

Joint Committee Report Summary

The Enforcement of Security Interest and Recovery of Debts Laws and Miscellaneous Provisions (Amendment) Bill, 2016

- The Joint Committee on the Enforcement of Security Interest and Recovery of Debts Laws and Miscellaneous Provisions (Amendment) Bill, 2016 (Chairperson: Mr. Bhupender Yadav) submitted its report and a modified Bill on July 22, 2016.
- The Bill seeks to amend four Acts, 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, 2002

- **Sponsor of an ARC:** The Act prohibits a sponsor (such as an investor) of an Asset Reconstruction Company (ARC) from having a majority holding or a controlling stake in the company. The Bill removes this restriction and requires the Reserve Bank of India (RBI) to determine a 'Fit and Proper' criteria for a sponsor. The Committee recommended that in light of the restrictions on the sponsor being relaxed, a provision of the Act restricting the representatives of a sponsor from constituting more than half of the Board of Directors should be omitted.
- **Audit and inspection:** The Act allows the RBI to call for statements of an ARC (such as audit reports.) The Bill proposes to allow the RBI to conduct an audit and carry out an inspection of the ARC. The Committee observed that the RBI should also be allowed to authorise a specialised agency to conduct such an audit or inspection.
- **Time limit for DM to take action:** The Act allows a secured creditor to take possession over the collateral security with the assistance of the District Magistrate (DM), if the borrower defaults on repayment. The Bill provides a time limit of 30 days for the DM to pass an order to complete this process. The Committee observed that this time limit should be extended to 60 days, if the DM is unable to pass an order in 30 days due to reasons beyond his control.
- **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, or (ii) where the collateral security is located. The Committee recommended that an aggrieved party may also be allowed to file a case in the DRT having jurisdiction over the bank branch where the debt is outstanding.

- **Power of DRT to restore assets:** The Act allows the DRT to restore a secured asset or management of a business to the borrower, after examining facts related to the case. The Bill expands this provision to allow assets or management of a business to be restored to any person other than a borrower.
- The Committee observed that this power allows the DRT to decide tenancy and lease rights of a person over an asset. It observed that since tenancy is a state subject, the DRTs (enacted through a central law) will have limited powers in determining the legitimacy of a tenancy or lease right. In this regard, the Committee specified certain circumstances which the DRTs will have to examine while restoring assets to a person.

Amendments to the RDDBFI Act, 1993

- **Presiding Officer and Chairman of Tribunal:** The Act allows a Presiding Officer of a DRT or Chairman of a Debt Recovery Appellate Tribunal (DRAT) to also perform functions of another DRT or Appellate Tribunal, respectively. The Committee recommended that in order to fill up vacancies, Presiding Officers or Chairmen of Tribunals set up under any other law should be allowed to also perform the functions in DRTs or DRATs.
- **Modes of debt recovery:** The Act specifies three modes of recovering outstanding debt: (i) sale of property, (ii) arrest and detention of defendant, or (iii) appointment of a person to manage the property of the defendant. The Bill inserts a provision which allows the creditor to take possession of a collateral security against which the debt was given. The Committee observed that lending against intangible assets (such as goodwill of a company) is evolving, and the central government should also be allowed to notify other modes of debt recovery.

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