

Bill No. 144 of 2016

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

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BILL

further to amend the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, the Recovery of Debts due to Banks and Financial Institutions Act, 1993, the Indian Stamp Act, 1899 and the Depositories Act, 1996, and for matters connected therewith or incidental thereto.

BE it enacted by Parliament in the Sixty-seventh Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

5 **1.** (1) This Act may be called the Enforcement of Security Interest and Recovery of Debts Laws and Miscellaneous Provisions (Amendment) Act, 2016. Short title and commencement.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint:

10 Provided that different dates may be appointed for different provisions of this Act, and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

CHAPTER II

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

Amendment of long title.	<p>2. In the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, (hereinafter referred to in this Chapter as the principal Act), for the long title, the following shall be substituted, namely:—</p> <p>"An Act to regulate securitisation and reconstruction of financial assets and enforcement of security interest and to provide for a Central database of security interests created on property rights, and for matters connected therewith or incidental thereto."</p>	5 54 of 2002. 10
Substitution of certain expressions throughout the principal Act.	<p>3. In the principal Act,—</p> <p>(i) for the words "securitisation company", "reconstruction company", "securitisation or reconstruction company", "securitisation company or the reconstruction company" or "securitisation company or a reconstruction company", wherever they occur, the words "asset reconstruction company" shall be substituted;</p> <p>(ii) for the words "securitisation companies or reconstruction companies", wherever they occur, the words "asset reconstruction companies" shall be substituted.</p>	15
Amendment of section 2.	<p>4. In the principal Act, in section 2, in sub-section (1),—</p> <p>(i) after clause (b), the following clause shall be inserted, namely:—</p> <p>'(ba) "asset reconstruction company" means a company incorporated under the Companies Act, 2013 and registered with Reserve Bank under section 3 of this Act for the purpose of carrying on the business of asset reconstruction and securitisation;'</p> <p>(ii) in clause (f), after the words "financial institution in relation to such financial assistance", the words "or who has raised funds through issue of debt securities" shall be inserted;</p> <p>(iii) for clause (ha), the following clause shall be substituted, namely:—</p> <p>'(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 and includes—</p> <p>(i) unpaid portion of the purchase price of any tangible asset given on hire or financial lease or conditional sale or under any other contract;</p> <p>(ii) any right, title or interest on any intangible asset or licence or assignment of any intangible asset, which secures the obligation to pay any unpaid portion of the purchase price of such intangible asset or an obligation incurred or credit otherwise extended to enable any borrower to acquire the intangible asset or obtain licence of such asset;'</p> <p>(iv) after clause (i), the following clause shall be inserted, namely:—</p> <p>'(ia) "debt securities" means debt securities listed in accordance with the regulations made by the Board under the Securities and Exchange Board of India Act, 1992;'</p> <p>(v) for clause (j), the following clause shall be substituted, namely:—</p> <p>'(j) "default" means—</p> <p>(i) non-payment of any debt or any other amount payable by the borrower to any secured creditor consequent upon which the account of such borrower is classified as non-performing asset in the books of account of the secured creditor; or</p>	20 18 of 2013. 25 30 35 40 15 of 1992. 45

(ii) non-payment of any debt by the borrower with respect to debt securities after notice of ninety days, demanding payment of dues served upon such borrower, by the debenture trustee or by any other authority in whose favour security interest is created for the benefit of holders of such debt securities;'

(vi) in clause (k), after the words "any bank or financial institution", the following words shall be inserted, namely:—

"including funds provided for the purpose of acquisition of any tangible asset on hire or financial lease or conditional sale or under any other contract or obtaining assignment or licence of any intangible asset or purchase of debt securities;"

(vii) in clause (l), after sub-clause (v), the following sub-clauses shall be inserted, namely:—

"(va) any beneficial right, title or interest in any tangible property given on hire or financial lease or conditional sale or under any other contract which secures the obligation to pay any unpaid portion of the purchase price of such asset or an obligation incurred or credit otherwise provided to acquire such tangible property; or

(vb) any right, title or interest on any intangible asset or licence or assignment of such intangible asset, which secures the obligation to pay any unpaid portion of the purchase price of such intangible asset or an obligation incurred or credit otherwise extended to enable the borrower to acquire such intangible asset or obtain licence of the intangible asset; or";

(viii) in clause (m), after sub-clause (iii), the following sub-clauses shall be inserted, namely:—

"(iiia) a debenture trustee registered with the Board and appointed for debt securities;

(iiib) asset reconstruction company, whether acting as such or managing a trust created for the purpose of securitisation or asset reconstruction, as the case may be;"

(ix) after clause (m), the following clause shall be inserted, namely:—

'(ma) "financial lease" means a lessor's right in a tangible asset, other than a negotiable instrument or negotiable document, under the lease agreement where lessee, at the expiry of the term of the lease or on payment of agreed residual value of the asset, becomes the owner of the asset;'

(x) after clause (n), the following clause shall be inserted, namely:—

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

(xi) in clause (u), after the words "regulations made thereunder", the following words, figures and brackets shall be inserted, namely:—

"or any other category of non-institutional investors specified by the Reserve Bank under sub-section (1) of section 7 in consultation with the Board from time to time;"

(xii) clause (v) shall be omitted;

(xiii) clause (za) shall be omitted;

(xiv) in clause (zd),—

(a) after sub-clause (i), the following sub-clause shall be inserted, namely:—

"(ia) a debenture trustee appointed by any company for debt securities;"

(b) after sub-clause (iii), the following sub-clauses shall be inserted, namely:—

"(iv) any bank or financial institution holding any right, title or interest upon any tangible property given on hire or financial lease or conditional sale or under any other contract, which secures the obligation to pay any unpaid portion of the purchase price of the asset or an obligation incurred or any credit provided to enable the borrower to acquire the tangible property; or

(v) any bank or financial institution holding any right, title or interest on any intangible asset or licence or assignment of such intangible asset, which secures the obligation to pay any unpaid portion of the purchase price of the intangible asset or an obligation incurred or any credit provided to enable the borrower to acquire the intangible asset or obtain licence of intangible asset;"

(xv) for clause (zf), the following clause shall be substituted, namely:—

'(zf) " security interest" means right, title or interest of any kind whatsoever upon property created in favour of any secured creditor and includes—

(i) any mortgage, charge, hypothecation, assignment or any right, title or interest of any kind, on tangible property, retained by the secured creditor as an owner of the property, given on hire or financial lease or conditional sale or under any other contract which secures the obligation to pay any unpaid portion of the purchase price of the asset or an obligation incurred or credit provided to enable the borrower to acquire the tangible property; or

(ii) such right, title or interest in any intangible asset or licence of such intangible asset which secures the obligation to pay any unpaid portion of the purchase price of the intangible asset or the obligation incurred or any credit provided to enable the borrower to acquire the intangible asset or licence of intangible asset.

Explanation.—For the purposes of this clause, it is hereby clarified that security interest shall not include the security interest referred to in section 31;'

Amendment
of section 3.

5. In the principal Act, in section 3,—

(i) in sub-section (1), for clause (b), the following clause shall be substituted, namely:—

"(b) having net owned fund of not less than two crore rupees or such other amount as the Reserve Bank, may, by notification, specify;"

(ii) in sub-section (3), for clause (f), the following clause shall be substituted, namely:—

"(f) that a sponsor of an asset reconstruction company is a fit and proper person in accordance with the criteria specified by the Reserve Bank for such persons;"

(iii) in sub-section (6),—

(a) after the words "any substantial change in its management", the words "including appointment of any director on the board of directors of the asset reconstruction company or managing director or chief executive officer thereof" shall be inserted;

(b) in the *Explanation*, after the words "by way of transfer of shares or", the words "change affecting the sponsorship in the company by way of transfer of shares or" shall be inserted.

6. In the principal Act, in section 5,—

Amendment
of section 5.

5 (i) after sub-section (1), the following sub-sections shall be inserted, namely:—

"(1A) Any document executed by any bank or financial institution in favour of the asset reconstruction company under sub-section (1) for the purpose of acquiring financial assets shall be exempted from stamp duty in accordance with the provisions of section 8F of the Indian Stamp Act, 1899.

2 of 1899.

10 (1B) An asset reconstruction company may acquire the financial asset of any bank or financial institution for the purpose of asset reconstruction where a borrower has failed to pay the secured debt or any instalment thereof on due date, whether or not the account of such borrower is classified as non-performing asset.";

15 (ii) after sub-section (2), the following sub-section shall be inserted, namely:—

"(2A) If the bank or financial institution is holding any right, title or interest upon any tangible property or intangible asset to secure payment of any unpaid portion of the purchase price of the asset or an obligation incurred or credit otherwise provided to enable the borrower to acquire the tangible property or assignment or licence of intangible asset, such right, title or interest shall vest in the asset reconstruction company on acquisition of such financial assets.";

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(iii) after sub-section (3), the following sub-section shall be inserted, namely:—

"(3A) Notwithstanding anything contained in any other law for the time being in force, on the basis of the document executed under sub-section (1), the name of the asset reconstruction company shall be substituted in all the registration records or public records or such other records and in all legal proceedings filed by or against the bank or financial institution before any court, tribunal or any other authority and such asset reconstruction company shall be entitled to exercise all the rights of such bank or financial institution.".

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30 7. In the principal Act, in section 7, in sub-section (1), for the words "other than by offer to public", the words "or such other category of investors as may be specified by the Reserve Bank in consultation with the Board, from time to time," shall be substituted.

Amendment
of section 7.

8. In the principal Act, for section 9, the following section shall be substituted, namely:—

Substitution
of new
section for
section 9.

35 "9. (1) Without prejudice to the provisions contained in any other law for the time being in force, an asset reconstruction company may, for the purposes of asset reconstruction, provide for any one or more of the following measures, namely:—

Measures for
assets
reconstruction.

(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;

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(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;

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(f) taking possession of secured assets in accordance with the provisions of this Act;

(g) conversion of any portion of debt into shares of a borrower company:

Provided that conversion of any part of debt into shares of a borrower company shall be deemed always to have been valid, as if the provisions of this clause were in force at all material times.

(2) The Reserve Bank shall, for the purposes of sub-section (1), determine the policy and issue necessary directions including the direction for regulation of management of the business of the borrower and fees to be charged. 5

(3) The asset reconstruction company shall take measures under sub-section (1) in accordance with policies and directions of the Reserve Bank determined under sub-section (2)". 10

Amendment of section 12.

9. In the principal Act, in section 12, in sub-section (2), after clause (b), the following clauses shall be inserted, namely:—

"(c) the fee and other charges which may be charged or incurred for management of financial assets acquired by any asset reconstruction company;

(d) the transfer of security receipts issued to qualified institutional buyers." 15

Insertion of new sections 12B, 12C and 12D.

10. In the principal Act, after section 12A, the following sections shall be inserted, namely:—

"12B. (1) The Reserve Bank may, for the purposes of this Act, carry out audit and conduct inspection of an asset reconstruction company from time to time.

(2) It shall be the duty of an asset reconstruction company and its officers to provide assistance and cooperation to the Reserve Bank to carry out audit or inspection under sub-section (1). 20

(3) Where on audit or inspection or otherwise, the Reserve Bank is satisfied that business of an asset reconstruction company is being conducted in a manner detrimental to public interest or to the interests of investors in security receipts issued by such asset reconstruction company, the Reserve Bank may, for securing proper management of an asset reconstruction company— 25

(a) remove the Chairman or any director or appoint additional directors on the board of directors of the asset reconstruction company; or

(b) appoint any of its officers as an observer to observe the working of the board of directors of such asset reconstruction company. 30

(4) It shall be the duty of every director or other officer or employee of the asset reconstruction company to produce before the person, conducting an audit or inspection under sub-section (1), all such books, accounts and other documents in his custody and to provide him such statements and information relating to the affairs of the asset reconstruction company as may be required by such person within the stipulated time specified by him. 35

Penalties for non-compliance of directions of the Reserve Bank.

12C. (1) Where any asset reconstruction company fails to comply with any direction issued by the Reserve Bank under section 9 or section 12 or section 12A or any other provision of this Act, the Reserve Bank may impose on such asset reconstruction company a penalty not exceeding one crore rupees or twice the amount involved in such failure whichever is more, and where such failure is a continuing one, with a further penalty which may extend to one lakh rupees for every day during which such failure continues. 40

(2) For the purpose of imposing penalty under sub-section (1), the Reserve Bank shall serve a notice on the asset reconstruction company under default requiring it to pay the amount of penalty specified in such notice. 45

(3) Any penalty imposed by the Reserve Bank under sub-section (1) shall be payable within a period of thirty days from the date of issue of notice under sub-section (2).

5 (4) Where the asset reconstruction company fails to pay the penalty within the specified period under sub-section (3), the Reserve Bank may by order cancel its registration:

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

10 12D. Without prejudice to the provisions contained in sub-section (4) of section 12C, if any asset reconstruction company fails to pay the penalty under sub-section (3) of section 12C within the specified period, a complaint may be filed against such company and the officer of such company who is in default, in accordance with section 30." Failure to pay penalty.

11. In the principal Act, in section 13,—

Amendment of section 13.

(i) in sub-section (2), the following proviso shall be inserted, namely:—

15 "Provided that—

(i) the requirement of classification of secured debt as non-performing asset under this sub-section shall not apply to a borrower who has raised funds through issue of debt securities and the provisions for enforcement of security interest under this Chapter shall apply to such borrower; and

20 (ii) in the event of default, the debenture trustee shall be entitled to enforce security interest in the same manner as provided under this section with such modifications as may be necessary and in accordance with the terms and conditions of security documents executed in favour of the debenture trustee.";

25 (ii) for sub-section (8), the following sub-section shall be substituted, namely:—

30 "(8) Where the amount of 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 lease, assignment or sale of the secured assets,—

(i) the secured assets shall not be leased, assigned or sold by the secured creditor; and

35 (ii) in case, any step has been taken by the secured creditor for lease or assignment or sale of the assets before tendering of such amount under this sub-section, no further step shall be taken by such secured creditor for lease or assignment or sale of such secured assets."

12. In the principal Act, in section 14,—

Amendment of section 14.

(i) in sub-section (1), in the second proviso, after the words "secured assets", the words "within a period of thirty days from the date of application" shall be inserted;

40 (ii) after sub-section (2), the following sub-section shall be inserted, namely:—

"(2A) Any application under sub-section (1) may be made by—

(a) two or more banks as secured creditors with or without any financial institution where they have converted part of their respective debts into shares of a borrower company in compliance with the provisions of sub-section (2) of section 19 of the Banking Regulation Act, 1949 or obtained transfer of shares of the promoter shareholders held in pledge as security for any financial assistance in the name of such banks, thereby jointly holding more than fifty per cent. share capital of the borrower company; or

(b) any asset reconstruction company or financial institution or any other assignee holding more than fifty-one per cent. share capital of the borrower company.

Explanation.—For removal of doubts, it is hereby clarified that the conversion of debt into shares of any borrower company by the secured creditors shall not in any way affect the rights of the secured creditors to enforce securities and recover the balance amount of debt under this Act or any other law for the time being in force." 5

Amendment of section 15.

13. In the principal Act, in section 15, in sub-section (4), the following proviso shall be inserted, namely:—

"Provided that if any secured creditor jointly with other secured creditors or any asset reconstruction company or financial institution or any other assignee has converted part of its debt into shares of a borrower company and thereby acquired controlling interest in the borrower company, it shall not be necessary for the secured creditor to restore the business to such borrower." 10

Amendment of section 17.

14. In the principal Act, in section 17,— 15

(i) for the marginal heading "Right to appeal", the words " Application against measures to recover secured debts" shall be substituted;

(ii) after sub-section (1), the following sub-sections shall be inserted, namely:—

"(IA) An application under sub-section (1) shall be filed before the Debts Recovery Tribunal within the local limits of whose jurisdiction— 20

(a) the cause of action, wholly or in part, arises; or

(b) where the secured asset is located.

(IB) Where any person, in an application under sub-section (1), claims any tenancy or any other right upon the property over which the security interest has been created for the secured debt, the Debts Recovery Tribunal shall have the jurisdiction to examine such claims and pass such orders as it deems appropriate." 25

(iii) after sub-section (3), the following proviso shall be inserted, namely:—

"Provided that if the Debts Recovery Tribunal is of the opinion that an applicant other than the borrower is entitled to restoration of possession of secured assets or management of the business of the borrower, the Debt Recovery Tribunal shall restore the possession of assets or management to such person." 30

Insertion of new sections 20A and 20B.

15. In the principal Act, after section 20, the following sections shall be inserted, namely:—

Integration of registration systems with Central Registry.

"20A. (1) The Central Government may, for the purpose of providing a Central Database, in consultation with State Governments or other authorities operating registration system for recording rights over any property of creation, modification or satisfaction of any security interest on such property, integrate the registration records of such registration systems with the records of Central Registry established under section 20, in such manner as may be prescribed. 35 40

Explanation.—For the purpose of this sub-section, the registration records includes records of registration under the Companies Act, 2013, the Registration Act, 1908, the Merchant Shipping Act, 1958, the Motor Vehicles Act, 1988, the Patents Act, 1970, the Designs Act, 2000 or other such records under any other law for the time being in force. 45 18 of 2013. 16 of 1908. 44 of 1958. 59 of 1988. 39 of 1970. 16 of 2000.

(2) The Central Government shall, after integration of records of various registration systems referred to in sub-section (1) with the Central Registry, by notification, declare the date of integration of registration systems and the date from

which such integrated records shall be available; and with effect from such date it shall not be necessary for any person to register security interests over properties which are already registered under any registration system referred to in sub-section (1) with the Central Registry under this Act."

5 20B. The Central Government may, by notification, delegate its powers and functions under this Chapter, in relation to establishment, operations and regulation of the Central Registry to the Reserve Bank, subject to such terms and conditions as may be prescribed." Delegation of powers.

16. In the principal Act,—

10 (i) section 23 shall be numbered as sub-section (1), and in sub-section (1) as so re-numbered,— Amendment of section 23.

(a) the words "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" shall be omitted.

15 (b) the first proviso shall be omitted;

(c) in the second proviso, the word "further" shall be omitted;

(ii) in section 23, after sub-section (1) so re-numbered, the following sub-sections shall be inserted, namely:—

20 "(2) The Central Government may, by notification, extend the registration of transaction relating to different types of security interest created on different kinds of property with the Central Registry.

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

25 **17.** In the principal Act, after section 26A, the following Chapter shall be inserted, namely:— Insertion of new Chapter IVA.

"CHAPTER IVA

REGISTRATION BY SECURED CREDITORS AND OTHER CREDITORS

30 26B. (1) The Central Government may, by notification, extend the provisions of Chapter IV relating to Central Registry to all creditors other than secured creditors specified in clause (zd) of sub-section (1) of section 2, for creation, modification or satisfaction of any security interest over any property of the borrower for the purpose of securing due repayment of any financial assistance granted by such creditor to the borrower. Registration by secured creditors and other creditors.

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

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

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

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

Effect of the registration of transactions, etc.

26C. (1) Without prejudice to the provisions contained in any other law for the time being in force, any registration of transactions of creation, modification or satisfaction of security interest by a secured creditor or any other creditor or filing of attachment order under this Chapter shall be deemed to constitute a public notice from the date and time of filing of particulars of such transaction with the Central Registry for creation, modification or satisfaction of such security interest or attachment order, as the case may be. 10

(2) Where security interest or attachment order upon any property in favour of the secured creditor or any other creditor are filed for the purpose of registration under the provisions of Chapter IV and Chapter IVA, the claim of such secured creditor or other creditor holding attachment order shall have priority over any subsequent security interest created upon such property and any sale, transfer, lease or licence of such property or attachment order subsequent to such registration, shall be subject to such claim: 15

Provided that nothing contained in this sub-section shall apply to transactions carried on by the borrower in the ordinary course of business. 20

Right of enforcement of securities.

26D. Notwithstanding anything contained in any other law for the time being in force, from the date of commencement of the provisions of Chapter IVA, no secured creditor shall be entitled to exercise the rights of enforcement of securities under Chapter III unless the security interest created in its favour by the borrower has been duly filed with the Central Registry. 25

Priority to secured creditors.

26E. Notwithstanding anything contained in any other law for the time being in force, after the registration of security interest, the debts due to any secured creditor shall be paid in priority over all other debts and all revenues, taxes, cesses and other rates payable to the Central Government or State Government or local authority." 30

Amendment of section 27.

18. In section 27, the following proviso shall be inserted, namely: —

"Provided that provisions of this section shall be deemed to have been omitted from the date of coming into force of the provisions of Chapter IVA and section 23 as amended by the Enforcement of Security Interest and Recovery of Debts Laws and Miscellaneous Provisions (Amendment) Act, 2016." 35

Omission of section 28.

19. In the principal Act, section 28 shall be omitted.

Insertion of new sections 30A, 30B and 30C and 30D.

20. In the principal Act, after section 30 the following sections shall be inserted, namely:—

Power of adjudicating authority to impose penalty.

"30A. (1) Notwithstanding anything contained in section 12C or section 29, where any person fails or contravenes or commits any default of the nature referred to in those sections, the adjudicating authority may, by an order, impose on such person, a penalty not exceeding one crore rupees or twice the amount involved in such failure or contravention or default where such amount is quantifiable, whichever is more, and where such failure or contravention or default is a continuing one, a further penalty which may extend to one lakh rupees for every day, after the first, during which such failure or contravention or default continues. 40 45

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

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

5 (4) Where any complaint has been filed against a person in default in any court in respect of failure or contravention or default of the nature referred to in section 12C or section 29, no proceeding for imposition of penalty against that person shall be taken under this section.

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

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

15 (ii) "person in default" means the asset reconstruction company or any person which has committed any failure or contravention or default under section 12C or section 29, as the case may be, and such other person incharge of such company or any such other person shall be liable to be proceeded against and punished under section 33 for such failure or contravention or default committed by such company or person.

20 30B. A person in default, aggrieved by an order passed under sub-section (1) of section 30A, may, within a period of thirty days from the date on which such order is passed, prefer an appeal to the Appellate Authority: Appeal against penalties.

Provided that the Appellate Authority may entertain an appeal after the expiry of the said period of thirty days, if it is satisfied that there was sufficient cause for not filing it within such period.

25 30C. (1) The Central Board of Reserve Bank may designate such officer or committee of officers as it deems fit to exercise the power of Appellate Authority. Appellate Authority.

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

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

(4) Where the person in default fails to fulfil the terms and conditions imposed by order under sub-section (3) without reasonable cause, the Appellate Authority may dismiss the appeal.

35 30D. (1) Any penalty imposed under section 30A shall be recovered as a "recoverable sum" and shall be payable within a period of thirty days from the date on which notice demanding payment of the recoverable sum is served upon the person in default and, in the case of failure of payment by such person within such period, the Reserve Bank may, for the purpose of recovery,— Recovery of penalties.

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

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

(2) Save as otherwise provided in sub-section (4), a notice issued under clause (b) of sub-section (1) shall be binding on every person to whom it is issued, and, where such notice is issued to a post office, bank or an insurance company, it shall not be necessary to produce any pass book, deposit receipt, policy or any other document for

the purpose of any entry or endorsement thereof before payment is made, notwithstanding any rule, practice or requirement to the contrary.

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

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

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

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

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

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

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

or

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

whichever is less.

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

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

Provided that no such recovery shall be enforced, except on an application made to the principal Civil court by an officer of the Reserve Bank authorised in this behalf certifying that the person in default has failed to pay the recoverable sum."

Amendment
of section 31.

21. In the principal Act, in section 31, clause (e) shall be omitted.

Amendment
of section
31A.

22. In the principal Act, in section 31A, for sub-section (2), the following sub-sections shall be substituted, namely:—

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

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

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

23. In the principal Act, in section 32, for the words "any secured creditor or any of his officers or manager exercising any of the rights of the secured creditor or borrower", the words "the Reserve Bank or the Central Registry or any secured creditor or any of its officers", shall be substituted. Amendment of section 32.

10 24. In the principal Act, in section 38, in sub-section (2), — Amendment of section 38.

(i) after clause (bc), the following clauses shall be inserted, namely:—

"(bca) the manner of integration of records of various registration systems with the records of the Central Registry under section 20A;

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

(ii) after clause (d), the following clause shall be inserted, namely:—

"(da) forms for registration of different types of security interests and fee thereof under sub-section (3) of section 23;"

(iii) after clause (f), the following clauses shall be inserted, namely:—

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

(fb) the form and the manner of filing attachment orders with the Central Registry under sub-section (4) and fee under sub-section (5) of section 26B."

CHAPTER III

25 AMENDMENTS TO THE RECOVERY OF DEBTS DUE TO BANKS AND FINANCIAL INSTITUTIONS ACT, 1993

51 of 1993. 25. In the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (hereinafter in this Chapter referred to as the principal Act), in section 2,— Amendment of section 2.

30 (i) in clause (g), after the words "the date of the application", the following words shall be inserted, namely:—

"and includes any liability towards debt securities which remains unpaid in full or part after notice of ninety days served upon the borrower by the debenture trustee or any other authority in whose favour security interest is created for the benefit of holders of debt securities or;"

35 (ii) after clause (g), the following clause shall be inserted, namely:—

15 of 1992. '(ga) "debt securities" means debt securities listed in accordance with regulations made by the Securities Exchange Board of India under the Securities and Exchange Board of India Act, 1992;"

40 (iii) in clause (h), after sub-clause (ia), the following sub-clause shall be inserted, namely:—

"(ib) a debenture trustee registered with the Board and appointed for debt securities;"

(iv) after clause (h), the following clause shall be inserted, namely:—

45 '(ha) "financial lease" means a lessor's right in a tangible asset other than a negotiable instrument or negotiable document under the lease agreement where

lessee, at the expiry of the term of the lease or on payment of agreed residual value of the asset, becomes the owner of the asset;';

(v) after clause (ja), the following clause shall be inserted, namely:—

'(jb) "property" means —

(a) immovable property; 5

(b) movable property;

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

(d) receivables, whether existing or future;

(e) intangible assets, being know-how, patent, copyright, trade mark, licence, franchise or any other business or commercial right of similar nature, which are declared by the Reserve Bank, by notification, to be property rights over which security interest can be created in favour of banks and financial institutions;'; 10

(vi) after clause (l), the following clauses shall be inserted, namely:— 15

'(la) "secured creditor" shall have the meaning as assigned to it in clause (zd) of sub-section (1) of section 2 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002; 54 of 2002.

(lb) "security interest" means mortgage, charge, hypothecation, assignment or any other right, title or interest of any kind whatsoever upon property, created in favour of any bank or financial institution and includes— 20

(a) such right, title or interest upon tangible property, retained by the bank or financial institution as owner of the property, given on hire or financial lease or conditional sale which secures the obligation to pay any unpaid portion of the purchase price of the asset or an obligation incurred or any credit provided to enable the borrower to acquire the tangible property; or 25

(b) such right, title or interest in any intangible asset or licence of any intangible asset, which secures the obligation to pay any unpaid portion of the purchase price of the intangible asset or the obligation incurred or any credit extended to enable the borrower to acquire the intangible asset or license of intangible asset;'. 30

Amendment
of section 6.

26. In the principal Act, in section 6,—

(i) for the words "sixty-two years", the words "sixty-five years" shall be substituted; 35

(ii) after section 6, the following proviso shall be inserted, namely:—

"Provided that any Presiding Officer of a Tribunal, who has completed his term, shall be eligible for reappointment as a Presiding Officer."

Amendment
of section 11.

27. In the principal Act, in section 11,—

(i) for the words "sixty-five years", the words "sixty-seven years" shall be substituted. 40

(ii) after section 11, the following proviso shall be inserted, namely:—

"Provided that any Chairperson of the Appellate Tribunal who has completed his term, shall be eligible for reappointment as the Chairperson."

28. In the principal Act, in section 17A, after sub-section (1), the following sub-sections shall be inserted, namely:—

Amendment
of section
17A.

"(1A) For the purpose of exercise of general powers of superintendence and control over Tribunals under sub-section (1), the Chairperson may—

(i) direct the Tribunals to furnish, in such form, at such intervals and within such time, information relating to pending cases both under this Act and the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, or under any other law for the time being in force, number of cases disposed of, number of new cases filed and such other information as may be considered necessary by the Chairperson;

(ii) convene meetings of the Presiding Officers of Tribunals periodically to review their performance.

(1B) Where on assessment of the performance of any Presiding Officer of the Tribunal or otherwise, the Chairperson is of the opinion that an inquiry is required to be initiated against such Presiding Officer for misbehaviour or incapacity, he shall submit a report to the Central Government recommending action against such Presiding Officer, if any, under section 15, and for reasons to be recorded in writing for the same."

29. In the principal Act, in section 19,—

Amendment
of section 19.

(i) in sub-section (1), clause (a) shall be re-numbered as clause (aa) and before clause (aa) so renumbered, the following clause shall be inserted, namely:—

"(a) the branch or any other office of the bank or financial institution is functioning and maintains an account in which debt claimed is outstanding, for the time being; or";

(ii) for sub-section (3), the following sub-section shall be substituted, namely:—

"(3) Every application under sub-section (1) or sub-section (2) shall be in such form as may be prescribed and shall be accompanied with true copies of all documents relied on in support of the claim along with such fee as may be prescribed.";

(iii) in sub-section (3), after the second proviso, the following *Explanation* shall be inserted, namely:—

"*Explanation.*—For the purposes of this section, documents includes statement of account or any entry in bankers book duly certified under the Bankers' Books Evidence Act, 1891."

(iv) after sub-section (3), sub-section (3A) shall be renumbered as sub-section (3B) and before sub-section (3B) so renumbered, the following sub-section shall be inserted, namely:—

"(3A) Every applicant, in the application filed under sub-section (1) or sub-section (2) for recovery of debt, shall—

(a) state particulars of the debt secured by security interest over properties or assets belonging to any of the defendants and the estimated value of such securities;

(b) if the estimated value of securities is not sufficient to satisfy the debt claimed, state particulars of any other properties or assets owned by any of the defendants, if any; and

(c) if the estimated value of such other assets is not sufficient to recover the debt, seek an order directing the defendant to disclose to the

Tribunal particulars of other properties or assets owned by the defendants.";

(v) for sub-section (4), the following sub-section shall be substituted, namely:—

"(4) On receipt of application under sub-section (1) or sub-section (2), the Tribunal shall issue summons with following directions to the defendant,— 5

(i) to show cause within thirty days of the service of summons as to why relief prayed for should not be granted;

(ii) direct the defendant to disclose particulars of properties or assets other than properties and assets specified by the applicant under clauses (a) and (b) of sub-section (3A); and 10

(iii) pass an interim *ex-parte* order restraining the defendant from dealing with or disposing of such assets and properties disclosed under clause (c) of sub-section (3A) pending the hearing and disposal of the application for attachment of properties.";

(vi) after sub-section (4), the following sub-section shall be inserted, namely:— 15

"(4A) Notwithstanding anything contained in section 65A of the Transfer of Property Act, 1882, the defendant on service of summons shall not transfer 4 of 1882. by way of sale, lease or otherwise except in the ordinary course of his business any of the assets over which security interest is created and other properties and assets specified or disclosed under sub-section (3A), without the prior 20 approval of the Tribunal:

Provided that the Tribunal shall not grant such approval without giving notice to the applicant bank or financial institution to show cause as to why approval prayed for should not be granted:

Provided further that defendant shall be liable to account for the sale 25 proceeds realised by sale of secured assets in the ordinary course of business and deposit such sale proceeds in the account maintained with the bank or financial institution holding security interest over such assets.";

(vii) for sub-section (5), the following sub-section shall be substituted, namely:—

"(5) (i) The defendant shall within a period of thirty days from the date of service of summons, present a written statement of his defence including claim 30 for set-off under sub-section (6) or a counter-claim under sub-section (8), if any, and such written statement shall be accompanied with original documents or true copies thereof with the leave of the Tribunal, relied on by the defendant in his defence: 35

Provided that where the defendant fails to file the written statement within the said period of thirty days, the Presiding Officer may, in exceptional cases and in special circumstances to be recorded in writing, extend the said period by such further period not exceeding fifteen days to file the written statement of his 40 defence.

(ii) Where the defendant makes a disclosure of any property or asset pursuant to orders passed by the Tribunal, the provisions of sub-section (4A) of this section shall apply to such property or asset;

(iii) In case of non-compliance of any order made under clause (ii) of sub-section (4), the Presiding Officer may, by an order, direct that the person or 45 officer who is in default, be detained in civil prison for a term not exceeding three months unless in the meantime the Presiding Officer directs his release:

Provided that the Presiding Officer shall not pass an order under this clause without giving an opportunity of being heard to such person or officer.

Explanation.— For the purpose of this section, the expression 'officer who is in default' shall mean such officer as defined in section (60) of section 2 of the Companies Act, 2013.";

18 of 2013. 5

(viii) for sub-section (5A), the following sub-section shall be substituted, namely:—

"(5A) On receipt of the written statement of defendant or on expiry of time granted by the Tribunal to file the written statement, the Tribunal shall fix a hearing for admission or denial of documents produced by the parties to the proceedings and also for continuation or vacation of the interim order passed under sub-section (4).

10

15

(5B) Where a defendant makes an admission of the full or part of the amount of debt due to a bank or financial institution, the Tribunal shall order such defendant to pay the amount, to the extent of the admission within a period of thirty days from the date of such order failing which the Tribunal may issue a certificate in accordance with the provisions of sub-section (22) to the extent of the amount of debt due admitted by the defendant.";

20

(ix) in sub-section (6), after the words "the debt sought to be set off", the words "the debt sought to be set-off along with original documents and other evidence relied on in support of claim of set-off in relation to any ascertained sum of money, against the applicant" shall be substituted;

(x) in sub-section (10), for the words "as may be fixed by the Tribunal", the words "as may be prescribed" shall be substituted;

(xi) after sub-section (10), the following sub-sections shall be inserted, namely:—

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30

"(10A) Every application under sub-section (3) or written statement of defendant under sub-section (5) or claim of set-off under sub-section (6) or a counter-claim under sub-section (8) by the defendant, or written statement by the applicant in reply to the counter-claim, under sub-section (10) or any other pleading whatsoever, shall be supported by an affidavit sworn in by the applicant or defendant verifying all the facts and pleadings, the statements pleading documents and other evidence annexed to the application or written statement or reply to set-off or counter-claim, as the case may be:

35

Provided that if there is any evidence of witnesses to be led by any party, the affidavits of such witnesses shall be filed simultaneously by the party with the application or written statement or replies filed under sub-section (10A).

40

(10B) If any of the facts or pleadings in the application or written statement are not verified in the manner provided under sub-section (10A), a party to the proceedings shall not be allowed to rely on such facts or pleadings as evidence or any of the matters set out therein.";

45

(xii) for sub-section (11), the following sub-section shall be substituted, namely:—

"(11) Where a defendant sets up a counter-claim in the written statement and in reply to such claim the applicant contends that the claim thereby raised ought not to be disposed of by way of counter-claim but in an independent action, the Tribunal shall decide such issue along with the claim of the applicant for recovery of the debt.";

(xiii) sub-section (12) shall be omitted.

(xiv) in sub-section (13)(A), for the words "the Tribunal is satisfied by affidavit or otherwise", the words "the Tribunal on an application made by the applicant

alongwith particulars of property to be attached and estimated value thereof, or otherwise" shall be substituted;";

(xv) sub-section (14) shall be omitted.

(xvi) in sub-section (15), for the word, brackets and figures "sub-section (14)", the word, brackets and figures "sub-section (13)" shall be substituted; 5

(xvii) for sub-section (19), the following sub-section shall be substituted namely:—

"(19) Where a certificate of recovery is issued against a company registered under the Companies Act, 2013 and such company is under liquidation, the Tribunal may by an order direct that the sale proceeds of secured assets of such company be distributed in the same manner as provided in section 326 of the Companies Act, 2013 or under any other law for the time being in force."; 10 18 of 2013.

(xviii) for sub-section (20), the following sub-section shall be substituted, namely:—

"(20) The Tribunal may, after giving the applicant and the defendant, an opportunity of being heard, in respect of all claims, set off or counter claim, if any, and interest on such claims, within thirty days from the date of conclusion of the hearings, pass interim or final order as it deems fit which may include for payment of interest from the date on which payment of the amount is found due up to the date of realisation or actual payment."; 15 20

(xix) after sub-section (20A), the following sub-sections shall be inserted, namely:—

"(20AA) While passing the final order under sub-section (20), the Tribunal shall clearly specify the assets of the borrower over which security interest is created in favour of any bank or financial institution and direct the Recovery Officers to distribute the sale proceeds of such assets as provided in sub-section (20AB). 25

(20AB) Notwithstanding anything to the contrary contained in any law for the time being in force, the proceeds from sale of secured assets shall be distributed in the following orders of priority, namely:— 30

(i) the costs incurred for preservation and protection of secured assets, the costs of valuation, public notice for possession and auction and other expenses for sale of assets shall be paid in full;

(ii) debts owed to such bank or financial institution.";

(xx) for sub-section (21), the following sub-section shall be substituted, namely:— 35

"(21) (i) The Tribunal shall send a copy of its final order and the recovery certificate, to the applicant and defendant.

(ii) The applicant and the defendant may obtain copy of any order passed by the Tribunal on payment on such fee as may be prescribed.";

(xxi) for sub-section (22), the following sub-section shall be substituted, namely:— 40

"(22) The Presiding Officer shall issue a certificate of recovery along with the final order, under sub-section (20), for payment of debt with specified interest under his signature to the Recovery Officer for recovery of the amount of debt specified in the certificate."; 45

(xxii) after sub-section (22), the following sub-section shall be inserted, namely:—

"(22A) Any recovery certificate issued by the Presiding Officer under sub-section (22) shall be deemed to be decree or order of the Court for the purposes of initiation of winding up proceedings against a company registered under the Companies Act, 2013 or Limited Liability Partnerships registered under the Limited Liability Partnership Act, 2008 or insolvency proceedings against any individual or partnership firm under the Presidency Towns Insolvency Act, 1909 or the Provincial Insolvency Act, 1920 or any other law for the time being in force, as the case may be.";

18 of 2013.
9 of 2008. 5
3 of 1909.
5 of 1920.

(xxiii) in sub-section (24), for the words "endeavour shall be made by it", the following words "every effort shall be made by it to complete the proceedings in two hearings, and" shall be substituted.

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30. After section 19 of the principal Act, the following sections shall be inserted, namely:—

Insertion of new section 19A.

"19A. (1) Notwithstanding anything to the contrary contained in this Act, and without prejudice to the provisions contained in section 6 of the Information Technology Act, 2000, the Central Government may by rules provide that from such date and before such Tribunal and Appellate Tribunal, as may be notified,—

15
21 of 2000.

Filing of recovery applications, documents and written statements in electronic form.

(a) application or written statement or any other pleadings and the documents to be annexed thereto required to be filed shall be submitted in the electronic form and authenticated with digital signature of the applicant, defendant or any other petitioner in such form and manner as may be prescribed;

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(b) any summons, notice or communication or intimation as may be required to be served or delivered under this Act, may be served or delivered by transmission of pleadings and documents by electronic form and authenticated in such manner as may be prescribed.

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(2) Any interim or final order passed by the Tribunal or Appellate Tribunal displayed on the website of such Tribunal or Appellate Tribunal shall be deemed to be public notice of such order and transmission of such order by electronic mail to the registered address of the parties to the proceeding shall be deemed to be served on such party.

30

(3) The Central Government may, by rules, provide that the electronic form for the purpose specified in this section shall be exclusive, or in the alternative or in addition to the physical form, therefor.

(4) The Tribunal or the Appellate Tribunal notified under sub-section (1), for the purpose of adopting electronic filing, shall maintain its own website or common website with other Tribunals and Appellate Tribunal or such other universally accessible repositories of electronic information and ensure that all orders or directions issued by the Tribunal or Appellate Tribunal are displayed on the website of the Tribunal or Appellate Tribunal, in such manner as may be prescribed.

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Explanation.— For the purpose of this section,—

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(a) "digital signature" means the digital signature as defined under clause (p) of section 2 of the Information Technology Act, 2000;

21 of 2000.

(b) "electronic form" with reference to an information or a document means the electronic form as defined under clause (r) of section 2 of the Information Technology Act, 2000."

21 of 2000. 45

31. In the principal Act, in section 20, in sub-section (3), for the words "forty-five days", at both the places where they occur the words "thirty days" shall be substituted.

Amendment of section 20.

Amendment of section 21.	<p>32. In the principal Act,—</p> <p>(i) in section 21, for the words "seventy-five per cent.", the words "fifty per cent." shall be substituted;</p> <p>(ii) in the proviso, for the words "waive or reduce the amount", the words "reduce the amount to be deposited by such amount which shall not be less than twenty-five percent. of the amount of such debt so due" shall be substituted.</p>	5
Amendment of section 22.	<p>33. In the principal Act, in section 22, after sub-section (3), the following sub-section shall be inserted, namely:—</p> <p>"(4) For the purpose of proof of any entry in the "bankers books", the provisions of the Bankers' Books Evidence Act, 1891 shall apply to all the proceedings before the Tribunal or Appellate Tribunal."</p>	10 18 of 1891.
Insertion of new section 22A.	<p>34. In the principal Act, after section 22, the following section shall be inserted, namely:—</p>	
Uniform procedure for conduct of proceedings.	<p>"22A. The Central Government may, for the purpose of this Act, by rules, lay down uniform procedure consistent with the provisions of this Act for conducting the proceedings before the Tribunals and Appellate Tribunals."</p>	15
Amendment of section 25.	<p>35. In the principal Act, in section 25, after clause (a), the following clause shall be inserted, namely:—</p> <p>"(aa) taking possession of property over which security interest is created or any other property of the defendant and appointing receiver for such property and to sell the same;"</p>	20
Amendment of section 27.	<p>36. In the principal Act, in section 27, for sub-section (I), the following sub-sections shall be substituted, namely:—</p> <p>"(IA) Notwithstanding that a certificate has been issued to the Recovery Officer for the recovery of any amount, the Presiding Officer, may by an order, grant time for payment of the amount, provided the defendant makes a down payment of not less than twenty-five per cent. of the amount specified in the recovery certificate and gives an unconditional undertaking to pay the balance within a reasonable time, which is acceptable to the applicant bank or financial institution holding recovery certificate.</p> <p>(IB) The Recovery Officer shall, after receipt of the order passed under sub-section (I), stay the proceedings until the expiry of the time so granted.</p> <p>(IC) Where defendant agrees to pay the amount specified in the Recovery Certificate and proceeding are stayed by the Recovery Officer, the defendant shall forfeit right to file appeal against the orders of the Tribunal.</p> <p>(ID) Where the defendant commits any default in payment of the amount under sub-section (I), the stay of recovery proceedings shall stand withdrawn and the Recovery Officer shall take steps for recovery of remaining amount of debt due and payable."</p>	25 30 35
Insertion of new section 30A.	<p>37. In the principal Act, after section 30, the following section shall be inserted, namely:—</p>	40
Deposit of amount of debt due, for filing appeal against orders of the Recovery Officer.	<p>"30A. Where an appeal is preferred against any order of the Recovery Officer, under section 30, by any person from whom the amount of debt is due to a bank or financial institution or consortium of banks or financial institutions, such appeal shall not be entertained by the Tribunal unless such person has deposited with the Tribunal fifty per cent. of the amount of debt due as determined by the Tribunal."</p>	45

38. In the principal Act, after section 31A, the following section shall be inserted, namely:—

Insertion of new section 31B.

"31B. Notwithstanding anything contained in any other law for the time being in force, the rights of secured creditors to realise secured debts due and payable to them by sale of assets over which security interest is created, shall have priority and shall be paid in priority over all other debts and Government dues including revenues, taxes, cesses and rates due to the Central Government, State Government or local authority."

Priority to Secured Creditors

39. In the principal Act, in section 36, in sub-section (2),—

Amendment of section 36.

(i) after clause (c), the following clause shall be inserted, namely:—

"(ca) the fee for filing application under sub-section (3) of section 19;"

(ii) in clause (cc), for the brackets, figure and letter "(3A)", the brackets, figure and letter "(3B)" shall be substituted;

(iii) after clause (cc) the following clauses shall be inserted, namely:—

"(cca) the period for filing written statement under sub-section (10) of section 19;

(ccb) the fee for obtaining copy of the order of the Tribunal under sub-section, (21) of section 19;

(ccc) the form and the manner of filing application and other documents in the electronic form under sub-section (1) and the manner of display of orders of the Tribunal and Appellate Tribunal under sub-section (4) of section 19A;

(ccd) the rules of uniform procedure for conducting the proceedings before the Tribunals and Appellate Tribunals under section 22A;"

40. The Indian Stamp Act, 1899 shall be amended in the manner specified in the First Schedule.

Amendment of Act 2 of 1899.

41. The Depositories Act, 1996 shall be amended in the manner specified in the Second Schedule.

Amendments of Act 22 of 1996.

THE FIRST SCHEDULE

(See section 40)

AMENDMENT TO THE INDIAN STAMP ACT, 1899

(2 OF 1899)

1. After section 8E, the following section shall be inserted, namely:—

"8F. Notwithstanding anything contained in this Act or any other law for the time being in force, any agreement or other document for transfer or assignment of rights or interest in financial assets of banks or financial institutions under section 5 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, in favour of any asset reconstruction company, as defined, in clause (ba) of sub-section (1) of section 2 of that Act, shall not be liable to duty under this Act."

Agreement or document for transfer of financial asset not liable to stamp duty.

THE SECOND SCHEDULE

(See section 41)

AMENDMENT TO THE DEPOSITORIES ACT, 1996

(22 OF 1996)

1. In section 7, after sub-section (1), the following sub-sections shall be inserted,— namely:—

"(IA) Every depository on receipt of intimation from a participant register any transfer of security in favour of an asset reconstruction company as defined in clause

(ba) of sub-section (1) of section 2 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 along with or consequent upon transfer or assignment of financial asset of any bank or financial institution under sub-section (1) of section 5 of that Act. 54 of 2002.

(1B) Every depository, on receipt of intimation from a participant, register any issue of new shares in favour of any bank or financial institution or asset reconstruction company or any other assignee of such bank or financial institutions or asset reconstruction company, as the case may be, by conversion of part of their debt into shares pursuant to reconstruction of debts of the company agreed between the company and the bank or financial institution or asset reconstruction company. 5 10

Explanation.—For the purpose of this section, the expressions "asset reconstruction company", "bank", or "financial institution" shall have the meanings assigned to them under clauses (ba), (c) and (m) of sub-section (1) of section 2 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.". 15 54 of 2002.

STATEMENT OF OBJECTS AND REASONS

The Recovery of Debts due to Banks and Financial Institutions Act, 1993 and the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, were enacted for expeditious recovery of loans of banks and financial institutions. 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. In order to facilitate expeditious disposal of recovery applications, it has been decided to amend the said Acts and also to make consequential amendments in the Indian Stamp Act, 1899 and the Depositories Act, 1996.

2. The amendments in the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 are proposed to suit changing credit landscape and augment ease of doing business which, *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 Central Registry so as to create Central database of security interest on property rights; (ii) conferment of powers upon the Reserve Bank of India to regulate asset reconstruction companies in a changing business environment; (iii) exemption from stamp duty on assignment of loans by banks and financial institutions in favour of asset reconstruction companies; (iv) enabling non-institutional investors to invest in security receipts; (v) debenture trustees as secured creditors; (vi) specific timeline for taking possession of secured assets; and (vii) priority to secured creditors in repayment of debts.

3. The amendments proposed in the Recovery of Debts due to Banks and Financial Institutions Act, 1993 *inter alia*, include (i) expeditious adjudication of recovery applications; (ii) electronic filing of recovery applications, documents and written statements; (iii) priority to secured creditors in repayment of debts; (iv) debenture trustees as financial institutions; (v) empowering the Central Government to provide for uniform procedural rules for conduct of proceedings in the Debts Recovery Tribunals and Appellate Tribunals.

4. The Bill also seeks to amend the Indian Stamp Act, 1899, so as to exempt assignment of loans in favour of asset reconstruction companies from stamp duty and the Depositories Act, 1996 for facilitating transfer of shares held in pledge or on conversion of debt into shares in favour of banks and financial institutions.

5. The Bill aims to improve ease of doing business and facilitate investment leading to higher economic growth and development.

6. The Bill seeks to achieve the above objectives.

New Delhi;

ARUN JAITLEY

The 8th May, 2016.

Notes on clauses

Clause 1 provides for short title of the Bill as "The Enforcement of Security Interest and Recovery of Debts Laws and Miscellaneous Provisions (Amendment) Bill, 2016, and seeks to provide for commencement of the provisions of Bill from such date as may be notified by the Central Government and different dates for different provisions of the Bill.

Clause 2 seeks to provide for the amendment in the long title of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter refer to as the principal Act) to provide for central database of security interests created on property rights.

Clause 3 seeks to change the nomenclature of Securitisation Company or reconstruction company as asset reconstruction company throughout the Act and for that purpose seeks to provide for that for the words "securitisation company", "reconstruction company", "securitisation or reconstruction company", "securitisation company or the reconstruction company" or "securitisation company or a reconstruction company", wherever they occur, the words "asset reconstruction company" shall be substituted and for the words "securitisation companies or reconstruction companies", wherever they occur, the words "asset reconstruction companies" shall be substituted.

Clause 4 seeks to amend section 2 relating to definitions of certain expressions used in the Act such as debt, default, etc., and also to insert some new definitions in section 2, such as, 'assets reconstruction company', 'financial lease' and 'negotiable document', to widen the scope of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.

Clause 5 seeks to amend section 3(1) of the principal Act for bringing change in the criteria of sponsor of asset reconstruction companies as fit and proper person instead of the provision that sponsor cannot have majority shares in asset reconstruction company.

Clause 6 seeks to amend section 5 of the principal Act for exemption of stamp duty on the assignment deeds executed by the banks or financial Institutions in favour of asset reconstruction companies and acceptance of such assignment deed for substitution of the name of asset reconstruction company in various public records.

Clause 7 seeks to amend section 7 of the principal Act to enable the non-institutional buyers besides qualified institutional buyers for investment in security receipts.

Clause 8 seeks to substitute section 9 of the principal Act to provide for measures to be taken by the asset reconstruction company for asset reconstruction in accordance with the policy to be determined by Reserve Bank and directions issued by it regarding management and fee to be charged by asset reconstruction companies.

Clause 9 seeks to amend section 12 of the principal Act to provide for expansion of power of Reserve Bank to determine policy and issue directions to asset reconstruction companies for regulation of the fee and other charges which may be charged or incurred for management of financial assets acquired by any asset reconstruction company and transfer of security receipts issued to qualified institutional buyers.

Clause 10 seeks to insert new provisions, viz., sections 12B, 12C and 12D in the principal Act. Section 12C provides to empower Reserve Bank to carry out audit and inspection of asset reconstruction companies and to remove the Chairman or any director or appoint additional directors on the board of directors of the asset reconstruction company, or to appoint any of its officers as an observer to observe the working of the board of directors of such asset reconstruction company for securing proper management of an asset

reconstruction company. New section 12C provides for penalties for non-compliance of the directions of the reserve bank and section 12D provides for filing of complaint in case of failure to pay penalty.

Clause 11 seeks to amend section 13 of the principal Act by inserting a proviso in sub-section (2) of section 13 to provide that the requirement of classification of secured debt as non-performing asset shall not apply to a borrower who raised funds through issue of debt securities but the provisions for enforcement of security interest under this Chapter shall apply to such borrower; and in the event of default, the debenture trustee shall be entitled to enforce security interest in the same manner as provided in section 13 with necessary modifications and in accordance with the terms and conditions of security documents executed in favour of the debenture trustee.

Clause 12 seeks to amend section 14 of the principal Act to provide time period of 30 days within which the District Magistrate/Chief Metropolitan Magistrate shall dispose of the applications filed by banks or financial institutions and also to provide that an application may be made by -

(a) two or more banks as secured creditors with or without any financial institution where they have converted part of their respective debts into shares of a borrower company in compliance with the provisions of sub-section (2) of section 19 of the Banking Regulation Act, 1949 or obtained transfer of shares of the promoter shareholders held in pledge as security for any financial assistance in the name of such banks, thereby jointly holding more than fifty per cent. share capital of the borrower company, or

(b) any asset reconstruction company or financial institution or any other assignee holding more than fifty one per cent. share capital of the borrower company.

Clause 13 seeks to amend section 15 of the principal Act to enable secured creditor on acquisition of controlling interest in the borrower company to restore its business upon conversion of its debt into shares.

Clause 14 seeks to amend section 17 of the principal Act to empower Debts Recovery Tribunals (DRTs) to decide the claims of tenancy or any other right of third parties over the secured assets. It also seeks to provide for filing of securitisation applications in DRTs within the local limits of whose jurisdiction cause of action, wholly or in part, arises; or where the secured asset is located. It also seeks to provide that where the Tribunal is of the opinion that an applicant other than the borrower is entitled to restoration of possession of secured assets or management of the business of the borrower, the Debt Recovery Tribunal shall restore the possession of assets or management to such person.

Clause 15 seeks to insert a new section 20A in the principal Act for integration of records registered under various registration systems relating to property rights with the records of Central Registry so as to provide for Central database of security interest on property rights. It also gives power to Central Government to delegate its power and functions regarding Central Registry to Reserve Bank.

Clause 16 provides seeks to amend section 23 of the principal Act to provide that Central Government may by notification extend the registration of transaction relating to different types of security interest created on different kinds of property with Central Registry and may, by rules, prescribe forms for registration for different types of security interest under this section and fee to be charged for such registration.

Clause 17 seeks to insert a new Chapter IVA in the principal Act relating to Registration by Secured Creditors and other creditors, consisting of sections 26B, 26C, 26D and 26E. Section 26B seeks to provide for extending the provision of registration to all lenders other than secured creditor for creation, modification or satisfaction of any security interest over any property of the borrower for the purpose of securing due repayment of any financial assistance granted by such creditor to the borrower.

It further provides that an authority or officer of the Central Government or any State Government or local authority, entrusted with the function of recovery of tax or other Government dues and for issuing any order for attachment of any property of any person liable to pay the tax or Government dues, shall file with the Central Registry such attachment order with particulars of the assessee and details of tax or other government dues from such date as may be notified by the Central Government. Section 26C seeks to provide that registration of security interest will be effective from the date and time of registration of transactions or filing of attachment orders with Central Registry and section 26D seeks to provide that secured creditor will be entitled to exercise right to enforce securities only if it is registered with Central Registry.

Section 26E seeks to provide for the priority of debts due to secured creditors over all other debts, revenues, taxes, cesses and rates payable to central Government, State Government or any other local authority

Clause 18 seeks to provide that provisions of section 27 of the principal Act regarding the penalties shall be deemed to be omitted from the date of enforcement of Chapter IV and section 23 as amended by this Amended Bill.

Clause 19 seeks to omit section 28 of the Act.

Clause 20 seeks to provide for insertion of new section 30A in the principal Act to provide for penalties to be imposed by adjudicating authority for non-compliance of directions of Reserve Bank which has been enhanced from rupees five lakh to one crore rupees and in case of continuing offence enhanced from ten thousand rupees per day to rupees one lakh per day. It further provides that no complaint shall be filed against any person in default in any court pertaining to any failure or contravention or default in respect of which any penalty has been imposed and recovered by the Reserve Bank and where any complaint has been filed against a person in default in a court in respect of failure or contravention or default of the nature referred to in section 12C or section 29, no proceedings for imposition of penalty against that person shall be taken.

Clause 21 seeks to omit clause (e) of section 31 of the principal Act which excludes applicability of the Act to transactions of conditional sale, hire purchase or lease.

Clause 22 seeks to provide for amendment of section 31A of the principal Act relating to laying of draft notifications before both Houses of Parliament, in case the notifications are issued by the Central Government to exempt class or classes of banks and financial institutions from the application of the provisions of the principal Act.

Clause 23 seeks to provide for the amendment in section 32 of the principal Act for protection of action taken by secured creditor or Reserve Bank or Central Registry or any of their officers, in good faith.

Clause 24 seeks to provide for amendment in rule making power of the Central Government under sections 20A, 20B, 23 and 26B of the principal Act in consequence of the amendments proposed by this amendment Act.

Chapter III of this Amendment Bill seeks to provide for amendment in the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (hereinafter in this Chapter referred to as the said Act).

Clause 25 seeks to define certain expressions in the said Act such as “debt securities”, “financial institutions (FIs)”, “property”, “security interest” and secured creditor, etc.

Clause 26 seeks to amend section 6 of the said Act to provide for enhancement of the age of retirement and re-appointment of Presiding Officers (P.O.s) of Debt Recovery Tribunals (DRTs).

Clause 27 seeks to amend section 11 of the said Act to provide for enhancement of the age of retirement and re-appointment of Chairperson of Debt Recovery Appellate Tribunals (DRATs).

Clause 28 seeks to amend section 17A of the said Act relating to the general power of superintendence of Chairpersons of DRATs over Presiding Officers of Debt Recovery Tribunals under its jurisdiction to empower him to assess the performance of such officers and for that purpose to direct the Tribunals to furnish, in such form, at such intervals and within such time, information relating to pending cases both under this Act and under Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, or under any other law for the time being in force, number of cases disposed of, number of new cases filed and such other information as may be considered necessary by the Chairperson, and also convene meetings of the Presiding Officers of Tribunals periodically to review their performance.

Clause 29 seeks to provide for amendment in section 19 of the said Act which lays down detailed procedure to be followed by the Tribunals under Chapter IV of the Act to provide that the application shall be accompanied with all documents and evidences, which the applicant relies on, for expeditious adjudication and recovery of debts due to banks and financial Institutions.

Clause 30 seeks to provide for insertion of new section 19A in the said Act for filing of recovery applications, documents and written statements in electronic form and display of interim and final orders of the DRTs and DRATs on their website.

Clause 31 seeks to amend section 20 of the said Act to provide for reduction of time for filing appeal to the Appellate Tribunal from 45 days to 30 days.

Clause 32 seeks to amend section 21 of the said Act to provide for deposit of fifty per cent of amount of debt due, for the purpose of filing of appeal and to also provide that the amount may be reduced by such amount which shall not be less than twenty-five per cent. of the amount of such debt so due.

Clause 33 seeks to amend section 22 of the said Act to provide that for the purpose of proof of entries in the Bankers' Book the provisions of the Bankers' Books Evidence Act, 1891 shall apply.

Clause 34 provides for insertion of new section 22A in the said Act to empower the Central Government to prescribe uniform procedure rules to be observed by the Tribunal and Appellate Tribunals in conduct of their proceedings.

Clause 35 seeks to amend section 25 of the said Act to provide for the recovery of debts by taking possession of property over which security interest is created and appointing receiver for such property and to sell the same.

Clause 36 seeks to amend section 27 of the said Act to provide that the Presiding Officer may grant time for recovery of the amount provided the defendant makes a down payment of not less than twenty-five percent of the amount claimed and to give an unconditional undertaking to pay the balance within a reasonable time, which is acceptable to the applicant bank or financial institutions for stay of proceedings under recovery certificate.

Clause 37 seeks to amend section 30 of the said Act to provide for the requirement of deposit of fifty per cent. of debt payable by the defendant/ borrowers for filing appeal against orders of Recovery Officers.

Clause 38 seeks to provide for insertion of new section 31A in the said Act which seeks to provide priority to secured creditors over all other claimants including claims of Central Government, State Government or local authority.

Clause 39 seeks to provide for amendment of section 36 of the said Act in rule making power of the Central Government in consequence of the provisions amended or inserted by this Bill prescribing for making rules in respect of certain matters in section 19, section 19A and section 22A of the said Act.

Clause 40 seeks to amend the Indian Stamp Act, 1899 as mentioned in the First Schedule for insertion of new section 8F in the Indian Stamp Act, 1899 which seeks to provide that agreement or other document for transfer or assignment of rights or interest in financial assets of banks or financial institutions under section 5 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, in favour of any asset reconstruction company as defined in clause (ba) of sub-section (1) of section 2 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 shall not be liable to duty under this Act..

Clause 41 provides for amendment in the Depositories Act, 1996 as mentioned in the Second Schedule which seeks to provide for insertion of new sub-sections (1A) and (1B) in section 7 of the Depositories Act, 1996 to provide that every depository on receipt of intimation from a participant register any transfer of security in favour of an asset reconstruction company as defined in clause (ba) of sub-section (1) of section (2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 along with or consequent upon transfer or assignment of financial asset of any bank or financial institution under sub-section (1) of section 5 of the that Act.

It further seeks to provide for that every depository on receipt of intimation from a participant register any issue of new shares in favour of any bank or financial institution or asset reconstruction company or any other assignee of such bank or financial institutions or asset reconstruction company, as the case may be, by conversion of part of their debt into shares pursuant to reconstruction of debts of the company agreed between the company and the bank or financial institution or asset reconstruction company.

FINANCIAL MEMORANDUM

The Enforcement of Security interest and Recovery of Debts Laws and Miscellaneous Provisions (Amendment) Bill, 2016 seeks to amend the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and the Recovery of Debts due to Banks and Financial Institutions Act, 1993, the Indian Stamp Act, 1899 and the Depositories Act, 1996.

2. The Bill, if enacted, is not likely to involve any recurring or non-recurring expenditure.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 15 of the Bill seeks to insert new sections 20A and 20B in the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as the SARFAESI Act). The proposed section 20A empowers the Central Government to make rules to provide for the manner of integration with the Central Registry of all registration records registered under various enactments specified in the *Explanation* to sub-section (1) thereof.

Clause 16 of the Bill seeks to amend section 23 of the SARFAESI Act by renumbering the said section as sub-section (1) thereof, and to insert new sub-sections (2) and (3) after sub-section (1) as so renumbered. The proposed sub-section (3) empowers the Central Government to prescribe forms for registration for different types of security interest and the fee for such registration.

Clause 17 of the Bill seeks to insert a new Chapter IVA in the SARFAESI Act containing new sections 26B to 26E.

Sub-section (1) of proposed section 26B empowers the Central Government to extend, by issuing notification, the provisions of Chapter IV relating to Central Registry to all creditors other than secured creditors specified therein, for creation, modification or satisfaction of security interest over any property of the borrower for the purpose of securing due repayment of any financial assistance granted by such creditor to the borrower.

Sub-section (2) of said section empowers the Central Government to prescribe the form and manner of filing particulars of transactions of creation, modification or satisfaction of any security interest with the Central Registry.

Sub-section (4) of the aforesaid section empowers the Central Government to make rules to provide for the form and manner of filing of attachment orders with particulars of the assessee and details of tax or other Government dues, from the date notified by the Central Government, with the Central Registry.

Sub-section (5) of the aforesaid section empowers the Central Government to make rules to provide for filing of particulars of attachment orders obtained from any court or other authority for attachment of property with Central Registry, and the fee for such registration.

Clause 29 of the Bill seeks to amend section 19 of the Recovery of Debts due to Banks and Financial Institutions Act, 1993 (hereinafter referred to as the DRT Act).

Sub-clause (x) thereof seeks to amend sub-section (10) of the said section so as to empower the Central Government to make rules to provide for the period within which written statement may be filed.

Sub-clause (xx) thereof seeks to substitute sub-section (21) of aforesaid section. Sub-clause (ii) of said sub-section (21) empowers the Central Government to make rules to provide fee for obtaining copy of the order passed by the Tribunal.

Clause 30 of the Bill seeks to insert a new section 19A in the DRT Act. Clause (a) of sub-section (1) of the proposed section seeks to empower the Central Government to make rules to provide for the form and manner of filing application, written statement or any other pleadings and documents in electronic form. Clause (b) of said sub-section (1) seeks to empower the Central Government to make rules to provide for the manner of authentication of pleadings and documents.

Sub-section (4) of the aforesaid section empowers the Central Government to make rules to provide for the manner of displaying the orders and directions issued by the Tribunal or the Appellate Tribunal on the websites of such Tribunals or Appellate Tribunals.

Clause 34 of the Bill seeks to insert a new section 22A in the DRT Act. The proposed section empowers the Central Government to make rules to provide for uniform procedure for conducting the proceedings before the Tribunals and Appellate Tribunals.

The matters in respect of which rules may be made in accordance with the aforesaid provisions of the Bill are matters of procedure and details and it is not practicable to provide for them in the Bill itself. The delegation of legislative power is, therefore, of a normal character.

ANNEXURE

EXTRACTS FROM 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 on incidental thereto.

Definitions.

2.(1) In this Act, unless the context otherwise requires—

(a) * * * * *

(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;

* * * * *

(ha) “debt” shall have the meaning assigned to it in clause (g) of section 2 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993;

51 of 1993.

(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;

(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;

* * * * *

(u) “qualified institutional buyer” means a financial institution, insurance company, bank, state financial corporation, state industrial development corporation, trustee of 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 a foreign institutional investor registered under the Securities and Exchange Board of India Act, 1992 or regulations made thereunder, or any other body corporate as may be specified by the Board;

15 to 1992.

(v) “reconstruction company” means a company formed and registered under the Companies Act, 1956, for the purpose of asset reconstruction;

1 to 1956.

* * * * *

(za) “securitisation company” means any company formed and registered under the Companies Act, 1956 for the purpose of securitisation.

1 to 1956.

* * * * *

(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;

* * * * *

CHAPTER II

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

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

Registration of securitisation companies or reconstruction companies.

* * * * *

(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 securitisation company or reconstruction company, as the Reserve Bank may, by notification, specify:

Provided that the Reserve Bank may, by notification, specify different amount of owned fund for different class of classes or 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 carry on the business of securitisation or asset reconstruction until a certificate of registration is granted to it or, as the case may be, rejection of application for registration is communicated to it.

* * * * *

(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 reconstruction, as the case may be, require to be satisfied, by an inspection of records or books of such securitisation company or reconstruction company, or otherwise, that the following conditions are fulfilled, namely:—

* * * * *

(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;

* * * * *

(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.

* * * * *

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

7. (1) Without prejudice to the provisions contained in the Companies Act, 1956, the Securities Contracts (Regulation) Act, 1956 and the Securities and Exchange Board of India Act, 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.

1 to 1956.
42 to 1956.
15 to 1992.

* * * * *

Measures for assets reconstruction.

9. 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.
- (g) to convert any portion of debt into shares of a borrower company:

Provided that conversion of any part of debt into shares of a borrower company shall be deemed always to have been valid, as if the provisions of this clause were in force at all material times.

* * * * *

CHAPTER III

ENFORCEMENT OF SECURITY INTEREST

Enforcement of security interest.

13. (1) * * * * *

(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).

* * * * *

(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.

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

14. (1) Where the possession of any secured asset 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:

* * * * *

Provided further that on receipt of the affidavit from the Authorised Officer, the District Magistrate or the Chief Metropolitan Magistrate, as the case may be, shall after satisfying the contents of the affidavit pass suitable orders for the purpose of taking possession of the secured assets:

* * * * *

17. (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 along with such fee, as may be prescribed to the Debts Recovery Tribunal having jurisdiction in the matter within forty-five days from the date on which such measures had been taken: Right to appeal.

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 sub-section (1) of section 17.

* * * * *

(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 secured assets 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 assets as invalid and restore the possession of the secured assets to the borrower or restore the management of the secured assets 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.

* * * * *

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

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:

Provided further that the Central Government may, by notification, require registration of all transactions of securitisation, or asset reconstruction or creation of security interest which are subsisting on or before the date of establishment of the Central Registry under sub-section (1) of section 20 within such period and on payment of such fees as may be prescribed.

* * * * *

Penalties for non-compliance of direction of Reserve Bank.

28. If any securitisation company or reconstruction company fails to comply with any direction issued by the Reserve Bank under section 12 or section 12A, such company and every officer of the company who is in default, shall be punishable with fine which may extend to five lakh rupees and in the case of a continuing offence, with an additional fine which may extend to ten thousand rupees for every day during which the default continues.

* * * * *

CHAPTER VI

MISCELLANEOUS

Provisions of this Act not to apply in certain cases.

31. The provisions of this Act shall not apply to—

* * * * *

(e) any conditional sale, hire-purchase or lease or any other contract in which no security interest has been created;

* * * * *

Power to exempt a class or classes of financial institutions.

“31A. (1) The Central Government may, by notification in the public interest, direct that any of the provisions of this Act,—

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

(b) shall apply to the class or classes of banks or financial institutions with such exceptions, modifications and adaptations,

as may be specified in the notification.

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

* * * * *

Protection of action taken in good faith.

32. 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.

* * * * *

EXTRACTS FROM THE RECOVERY OF DEBTS DUE TO BANKS AND FINANCIAL INSTITUTIONS ACT, 1993

(51 OF 1993)

* * * * *

Definitions.

2. In this Act, unless the context otherwise requires—

* * * * *

(g) “debt” means any liability (inclusive of interest) which is claimed as due from any person by a bank or a financial institution or by a consortium of banks or financial institutions during the course of any business activity undertaken by the bank or the financial institution or the consortium under any law for the time being in force, in cash or otherwise, whether secured or unsecured, or assigned, or whether payable under a decree or order of any civil court or any arbitration award or otherwise or under a mortgage and subsisting on, and legally recoverable on, the date of the application;

* * * * *

6. The Presiding Officer of a Tribunal shall hold office for a term of five years from the date on which he enters upon his office or until he attains the age of sixty-two years, whichever is earlier. Term of office.

* * * * *

11. The Chairperson of an Appellate Tribunal shall hold office for a term of five years from the date on which he enters upon his office or until he attains the age of sixty-five years, whichever is earlier. Term of office.

* * * * *

CHAPTER IV
PROCEDURE OF TRIBUNALS

19. (1) Where a bank or a financial institution has to recover any debt from any person, it may make an application to the Tribunal within the local limits of whose jurisdiction— Application to the Tribunal.

(a) the defendant, or each of the defendants where there are more than one, at the time of making the application, actually and voluntarily resides or carries on business or personally works for gain; or

* * * * *

(3) Every application under sub-section (1) or sub-section (2) shall be in such form and accompanied by such documents or other evidence and by such fee as may be prescribed:

Provided that the fee may by prescribed having regard to the amount of debt to be recovered:

Provided further that nothing contained in this sub-section relating to fee shall apply to cases transferred to the Tribunal under sub-section (1) of section 31.

(3A) If any application filed before the Tribunal for recovery of any debt is settled prior to the commencement of the hearing before that Tribunal or at any stage of the proceedings before the final order is passed, the applicant may be granted refund of the fees paid by him at such rates as may be prescribed.

(4) On receipt of the application under sub-section (1) or sub-section (2), the Tribunal shall issue summons requiring the defendant to show cause within thirty days of the service of summons as to why the relief prayed for should not be granted.

(5) The defendant shall, within a period of thirty days from the date of service of summons, present a written statement of this defence:

Provided that where the defendant fails to file the written statement within the said period of thirty days, the Presiding Officer may, in exceptional cases and in special circumstances to be recorded in writing, allow not more than two extensions to the defendant to file the written statement.

(5A) After hearing of the application has commenced, it shall be continued from day-to-day until the hearing is concluded:

Provided that the Tribunal may grant adjournments if sufficient cause is shown, but no such adjournment shall be granted more than three times to a party and where there are three or more parties, the total number of such adjournments shall not exceed six:

Provided further that, the Presiding Officer may grant such adjournments or imposing such costs as may be considered necessary.

(6) Where the defendant claims to set-off against the applicant's demand any ascertained sum of money legally recoverable by him from such applicant, the defendant may, at the first hearing of the application, but not afterwards unless permitted by the Tribunal, present a written statement containing the particulars of the debt sought to be set-off.

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(10) The applicant shall be at liberty to file a written statement in answer to the counter-claim of the defendant within such period as may be fixed by the Tribunal.

(11) Where a defendant sets up a counter-claim and the applicant contends that the claim thereby raised ought not to be disposed of by way of counter-claim but in an independent action, the applicant may, at any time before issues are settled in relation to the counter-claim, apply to the Tribunal for an order that such counter-claim may be excluded, and the Tribunal may, on the hearing of such application, make such order as it thinks fit.

(12) The Tribunal may make an interim order (whether by way of injunction or stay or attachment) against the defendant to debar him from transferring, alienating or otherwise dealing with, or disposing of, any property and assets belonging to him without the prior permission of the Tribunal.

* * * * *

(13) (A) Where, at any stage of the proceedings, the Tribunal is satisfied, by affidavit or otherwise, that the defendant, with intent to obstruct or delay or frustrate the execution of any order for the recovery of debt that may be passed against him,—

(i) is about to dispose of the whole or any part of his property; or

(ii) is about to remove the whole or any part of his property from the local limits of the jurisdiction of the Tribunal; or

(iii) is likely to cause any damage or mischief to the property or affect its value by misuse or creating third party interest,

the Tribunal may direct the defendant, within a time to be fixed by it, either to furnish security, in such sum as may be specified in the order, to produce and place at the disposal of the Tribunal, when required, the said property or the value of the same, or such portion thereof as may be sufficient to satisfy the certificate for the recovery of debt, or to appear and show cause why he should not furnish security.

(B) Where the defendant fails to show cause why he should not furnish security, or fails to furnish the security required, within the time fixed by the Tribunal, the Tribunal may order the attachment of the whole or such portion of the properties claimed by the applicant as the properties secured in his favour or otherwise owned by the defendant as appears sufficient to satisfy any certificate for recovery of debt.

(14) The applicant shall, unless the Tribunal otherwise directs, specify the property required to be attached and the estimated value thereof.

(15) The Tribunal may also in the order direct the conditional attachment of the whole or any portion of the property specified under sub-section (14).

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(19) Where a certificate of recovery is issued against a company registered under the Companies Act, 1956, the Tribunal may order the sale proceeds of such company to be distributed among its secured creditors in accordance with the provisions of section 529A of the Companies Act, 1956 and to pay the surplus, if any, to the company.

1 of 1956.

(20) The Tribunal may, after giving the applicant and the defendant an opportunity of being heard, pass such interim or final order, including the order for payment of interest from the date on or before which payment of the amount is found due up to the date of realisation or actual payment, on the application as it thinks fit to meet the ends of justice.

(21) The Tribunal shall send a copy of every order passed by it to the applicant and the defendant.

(22) The Presiding Officer shall issue a certificate under his signature on the basis of the order of the Tribunal to the Recovery Officer for recovery of the amount of debt specified in the certificate.

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(24) The application made to the Tribunal under sub-section (1) or sub-section (2) shall be dealt with by it as expeditiously as possible and endeavour shall be made by it to dispose of the application finally within one hundred and eighty days from the date of receipt of the application.

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20. (1) * * * * * Appeal to the Appellate Tribunal.

(3) Every appeal under sub-section (1) shall be filed within a period of forty-five days from the date on which a copy of the order made, or deemed to have been made, by the Tribunal is received by him and it shall be in such form and be accompanied by such fee as may be prescribed:

Provided that the Appellate Tribunal may entertain an appeal after the expiry of the said period of forty-five days if it is satisfied that there was sufficient cause for not filing it within that period.

21. Where an appeal is preferred by any person from whom the amount debt is due to a bank or a financial institution as a consortium of banks such appeal shall not be entertained by the Appellate Tribunal unless such person has deposited with the Appellate Tribunal seventy-five per cent of the amount of debt so due from him as determined by the Tribunal under section 19: Deposit of amount of debt due, on filing appeal.

Provided that the Appellate Tribunal may, for reasons to be recorded in writing, waive or reduce the amount to be deposited under this section.

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36. (1) * * * * * Power to make rules.

(2) Without prejudice to the generality of the foregoing powers, such rules may, provide for all or any of the following matters, namely:—

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(cc) the rate of fee to be refunded to the applicant under sub-section (3A) of section 19 of the Act.

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further to amend the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, the Recovery of Debts due to Banks and Financial Institutions Act, 1993, the Indian Stamp Act, 1899 and the Depositories Act, 1996, and for matters connected therewith or incidental thereto.

(Shri Arun Jaitley, Minister of Finance)