"बेटी बचाओ, बेटी पढ़ाओ"

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INTRODUCTION

It stands for securitization and reconstruction of financial Assets and enforcement of security interest Act, 2002

The SARFAESI Act, 2002 empowers Banks/Financial Institutions to recover their non-performing assets without the intervention of the court.

What is SARFAESI Act, 2002?

The SARFAESI Act full form is – "Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act". The SARFAESI Act allows banks and other financial institutions for auctioning commercial or residential properties to recover a loan when a borrower fails to repay the loan amount. Thus, the SARFAESI Act, 2002 enables banks to reduce their Non-Performing Assets (NPAs) through recovery methods and reconstruction.

The SARFAESI Act provides that banks can seize the property of a borrower without going to court except for agricultural land. SARFAESI Act, 2002 is applicable only in the cases of secured loans where banks can enforce underlying securities such as hypothecation, mortgage, pledge etc. An order from the court is not required unless the security is invalid or fraudulent. In the case of unsecured assets, the bank would have to go to court and file a civil case against the defaulters.

Applicability of SARFAESI Act, 2002

The Act deals with the following:

- Registration and regulation of Asset Reconstruction Companies (ARCs) by the Reserve Bank of India
- .Facilitating securitization of financial assets of banks and financial institutions with or without the benefit of underlying securities.
- Promotion of seamless transferability of financial assets by the ARC to acquire financial assets of banks and financial institutions through the issuance of debentures or bonds or any other security as a debenture.
- Entrusting the Asset Reconstruction Companies to raise funds by issue of security receipts to qualified buyers.
- Facilitating the reconstruction of financial assets which are acquired while exercising powers of enforcement of securities or change of management or other powers which are proposed to be conferred on the banks and financial institutions.
- Presentation of any securitization company or asset reconstruction company registered with the Reserve Bank of India as a public financial institution.
- Defining 'security interest' to be any type of security including mortgage and change on immovable properties given for due repayment of any financial assistance given by any bank or financial institution.
- Classification of the borrower's account as a non-performing asset in accordance with the directions given or under guidelines issued by the Reserve Bank of India from time to time.
- The officers authorized will exercise the rights of a secured creditor in this behalf in accordance with the rules made by the Central Government.

- An appeal against the action of any bank or financial institution to the concerned Debts Recovery Tribunal and a second appeal to the Appellate Debts Recovery Tribunal.
- The Central Government may set up or cause to be set up a Central Registry for the purpose of registration of transactions relating to securitization, asset reconstruction and creation of the security interest.
- Application of the proposed legislation initially to banks and financial institutions and empowerment of the Central Government to extend the application of the proposed legislation to non-banking financial companies and other entities.
- Non-application of the proposed legislation to security interests in agricultural lands, loans less than rupees one lakh and cases where eighty per cent, of the loans, is repaid by the borrower.

Objectives of SARFAESI Act, 2002

- Efficient or rapid recovery of non-performing assets (NPAs) of the banks and FIs.
- Allows banks and financial institutions to auction properties (say, commercial/residential) when the borrower fails to repay their loans.

How SARFAESI Act, 2002 works?

SARFAESI Act, 2002 provides power to a bank or financial institution to seize the property of a defaulting borrower. If the loan borrowers make any default in repayment of a loan or a loan installment, the financial institution can classify the account as Non-Performing Asset (NPA). The banks or financial institution can issue notices to the defaulting borrowers to discharge their liabilities within 60 days period. When the defaulting borrower fails to comply with the bank or financial institution notice, then the SARFAESI Act gives the following recourse to a bank:

- Take possession of the loan security
- Lease, sell or assign the right to the security
- Manage the same or appoint any person to manage the same.

Formation of SARFAESI Act, 2002

SARFAESI Act, 2002 was circulated:

- To regulate securitization and reconstruction of financial assets.
- Enforcement of the security interest for.
- Matters connected therewith or incidental thereto.

It extended to the whole of India. Amendment in the (SARFAESI) Act, 2002 vide the enforcement of the Security Interest and Recovery of Debts Laws and Miscellaneous Provisions (Amendment) Act, 2016. It is an Act to further amend four laws:

- Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI).
- Recovery of Debts due to Banks and Financial Institutions Act, 1993 (RDDBFI).
- Indian Stamp Act, 1899.
- Depositories Act, 1996, and for matters connected therewith or incidental thereto.

Amendments to the SARFAESI Act, 2002

The Enforcement of Security Interest and Recovery of Debts Laws (Amendment) Act, 2016 provided amendments for the SARFAESI Act, which are as follows:

- The banks and Asset Reconstruction Companies (ARCs) should have the power to transfer any part of the debt of the defaulting company into equity. Such a translation would indicate that lenders or ARCs would become equity holders, instead of the creditor of the company.
- Banks may request any immovable property set out for auction by themselves if they do not receive any request during the auction. In such a case, banks will be capable of adjusting the debt with the amount paid for this property. It allows the bank to secure the asset in partial fulfillment of the defaulted loan amount.
- Banks can also sell this property to a new person by asking him/her to remit these debts entirely over a period of time.

Right of Borrower under SARFAESI Act, 2002

The borrowers have the following rights:

- Borrowers can remit the dues and avoid losing their securities before the sale is concluded.
- Borrowers will get compensation for the default of an officer.
- SARFAESI Act Section 17 provides that borrowers can approach the Debt Recovery Tribunal to rectify their grievances against the creditor or authorized officer.

Methods of Recovery under SARFAESI Act, 2002

The SARFAESI Act provides the following three methods of recovery of the Non-Performing Assets (NPAs):

- **Securitisation**

Securitisation is the process of issuing marketable securities backed by a pool of existing assets such as home or auto loans. An asset can be sold after it is converted into a marketable security. A securitisation or asset reconstruction company can raise funds from only the Qualified Institutional Buyers (QIBs) by forming schemes for acquiring financial assets.

- **Asset Reconstruction**

Asset reconstruction empowers asset reconstruction companies. It can be done by managing the borrower's business by selling or acquiring it or by rescheduling payments of debt payable by the borrower as per the provisions of the Act.

- **Enforcement of security without the interruption of the court**

The Act empowers banks and financial institutions to issue notices to individuals who have obtained a secured asset from the borrower for paying the due amount and claim to a borrower's debtor to pay the sum due to the borrower.

Assets Not Covered Under SARFAESI Act, 2002

The SARFAESI Act does not cover the following assets:

- Money or security issued under the Sale of Goods Act, 1930 or Indian Contract Act, 1872.
- Any lease, hire-purchase, conditional sale, or any other contract where no security interest has been created.
- Any rights of the unpaid seller under Section 47 of the Sale of Goods Act, 1930.
- Any properties which are not liable for sale or attachment under Section 60 of the Code of Civil Procedure, 1908.