut back their non-performing assets (hereinafter referred to as ‘NPA’). Upon loan defaults, banks will seize the securities like land (except agricultural land) without the intervention of the courts. However, the intervention is critical once the security is invalid or dishonourable. The act comes into the picture for the secured loans, and just in case the assets in question are the unsecured assets, then he would have the choice to manoeuvre court for the civil suit as recourse accessible. Thus, as Economy is the Art of making the most of life. “Finance is not just about lending, it is about recovering loans also.” and while one fails to do that, there has to be recourse in order to maintain a healthy order in the economic development.*

## I. THE ACT FOR THE BANK’S

While there were certain major changes seen during the late 19<sup>th</sup> century in the Economy, the legislature was concerned about a set up for recovery of bad loans and when there is a need felt in the changing trends of the society, specifically in regularising things with socio-economic or political perspective it is often seen that the law changes, certain committees are set up or formulated to be suggestive enough and highlight the change demanded by the rush hour. This facilitates the process of law-making and helps in keeping an equilibrium balance, thus based

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on such recommendations by the committee set up under the guidance of Mr. Andhyarujina, the SARFAESI Act came into existence which was much regarded as the boon for the banks and curse for the borrower.

## II. WORKING OF THE ACT

Coming to the part of understanding the working of the act, the principal idea under its provisions in the act gives the option of ‘grab’ and ‘refrain’ to the originator (generally banks). There are several roles played by various bodies under the act, and the very first baseline that one needs to have clarity upon can be seen with the help of an instance where;

‘O’ is the obligor or the person responsible for the repayment of a loan taken from ‘B’ the originator.<sup>2</sup> He is “liable to pay the originator whether under a contract or otherwise, or to discharge any obligation in respect of a financial asset, whether existing, future, conditional or contingent”<sup>3</sup> or any, including a borrower. While the originator is in the state where he demands the repayment of the debt, the inability of the obligor lays stress on the part of the originator to regain his debt. Now, the originator has the obligation under the provisions of the act to issue a notice to the debtor in writing to discharge the liabilities within 60 days.<sup>4</sup> Thus ***the filing process in DRT by SARFAESI route is to comply with s.13 of the act***, and failure to comply with the said notice issued by the originator he has the right to claim the recourse available against the non-performing asset, which is generally the asset or the account of the obligor, classified by the bank or the financial institution as sub-standard, doubtful or loss asset, in accordance with the directions or under guidelines relating to asset classification issued by the Reserve Bank.<sup>5</sup> (It is important that the classification of any account as an NPA has to be done within the ambit of RBI directives). Therefore as per the functioning methodology of the act, “the originator has the right to sale or take possession of the security of the loan; secondly, he is having the managerial rights reserved with him to lease or assign the right over and thirdly to assign any person to manage the affairs of the same and lastly to require at any time by giving notice in writing, any person who has acquired the secured asset from the obligor and from whom any money is due or may become due to the obligor, to pay to the extent of secured debt”.<sup>6</sup> And then accordingly follow the process of adjudication under the act.

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<sup>2</sup> *Supra* note 3, s.2(1)(r).

<sup>3</sup> *Supra* note 3, s.2(1)(q).

<sup>4</sup> *Supra* note 3, s.13(2).

<sup>5</sup> *Supra* note 3, s.2(1)(o).

<sup>6</sup> *Supra* note 3, s.13(4).

The apex court in *Union of India v. Mardia Chemicals Ltd*<sup>7</sup> enumerated certain guidelines about what the bank or the financial institution should do when the obligor submits any reply or representation to the said notice, which included obligations to be fulfilled on the part of the second creditor. In such a scenario, as stated in the example above, *the recovery method* is carried out as:-

- *Securitisation*

The process of securitisation involves the use of a special purpose vehicle (SPV/SPE) that generally sells these financial assets to the Qualified Institutional Buyer. It means “acquisition of financial assets by any asset reconstruction company from any originator, whether by raising of funds by such asset reconstruction company from qualified buyers by the issue of security receipts representing an undivided interest in such financial assets or otherwise.”<sup>8</sup>

- *Asset Reconstruction*

The acquisition of “any right or interest, of any bank or financial institution in any financial assistance for the purpose of realisation of such financial assistance.”<sup>9</sup> is what asset reconstruction constitutes as it is performed by the ARCs as defined under the act.<sup>10</sup>

- *Enforcement of Security Interest*

In the event of default by the obligor, the act “empowers the originators to enforce securities without the intervention of either civil court or Debts recovery tribunal.”<sup>11</sup> the powers given by the act have had an overriding effect on other laws in this respect.

### III. ADJUDICATION PROCESS

Generally, the process of adjudication under the act is done by the **Debt Recovery Tribunal**. It is seen that it is a body that “ensures the recovery of money from borrowers which is due to financial institutions and banks. It has the same powers vested with the district court. The recovery process is generally carried out by the recovery officer.”

- *Application against measures to Recover Secured Debts (Jurisdiction of DRT)*

Under the provisions of the act, it provides that “any person including the borrower, aggrieved by any of the measures taken by the secured creditor or his authorised officer taking possession of the security may make an application along with the fees prescribed to the Debt recovery

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<sup>7</sup> AIR 2004 SC 2371.

<sup>8</sup> *Supra* note 3, s.2(1)(z).

<sup>9</sup> *Supra* note 3, s.2(1)(b).

<sup>10</sup> *Supra* note 3, s.2(1)(ba).

<sup>11</sup> *Supra* note 3, s.13.

tribunal jurisdiction within forty –five days from the date on which such measures are taken.” It is a right given to any person aggrieved by the action taken by the secured creditor.<sup>12</sup>

In compliance to the application, it is filed to the jurisdictional limit of DRT where “the cause of action, wholly or in part arises; where the secured asset is located; or the branch or any other office of a bank or financial institution is maintaining an account in which debt claimed is outstanding for the time being.”<sup>13</sup>

- ***Appeal to Appellate Tribunal***

The act also provides that “any person aggrieved by any order made by the debt recovery tribunal can prefer an appeal along with the prescribed fees to the appellate tribunal within thirty days within the receipt of the order of debts recovery tribunal.”<sup>14</sup>

It can be noted that s.18 of the act “bars all other courts from the adjudication of matters relating to debt recovery apart from the Supreme Court and High court exercising jurisdiction under Art. 226 and 227 of the constitution of India”. Therefore the process of adjudication explained is carried out as per the act, which provides for enforcement of security interest and for matters connected therewith.<sup>15</sup>

- ***Serving of Summon/Notice***

The registrar of DRT or “any other officer that has been authorised by the presiding officer will issue a notice which will be served by the application to the defendant. The summon also includes the paper book of the petition, which is served to the defendant generally by hand or registered post with acknowledgement due. As the digitalisation of the era is prolonged, the summon can be sent through email, fax, in any case with ensuring that the defendant gets the copy of the paper book on the primary date of appearance.”

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<sup>12</sup> *Supra* note 3, s.17.

<sup>13</sup> *Supra* note 3, s.17(1A).

<sup>14</sup> *Supra* note 3, s.18.

<sup>15</sup> *Transcore v. Union of India* AIR 2008 1 SCC 125.

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