

Bill Summary

Enforcement of Security Interest and Recovery of Debts Laws and Miscellaneous Provisions (Amendment) Bill, 2016 as reported by Joint Committee of Parliament

- The Enforcement of Security Interest and Recovery of Debts Laws and Miscellaneous Provisions (Amendment) Bill, 2016 was introduced by the Minister of Finance, Mr. Arun Jaitley, in Lok Sabha on May 11, 2016. It was subsequently referred to a Joint Committee of Parliament which submitted its report along with a modified Bill on July 22, 2016.
- The Bill seeks to amend four laws, including (i) Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act, 2002), and (ii) Recovery of Debts due to Banks and Financial Institutions Act, 1993 (RDDBFI Act, 1993).

Amendments to the SARFAESI Act

- **Taking possession over collateral:** The SARFAESI Act allows secured creditors to take possession over a collateral, against which a loan had been provided, upon a default in repayment. This process is undertaken with the assistance of the District Magistrate, and does not require the intervention of courts or tribunals. The Bill provides that this process will have to be completed within 30 days by the District Magistrate. However, if the Magistrate is unable to pass an order within this time limit due to externalities, this limit would be extended to 60 days.
- **Creation of database:** The Act creates a central registry to maintain records of transactions related to secured assets. The Bill creates a central database to integrate records of property registered under various registration systems with this central registry. This includes integration of registrations made under Companies Act, 2013, Registration Act, 1908 and Motor Vehicles Act, 1988.
- **Audit and inspection:** The Act empowered the Reserve Bank of India (RBI) to examine the statements and any information of Asset Reconstruction Companies related to their business. The Bill further empowers the RBI to carry out audits and inspections of these companies on its own, or authorise specialised agencies to conduct these audits. The RBI may penalise a company if the company fails to comply with any directions issued by it.
- **Stamp duty exemption:** The Bill provides that stamp duty will not be charged on transactions undertaken for transfer of financial assets in favour of asset reconstruction companies. Financial assets include

loans and collaterals. This exemption will not be applicable, if the asset has been transferred for purposes other than securitisation or reconstruction (such as for the ARC's own use).

- **Jurisdiction for filing appeals:** The Act provides the grounds on which an aggrieved party can file an appeal before a Debt Recovery Tribunal (DRT). The Bill seeks to clarify that such cases will be filed in the DRT having jurisdiction over the area, (i) where the cause of action arises, (ii) where the collateral security is located, or (iii) where the bank branch is located where the debt is outstanding.

Amendments to the RDDBFI Act

- **Presiding Officer and Chairman:** The RDDBFI Act established Debt Recovery Tribunals (DRTs) and Debt Recovery Appellate Tribunals (DRATs). The Bill increases the retirement age of Presiding Officers of Debt Recovery Tribunals from 62 years to 65 years. Further, it increases the retirement age of Chairpersons of Appellate Tribunals from 65 years to 67 years. It also makes Presiding Officers and Chairpersons eligible for reappointment.
- The Bill allows Presiding Officers of tribunals established under other laws (such as the National Company Law Tribunal) to also perform functions of Presiding Officers of DRTs. Similarly, it allows Chairmen of Appellate Tribunals established under other laws to additionally perform functions of Chairmen of DRATs.
- **Filing of Application:** The Act provides that banks and financial institutions will be required to file cases in tribunals having jurisdiction over the defendant's area of residence or business. The Bill also allows banks to file cases in tribunals having jurisdiction over the area of bank branch where the debt is pending.
- **Procedures:** The Bill provides that certain procedures under the Act will be undertaken in electronic form. These include presentation of claims by parties and summons issued by tribunals.
- The Bill provides details of procedures that the tribunals will follow in case of debt recovery proceedings. This includes the requirement of applicants to specify the assets of the borrower, which have been collateralised. The Bill also prescribes time limits for the completion of some of these procedures.

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