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ENFORCEMENT OF SECURITY INTEREST AND RECOVERY OF DEBTS LAWS AND MISCELLANEOUS PROVISIONS (AMENDMENT) BILL, 2016

Prepared by Smt. Parma Chatterjee, Additional Director (23034926) and Smt. Promila Pant, Joint Director of Lok Sabha Secretariat under the supervision of Smt. Kalpana Sharma, Joint Secretary and Smt. Anita Khanna, Director.

Legislative Note on "Enforcement of Security Interest and Recovery of Debts Laws and Miscellaneous Provisions (Amendment) Bill, 2016"

- The Enforcement of Security Interest and Recovery of Debts Laws and Miscellaneous Provisions (Amendment) Bill, 2016 has been introduced in the Lok Sabha by the Finance Minister of India on 11 May, 2016 .
- Aimed to improve ease of doing business and facilitate investment leading to higher economic growth and development.
- The Bill mainly seeks to amend two legislations, namely:
  - ✓ The Recovery of Debts due to Banks and Financial Institutions Act, 1993,
  - ✓ The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002[1].

Salient features of the above legislations along with proposed amendments are given below:

Salient features

- **The Recovery of Debts due to Banks and Financial Institutions (RDBFI)Act, 1993**
  - ✓ The most basic mechanism for debt recovery that is available for all types of creditors involves filing a petition in a civil court of competent jurisdiction and this mechanism remains available today.
  - ✓ Given the high pendency of cases in the civil courts, the Recovery of Debt Due to Banks and Financial Institutions Act (RDDBFI Act) was

[1] Enforcement of Security Interest and Recovery of Debts Laws and Miscellaneous Provisions (Amendment) Bill, 2016 as introduced in Lok Sabha on 11 May 2016

enacted in 1993 to make it easier for banks and financial institutions to recover debt.

- ✓ The RDDBFI Act is available to both secured and unsecured creditors, but they need to be banks or notified financial institutions.
- ✓ The act provided for the establishment of Debt Recovery Tribunals (DRTs) and Debt Recovery Appellate Tribunals (DRATs) to help banks and financial institutions recover their dues speedly without being subject to the lengthy procedure of usual civil courts.
- ✓ Cases pending before the civil courts that involved debt of over Rs 10 lakh were automatically transferred to the DRTs[2].
- ✓ The judgement of DRTs can be appealed to the Debt Recovery Appellate Tribunals.
- ✓ Presently, there are approximately seventy thousand cases pending in Debts Recovery Tribunals.
- ✓ Though the Recovery of Debts due to Banks and Financial Institutions Act provides for a period of 180 days for disposal of recovery applications, the cases are pending for many years due to various adjournments and prolonged hearings.

- The amendments proposed in the RDBFI Act, 1993 *inter alia*, include
  - (i) expeditious disposal of recovery applications;
  - (ii) electronic filing of recovery applications, documents and written statements; and display of interim and final orders of the DRTs and DRATs on their website;
  - (iii) priority to secured creditors in repayment of debts over all claimants;

[2] Indian Insolvency Regime in Practice – An Analysis; by Aparna Ravi, Economic and Political Weekly, Vol. L No. 51 dated 19 December 2015

(iv) debenture trustees as financial institutions; and

(v) empowering the Central Government to provide for uniform procedural rules for conduct of proceedings in the Debts Recovery Tribunals and Appellate Tribunals[3].

- **The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, 2002**
  - ✓ The enactment of the SARFAESI Act, 2002 enabled banks and financial institutions to sell off their non-performing assets to asset reconstruction companies registered with RBI[4].
  - ✓ Section 13 of the SARFAESI Act allows secured creditors to take steps to enforce their security interests in respect of any debt of a borrower that is classified as a non-performing asset without the intervention of a court or tribunal if certain conditions specified in the Act are met.
  - ✓ Any debtor who then wants to contest the action taken by a creditor under the SARFAESI Act may do so through an appeal to the DRT within 45 days of the enforcement action being taken[5].
  - ✓ The Act also laid the framework to the constitution of Asset Reconstruction Companies (ARCs) specialising in securitising distressed assets purchased from banks[6].
  - ✓ Asset Reconstruction Companies take over non-performing assets of banks at discounted rate and manage and dispose of such assets[7].
  - ✓ The RBI is the regulator of the major player in the Indian Financial System and has to ensure financial intermediaries engage in Securitisation prudently[8].

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[3] *Op.cit.*, Enforcement of Security Bill, 2016

[4] RBI. Securitization in India: Ambling Down or Reviving UP, Inaugural Speech by R. Gandhi, Deputy Governor, dated 14 July 2015

[5] *Op.cit.*, EPW

[6] *Op.cit.*, Securitization in India

[7] RBI Report on Trend and Progress of Banking in India 2003-04

- ✓ To prevent fraud in loan cases involving, multiple lending from different banks on the same immovable property, the Central Electronic Registry under SARFAESI Act, 2002 has become operational since 31 March, 2011. The records maintained by the Central Electronic Registry will be available for search by any lender or any other person desirous of dealing with the property[9].

- The amendments in the SARFAESI Act, 2002 *inter alia*, include
  - (i) registration of creation, modification and satisfaction of security interest by all secured creditors; and provision for integration of registration systems under different laws relating to property rights with the records of the Central Registry so as to create a Central database of security interest on property rights. This include the integration of records of registration made under the Companies Act, 2013, the Motor Vehicle Act, 1988 or other such records under any other law which will widen the scope of the Central Registry;
  - (ii) empowers the Reserve Bank of India to regulate asset reconstruction companies in a changing business environment. It empowers the RBI to carry out Audit and conduct inspections of an ARC from time to time. The RBI may impose a penalty where an ARC fails to comply with any direction issued by RBI;
  - (iii) exemption from stamp duty on loans assigned by banks and financial institutions to asset reconstruction companies;
  - (iv) enabling non-institutional investors besides qualified buyers to invest in security receipts by ARCs;
  - (v) Same right to the debenture trustees as secured creditors;

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[8] *Op.cit.*, Securitization in India

[9] RBI. Banks Debt Recovery and Regulations Talk delivered by Shri R. Gandhi, Deputy Governor dated 29 December 2014

(vi) specific timeline for taking possession of secured assets; and

(vii) priority to secured creditors in repayment of debts.

- The Bill also seeks to amend the Indian Stamp Act, 1899, to provide Stamp Duty Exemptions on loans assigned by banks and financial institutions to ARCs;
- In addition, the Bill also seeks to amend Depositories Act, 1996. Amendments in Depositories Act, 1996 have been proposed for facilitating transfer of shares held in pledge or on conversion of debt into shares in favour of banks and financial institutions[10].
- Once passed, it will help banks and financial institutions to recover bad loan faster.
- At Present, the Bill has been referred to Joint Parliamentary Committee, under the Chairmanship of Shri Bhupendra Yadav, M.P., for examination and presenting a Report to the Parliament during the Monsoon Session.

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[10] *Op.cit.,* Enforcement of Security Bill, 2016