

Bill No. 122 of 2011

THE ENFORCEMENT OF SECURITY INTEREST AND RECOVERY OF
DEBTS LAWS (AMENDMENT) BILL, 2011

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BILL

*further 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.*

BE it enacted by Parliament in the Sixty-second 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 (Amendment) Act, 2011.

Short title and
commence-
ment.

(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 section 2. **2.** In section 2 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereafter in this Chapter referred to as the principal Act), in clause (c), after sub-clause (iv), the following sub-clause shall be inserted, namely:— 5 54 of 2002.
- “(iva) a multi-State co-operative bank; or”.
- Amendment of section 9. **3.** In section 9 of the principal Act, after clause (f), the following clause shall be inserted, namely:— 10
- “(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.”.
- Amendment of section 13. **4.** In section 13 of the principal Act,— 15
- (a) in sub-section (3A), for the words “within one week”, the words “within fifteen days” shall be substituted;
- (b) after sub-section (5), the following sub-sections shall be inserted, namely:—
- “(5A) Where the sale of an immovable property, for which a reserve price has been specified, has been postponed for want of a bid of an amount not less than such reserve price, it shall be lawful for any officer of the secured creditor, if so authorised by the secured creditor in this behalf, to bid for the immovable property on behalf of the secured creditor at any subsequent sale. 20
- (5B) Where the secured creditor, referred to in sub-section (5A), is declared to be the purchaser of the immovable property at any subsequent sale, the amount of the purchase price shall be adjusted towards the amount of the claim of the secured creditor for which the auction of enforcement of security interest is taken by the secured creditor, under sub-section (4) of section 13. 25
- (5C) The provisions of section 9 of the Banking Regulation Act, 1949 shall, as far as may be, apply to the immovable property acquired by secured creditor under sub-section (5A).”.
- Amendment of section 14. **5.** In section 14 of the principal Act,— 10 of 1949. 30
- (a) in sub-section (1), the following provisos shall be inserted, namely:—
- “Provided that any application by the secured creditor shall be accompanied by an affidavit duly affirmed by the authorised officer of the secured creditor, declaring that— 35
- (i) the aggregate amount of financial assistance granted and the total claim of the Bank as on the date of filing the application;
- (ii) the borrower has created security interest over various properties and that the Bank or Financial Institution is holding a valid and subsisting security interest over such properties and the claim of the Bank or Financial Institution is within the limitation period; 40
- (iii) the borrower has created security interest over various properties giving the details of properties referred to in sub-clause (ii) above; 45

(iv) the borrower has committed default in repayment of the financial assistance granted aggregating the specified amount;

5 (v) consequent upon such default in repayment of the financial assistance the account of the borrower has been classified as a non-performing asset;

(vi) affirming that the period of sixty days notice as required by the provisions of sub-section (2) of section 13, demanding payment of the defaulted financial assistance has been served on the borrower;

10 (vii) the objection or representation in reply to the notice received from the borrower has been considered by the secured creditor and reasons for non-acceptance of such objection or representation had been communicated to the borrower;

15 (viii) the borrower has not made any repayment of the financial assistance in spite of the above notice and the Authorised Officer is, therefore, entitled to take possession of the secured assets under the provisions of sub-section (4) of section 13 read with section 14 of the principal Act;

(ix) that the provisions of this Act and the rules made thereunder had been complied with:

20 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:

25 Provided also that the requirement of filing affidavit stated in the first proviso shall not apply to proceeding pending before any District Magistrate or the Chief Metropolitan Magistrate, as the case may be, on the date of commencement of this Act.”;

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

30 “(1A) The District Magistrate or the Chief Metropolitan Magistrate may authorise any officer subordinate to him,—

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

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

35 (c) in sub-section (3), after the words “the District Magistrate”, the words “any officer authorised by the Chief Metropolitan Magistrate or District Magistrate” shall be inserted.

6. After section 18B of the principal Act, the following section shall be inserted, namely:—

40 “18C. (1) Where an application or an appeal is expected to be made or has been made under sub-section (1) of section 17 or section 17A or sub-section (1) of section 18 or section 18B, the secured creditor or any person claiming a right to appear before the Tribunal or the Court of District Judge or the Appellate Tribunal or the High Court, as the case may be, on the hearing of such application or appeal, may lodge a caveat in respect thereof.

45 (2) Where a caveat has been lodged under sub-section (1),—

(a) the secured creditor by whom the caveat has been lodged (hereafter in this section referred to as the caveator) shall serve notice of the caveat by

Insertion of
new section
18C.
Right to lodge
a caveat.

registered post, acknowledgement due, on the person by whom the application has been or is expected to be made under sub-section (1);

(b) any person by whom the caveat has been lodged (hereafter in this section referred to as the caveator) shall serve notice of the caveat by registered post, acknowledgement due, on the person by whom the application has been or is expected to be made under sub-section (1). 5

(3) Where after a caveat has been lodged under sub-section (1) any application or appeal is filed before the Tribunal or the court of District Judge or the Appellate Tribunal or the High Court, as the case may be, the Tribunal or the District Judge or the Appellate Tribunal or the High Court, as the case may be, shall serve a notice of application or appeal filed by the applicant or the appellant on the caveator. 10

(4) Where a notice of any caveat has been served on the applicant or the Appellant, he shall periodically furnish the caveator with a copy of the application or the appeal made by him and also with copies of any paper or document which has been or may be filed by him in support of the application or the appeal. 15

(5) Where a caveat has been lodged under sub-section (1), such caveat shall not remain in force after the expiry of the period of ninety days from the date on which it was lodged unless the application or appeal referred to in sub-section (1) has been made before the expiry of the said period.”

Amendment of section 23. 7. In section 23 of the principal Act, after the proviso, the following proviso shall be inserted, namely:— 20

“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.”. 25

Insertion of new section 26A. 8. After section 26 of the principal Act, the following section shall be inserted, namely:—

“26A. (1) The Central Government, on being satisfied—

(a) that the omission to file with the Registrar the particulars of any transaction of securitisation, asset reconstruction or security interest or modification or satisfaction of such transaction or; the omission or mis-statement of any particular with respect to any such transaction or modification or with respect to any satisfaction or other entry made in pursuance of section 23 or section 24 or section 25 of the principal Act was accidental or due to inadvertence or some other sufficient cause or it is not of a nature to prejudice the position of creditors; or 30 35

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

may, on the application of a secured creditor or securitisation company or reconstruction company or any other person interested on such terms and conditions as it may seem to the Central Government just and expedient, direct that the time for filing of the particulars of the transaction for registration or modification or satisfaction shall be extended or, as the case may require, the omission or mis-statement shall be rectified. 40

(2) Where the Central Government extends the time for the registration of transaction of security interest or securitisation or asset reconstruction or modification or satisfaction thereof, the order shall not prejudice any rights acquired in respect of the property concerned or financial asset before the transaction is actually registered.”. 45

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

9. For section 30 of the principal Act, the following section shall be substituted, namely:—

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

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

10. After section 31 of the principal Act, the following section shall be inserted, namely:—

“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.”

CHAPTER III

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

51 of 1993. 11. In the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, (hereafter in this Chapter referred to as the principal Act), in section 2, in clause (d), after sub-clause (v), the following sub-clause shall be inserted, namely:—

“(vi) a multi-State co-operative bank;”

35 12. In section 18 of the principal Act, the following proviso shall be inserted, namely:—

“Provided that any proceedings in relation to the recovery of debts due to any multi-State co-operative bank pending before the date of commencement of the Enforcement of Security Interest and Recovery of Debts Laws (Amendment) Act, 2011 under the Multi-State Co-operative Societies Act, 2002 shall be continued and nothing contained in this section shall, after such commencement, apply to such proceedings.”

13. In section 19 of the principal Act,—

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

“(1A) Every bank being, multi-State co-operative bank referred to in sub-clause (vi) of clause (d) of section 2, may, at its option, opt to initiate proceedings under the Multi-State Co-operative Societies Act, 2002 to recover debts, whether

Substitution of new section for section 30.

Cognizance of offences.

Insertion of new section 31A.

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

Amendment of section 2.

Amendment of section 18.

Amendment of section 19.

39 of 2002.

39 of 2002.

due before or after the date of commencement of the Enforcement of the Security Interest and Recovery of Debts Laws (Amendment) Act, 2011 from any person instead of making an application under this Chapter.

(1B) In case, a bank being, multi-State co-operative bank referred to in sub-clause (vi) of clause (d) of section 2 has filed an application under this Chapter and subsequently opts to withdraw the application for the purpose of initiating proceeding under the Multi-State Co-operative Societies Act, 2002 to recover debts, it may do so with the permission of the Tribunal and every such application seeking permission from the Tribunal to withdraw the application made under sub-section (1A) shall be dealt with by it as expeditiously as possible and disposed off within thirty days from the date of such application: 5 39 of 2002. 10

Provided that in case the Tribunal refuses to grant permission for withdrawal of the application filed under this sub-section, it shall pass such orders after recording the reasons therefor.”; 15

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

“(20A) Where it is proved to the satisfaction of the Tribunal that the claim of the applicant has been adjusted wholly or in part by any lawful agreement or compromise in writing and signed by the parties or where the defendant has repaid or agreed to repay the claim of the applicant, the Tribunal shall pass orders recording such agreement, compromise or satisfaction of the claim.”. 20

Amendment
of section 31.

14. In section 31 of the principal Act, after the proviso, the following proviso shall be inserted, namely:—

“Provided further that any recovery proceedings in relation to the recovery of debts due to any multi-State co-operative bank pending before the date of commencement of the Enforcement of Security Interest and Recovery of Debts Laws (Amendment) Act, 2011 under the Multi-State Co-operative Societies Act, 2002, shall be continued and nothing contained in this section shall apply to such proceedings.”. 25 39 of 2002.

STATEMENT OF OBJECTS AND REASONS

The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 was enacted with a view to regulate securitisation and reconstruction of financial assets and enforcement of security interest and for matters connected therewith or incidental thereto. The aforesaid Act enables the banks and financial institutions to realise long-term assets, manage problems of liquidity, asset liability mis-match and improve recovery by exercising powers to take possession of securities, sell them and reduce non-performing assets by adopting measures for recovery or reconstruction. The said Act further provides for setting up of asset reconstruction companies which are empowered to take possession of secured assets of the borrower including the right to transfer by way of lease, assignment or sale and realise the secured assets and take over the management of the business of the borrower.

2. At present, under the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (a) the reconstruction companies or securitisation companies do not have the facility to convert their debt into equity in cases of business reconstruction or rehabilitation or revival as required under section 9 of the said Act; (b) the banks and financial institutions find it difficult to meet the requirement of considering the representations from borrowers and communicate their response within a period of seven days as required under section 13 of the said Act; (c) even though the banks, as secured creditors, are empowered to sell the securities to realise the defaulted loans, they are not empowered to accept the property in full or partial satisfaction of the claim against the defaulted borrower, if no bidder comes to bid or banks are unable to find a buyer for such assets as per the provisions of section 13 of the said Act; (d) there is no provision enabling the banks or persons to file a caveat petition against the application filed by the defaulted borrower before the Debts Recovery Tribunal under section 18 of the said Act.

3. It is proposed to amend the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, *inter alia*, provides for the following, namely:—

(a) provide for conversion of any part of debt into shares of a borrower company and such conversion shall be deemed always to have been valid as if the provisions of said conversion were in force at all material times;

(b) include the multi-State co-operative banks in the definition of 'bank' under clause (c) of section 2 of the said Act;

(c) increase the period of response to be sent by the banks or financial institutions to the representation of the borrower from seven days to fifteen days;

(d) empower the banks or financial institutions to accept the immovable property in full or partial satisfaction of the claim of the bank against the defaulting borrower;

(e) enable the banks or any person to file a caveat so that before granting any stay, the bank or such person is heard by the Debts Recovery Tribunal;

(f) provide for registration of transactions of securitisation, reconstruction or creation of security interest in the Central Registry, which are subsisting on or before the establishment of Central Registry and also to give powers to the Central Government to extend time for filing of such transaction with the Central Registry.

4. The Recovery of Debts Due to Banks and Financial Institutions Act, 1993 was enacted with a view to provide for the establishment of Debts Recovery Tribunals for expeditious adjudication and recovery of debts due to banks and financial institutions.

To ensure expeditious adjudication and recovery of dues of banks and financial institutions, remove legal anomalies and strengthen the Recovery Tribunals, the said Act was amended in the years 1995, 2000 and 2004. The measures of recovery through the Debts Recovery Tribunal are not available to multi-State co-operative banks. In order to provide an additional and effective recovery mechanism to multi-State co-operative banks, it is considered necessary to give an option to the multi-State co-operative banks either to initiate proceedings for recovery of its debts under the Multi-State Co-operative Societies Act, 2002 or the Debts Recovery Tribunal under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993.

5. It is also proposed to amend the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 , *inter alia*, provides for the following, namely:—

(a) to include the multi-State co-operative banks in the definition of 'bank' under clause (d) of section 2 of the said Act;

(b) to permit the multi State co-operative banks, with respect to debts due before or after the commencement of the proposed legislation, to opt either to initiate proceedings under the Multi-State Co-operative Societies Act, 2002 or to initiate the proceedings before the Debts Recovery Tribunal;

(c) to enable the banks and financial institutions to enter into settlement or compromise with the borrower and also to empower the Debts Recovery Tribunal to pass an order acknowledging such settlement or compromise;

(d) to provide that the recovery proceedings pending before the commencement of the Enforcement of Security Interest and Recovery of Debts Laws (Amendment) Act, 2011 in relation to recovery of debts due to any multi-State co-operative bank shall be continued in the same manner as the proposed amendments had not come into force.

6. The Bill seeks to achieve the above objects.

PRANAB MUKHERJEE.

NEW DELHI;
The 30th November, 2011.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 7 of the Bill provides for amendment of section 23 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 empowering the Central Government to require, by notification, registration of all transactions of securitisation or asset reconstruction or creation of security interest which are subsisting on or before the 31st March, 2011 namely the date of establishment of Central Registry.

2. The matters in respect of which the notification may be issued by the Central Government is a matter of procedural and administrative detail and it is not practicable to provide for them under the Bill itself. The delegation of the 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)

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CHAPTER III

ENFORCEMENT OF SECURITY INTEREST

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Enforcement
of security
interest.

13. (1)* * * * * *

(3A) If, on receipt of the notice under sub-section (2), the borrower makes any representation or raises any objection, the secured creditor shall consider such representation or objection and if the secured creditor comes to the conclusion that such representation or objection is not acceptable or tenable, he shall communicate within one week of receipt of such representation or objection the reasons for non-acceptance of the representation or objection to the borrower:

Provided that the reasons so communicated or the likely action of the secured creditor at the stage of communication of reasons shall not confer any right upon the borrower to prefer an application to the Debts Recovery Tribunal under section 17 or the Court of District Judge under section 17A.

* * * * *

Chief Metro-
politan
Magistrate or
District
Magistrate to
assist secured
creditor in
taking
possession of
secured asset.

14. (1) * * * * * *

(3) No Act of the Chief Metro politan Magistrate or the District Magistrate done in pursuance of this section shall be called in question in any court or before any authority.

* * * * *

Cognizance of
offence.

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

EXTRACT 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,—

* * * * *

(d) “bank” means—

* * * * *

(v) a Regional Rural Bank;

* * * * *

LOK SABHA

A

BILL

further 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.

(Shri Pranab Mukherjee, Minister of Finance)