

# CONTENTS

---

	PAGE
<i>Foreword to Fourth Edition</i>	I-5
<i>Preface to Fourth Edition</i>	I-7
<i>Foreword to Third Edition</i>	I-11
<i>Preface to Third Edition</i>	I-13
<i>Foreword to Second Edition</i>	I-17
<i>Preface to Second Edition</i>	I-19
<i>Foreword to First Edition</i>	I-23
<i>Preface to First Edition</i>	I-25
<i>Disclaimer by author</i>	I-29
<i>Chapter-heads</i>	I-31

## 1

### SECURITISATION AND RECONSTRUCTION OF FINANCIAL ASSETS AND ENFORCEMENT OF SECURITY INTEREST ACT, 2002 (SARFAESI ACT)

1.0	Introduction	1
1.1	Asset classification - Prudential norms	4
1.2	Empowerment to banks/FIs	6
1.3	Authorised officer	6
1.4	Eligibility of accounts for taking action under Act	7
1.5	Basis of identification of NPA accounts for issue of demand notice u/s 13(2)	8
1.6	Abatement of reference before BIFR (SINCE SCRAPPED w.e.f. 1-12-2016)	10
1.7	Limitation	10
1.8	Issue of notice in non-suit filed and suit filed cases	12
1.9	Expiry of 60 days notice period	12
1.10	Norms for taking over possession of secured assets	13
1.11	Procedure for taking possession of movable/immovable assets	13

	PAGE
<b>1.12</b> Engagement of counsel/Advocate for filing of application before CMM/DM	14
<b>1.13</b> Sale of acquired secured assets	14
<b>1.14</b> Appropriation of sale proceeds	15
<b>1.15</b> Recovery of balance dues	15
<b>1.16</b> Issue of fresh/revised demand notice u/s 13(2)	15
<b>1.17</b> Amendments - 2007 Security Interest (Enforcement) Amendments Rules	16
<b>1.18-19</b> Main effects of the Decision of Hon'ble Supreme Court in <i>M/s. Transcore v. Union of India</i> [2007] 73 SCL 11 (Case No. 3228 of 2006)	19
<b>1.20</b> Amendments 2012 SARFAESI Act & DRT Act	20
<b>1.21</b> Amendments - 2012 - Security Interest (Enforcement) Rules, 2002	25
<b>1.22</b> Amendments - 2016 SARFAESI Act & DRT Act	25
<b>1.22.1</b> Substitution of references to certain expressions by other expressions	29
<b>1.22.2</b> Section 2 (SARFAESI Act) - Definitions	29
<b>1.22.3</b> Section 3 (SARFAESI Act) - Asset Reconstruction Companies	29
<b>1.22.4</b> Section 5: (SARFAESI Act) - Exemption of Stamp Duty on Assignment deeds	29
<b>1.22.5</b> Section 7 (SARFAESI Act) - Issue of security by raising of receipts or funds by asset reconstruction company	30
<b>1.22.6</b> Section 9 of SARFAESI Act - Measures for assets reconstruction	30
<b>1.22.6A</b> Section 12 (SARFAESI Act) - Power of Reserve Bank to determine policy and issue directions	30
<b>1.22.7</b> Section 13 - Enforcement of security interest	30
<b>1.22.8</b> Section 14 - CMM/DM Application	30
<b>1.22.9</b> Section 15 - Manner and effect of takeover of management	31
<b>1.22.10</b> Section 17 (SARFAESI Act) - Application against measures to recover secured debts	31
<b>1.22.11</b> Section 19 (SARFAESI Act) - Right of borrower to receive compensation and costs in certain cases	31
<b>1.22.12</b> Section 20 - Central Registry	31
<b>1.22.13</b> Section 23 (SARFAESI Act) - Filing of transactions of securitisation, reconstruction and creation of security interest	32
<b>1.22.14</b> Section 26 (SARFAESI Act) - Right to Inspect Particulars of Securitisation, Reconstruction and Security Interest Transactions	32

	PAGE
<b>1.22.15</b> Section 27 (SARFAESI Act) - Penalties	32
<b>1.22.16</b> Section 28 (SARFAESI Act)	32
<b>1.22.17</b> Section 30 (SARFAESI Act) - Cognizance of offences	32
<b>1.22.18</b> Section 31 (SARFAESI Act) - Provisions of this Act not to apply in certain cases	32
<b>1.22.19</b> Section 31A - SARFAESI Act - Power to exempt a class or classes of banks or financial institutions	32
<b>1.22.20</b> Section 32 (SARFAESI Act) - Protection of action taken in good faith	33
<b>1.22.21</b> Section 38 (SARFAESI Act) - Power of Central Government to make rules	33
<b>1.22.22</b> Amendment to the Indian Stamp Act, 1899	33
<b>1.22.23</b> Amendment to the Depositories Act, 1996	33
<b>1.22.24</b> Section 2 (DRT Act)	33
<b>1.22.25</b> Section 4 (DRT Act)	34
<b>1.22.26</b> Section 6 (DRT Act)	34
<b>1.22.27</b> Section 8 (DRT Act) Establishment of Appellate Tribunal	34
<b>1.22.28</b> Section 11 (DRT Act)	34
<b>1.22.29</b> Section 17A (DRT Act) Powers of Superintendence of Chairpersons of DRATs	34
<b>1.22.30</b> Section 19 (DRT Act)	34
<b>1.22.31</b> Section 19A (DRT Act)	34
<b>1.22.32</b> Section 20 (DRT Act)	35
<b>1.22.33</b> Section 21 (DRT Act)	35
<b>1.22.34</b> Section 22 (DRT Act)	35
<b>1.22.35</b> Insertion of new section 22A (DRT Act)	35
<b>1.22.36</b> Section 25 (DRT Act)	35
<b>1.22.37</b> Section 27 (DRT Act)	35
<b>1.22.38</b> Insertion of new section 30A (DRT Act)	35
<b>1.22.39</b> Insertion of new section 31B (DRT Act)	36
<b>1.22.40</b> Section 36 (DRT Act)	36
<b>1.23</b> Amendments - 2016 - Security Interest (Enforcement) Rules, 2002	36
<b>1.23.1</b> Rule 3(1)	36
<b>1.23.2</b> Rule 3(5) New clause	36
<b>1.23.3</b> Rule (3A) New Clause	37
<b>1.23.4</b> Rule 4	37
<b>1.23.5</b> Rule 6	37
<b>1.23.6</b> Rule 8	38
<b>1.23.7</b> Rule 9	39

## CONTENTS

**I-36**

	PAGE
<b>1.23.8</b> Rule 13A - New Rule - 13A. Application by lessee or tenant	40
<b>1.23.9</b> Certificate of Sale for Movable Secured Assets - Appendix III	40
<b>1.23.10</b> Possession Notice Amended - Appendix IV	40
<b>1.23.11</b> Certificate of Sale for Immovable Secured Assets - Appendix V	41
<b>1.24</b> Procedure for taking action under the SARFAESI Act in case of Company under liquidation	41

## 2

### **PRACTICAL TIPS FOR TAKING ACTION UNDER SARFAESI ACT**

<b>2.0</b> Identification of accounts	48
<b>2.1</b> Agricultural security/ Agricultural Land	48
<b>2.2</b> Negative lien	49
<b>2.3</b> Hypothecation of Stock, Plant & Machinery and Book Debts/ Receivables etc.	50
<b>2.4</b> Service of demand notice under section 13(2)	52
<b>2.4-1</b> Publication of undelivered notices	53
<b>2.4-2</b> Demand Notice u/s 13(2) General Complaint	54
<b>2.5</b> Powers of Secured Creditor under section 13(4)	57
<b>2.5A</b> Restraint on Sale/Lease/Transfer without consent of bank/ FIs (secured creditors) under section 13(13)	58
<b>2.5A-1</b> Joint Financing [SARFAESI Act - Section 13(9)]	58
<b>2.6</b> Physical possession of secured assets through CMM/District Magistrate	59
<b>2.6-1</b> Filing of application before the CMM/DM	60
<b>2.6-1A</b> Documents required for taking assistance from CMM/ DM [Application under section 14]	60
<b>2.6-1B</b> CMM/DM Orders under section 14 through the process of non-adjudication only	62
<b>2.6-2</b> Possession of immovable secured assets	64
<b>2.6-3</b> Service of possession notice	64
<b>2.6-3A</b> Possession of Nursing Homes, Hospitals etc. mortgaged/ hypothecated to the banks/FIs	65
<b>2.6-3B</b> Possession of abandoned movable/immovable properties	67
<b>2.6-3C</b> Possession through receiver appointed by the Court	67
<b>2.6-3D</b> Custody of properties/perishable goods taken under possession	68
<b>2.6-3E</b> Fixation of General Possession Notice Board	68

	PAGE
<b>2.6-3F</b> Physical Possession - Custody of Broken Locks	69
<b>2.6-4</b> Publication of possession notice	69
<b>2.6-4A</b> Offences	69
<b>2.6-5</b> Valuation of immovable secured assets	70
<b>2.6-6</b> Possession Kit	70
<b>2.7</b> Possession of movable secured assets	71
<b>2.7-1</b> Possession of valuable stocks hypothecated to the banks/FIs	71
<b>2.8</b> Valuation of movable secured assets	72
<b>2.9</b> Procedure for sale of movable secured assets	72
<b>2.9-1</b> Certificate of sale	73
<b>2.10</b> Notice for sale of immovable secured assets	73
<b>2.10-1</b> Appointment of Manager	75
<b>2.10-2</b> Procedure for recovery of shortfall	75
<b>2.10-3</b> Sale through private treaty	75
<b>2.11</b> Overriding effect of the Act	77
<b>2.12</b> Release of securities	77
<b>2.13</b> Empanelment of Enforcement/Resolution Agencies	77
<b>2.14</b> Safeguarding Bank's interest in case of equitable mortgage of immovable property	77
<b>2.15</b> Registration of sale certificate of immovable property	78
<b>2.16</b> Settlement/Compromise proposals	78
<b>2.17</b> Repayment of entire dues by the borrower before sale u/s 13(8)	79
<b>2.18</b> E-Auction for sale of movable/Immovable Secured Assets	79
<b>2.19</b> Seal/Lock Broken by the Borrower after Actual Possession	82
<b>2.20</b> Benefits of Caveat	83
<b>2.21</b> Physical Possession of immovable property after sale on symbolic possession basis u/s 14	84
<b>2.22</b> Assets sold by borrower after receipt of demand notice under section 13(2) without bank's consent	85
<b>2.23</b> Seeking of CMM/DM help even 60 days of demand notice u/s 13(2) not expired referring section 13(13) of SARFAESI Act	85
<b>2.24</b> Possession of undivided immovable properties - Method & procedure for demarcation	86
<b>2.25</b> Change of court receiver appointed by the CMM/DM u/s 14 of SARFAESI Act - Method & procedure	87
<b>2.26</b> Common Passage - Possession of Property	87
<b>2.27</b> Possession of Hypothecated Vehicle	88

	PAGE
<b>2.28</b> RTI Act Information - In case of already sealed properties by the Govt. Departments	88
<b>2.29</b> Services of Animals/Dogs squad at the time of visit/possession	89
<b>2.30</b> Conclusion	89

### 3

#### **SCHEME OF SARFAESI ACT AND SECURITY INTEREST (ENFORCEMENT) RULES, 2002**

<b>3.0</b> Scheme of the SARFAESI Act - Related sections & other important provisions under different Laws with <i>Explanations</i>	90
<b>3.1</b> The Security Interest (Enforcement) Rules, 2002 with <i>Explanations</i>	134

### 4

#### **CHECK LIST**

#### **FOR BANKS/FIs TO BE FOLLOWED WHILE TAKING ACTION UNDER THE SARFAESI ACT, 2002**

<b>4.1</b> <b>Procedure</b>	
Step-1 Demand Notice u/s 13(2)	148
Step-2 Symbolic Possession u/s 13(4) Rule 8(1)	150
Step-3 Physical Possession of movable & immovable properties u/s 13(4)	150
Step-4 Valuation & Reserve price	152
Step-5 Sale of secured assets	152
Step-6 Deposit of TDS	153
Step-7 Sale Certificate	154
Step-8 Central Registry	154
Step-9 Recovery of balance dues u/s 13(10)	154
<b>4.2</b> Points to remember	155
<b>4.2-1</b> Excluded transactions [Section 31]	155
<b>4.2-2</b> Joint financing section 13(9)	155
<b>4.2-3</b> General	156
<b>4.2-4</b> Other Important Points	157

### 5

#### **ROLE AND RESPONSIBILITY OF AUTHORISED OFFICER**

<b>5.1</b> Precautions to be taken by Authorised Officer	158
<b>5.2</b> Service of notice	159
<b>5.3</b> Taking over possession	161

	PAGE
5.4 Sale of charged secured assets	166
5.5 Sale certificate	171
5.5-1 Movables	171
5.6 Appropriation of sale proceeds	173
5.7 Possession Certificate/Receipt from the purchaser of secured Assets	175

## 6

### FREQUENTLY ASKED QUESTIONS

◆ Frequently asked questions	176
------------------------------	-----

## 7

### CENTRAL REGISTRY

7.0 Role of Central Registry	182
7.1 Relevant Sections under SARFAESI Act relating to Central Registry	184
7.2 Rules - Central Registry (CERSAI)	187

## 8

### TYPES OF RECOVERY MECHANISMS

◆ Types of Recovery Mechanisms	188
--------------------------------	-----

## 9

### RECOVERY CAMPS - SETTLEMENT OF NPAs

9.0 Holding of recovery camps	195
9.1 Negotiating Skills	196
9.2 Action Plan	196

## 10

### LOK ADALAT

10.0 Background	197
-----------------	-----

## 11

### RECOVERY OF DEBTS AND BANKRUPTCY ACT, 1993 (DRT ACT)

11.0 Background	199
11.1 Powers of Recovery officer to issue arrest orders	208
11.2 Important Tips for DRT cases	209
11.3 Procedure of sale in Decreed Accounts	212

## CONTENTS

**I-40**

PAGE

11.4	Other Important Points	213
11.5	Execution of DRT Decrees	213
11.6	Sale Procedure (Attachment)	215
11.7	Registration of sale certificate of Immovable Property	216
11.8	Filing of Caveat Petition in DRT/DRAT	217

## 12

### TENANTED PROPERTIES

◆	Possession of tenanted/lease hold mortgaged properties under the SARFAESI Act, 2002	218
---	---	-----

## 13

### RECOVERY THROUGH STATE RECOVERY ACT

13.0	Background	227
13.1	Procedure for Recovery of dues under State Recovery Acts	227

## 14

### INSOLVENCY AND BANKRUPTCY CODE, 2016

14.0	Background	229
14.1	The Code - Its Objective	230
14.2	Insolvency resolution and liquidation for Corporate persons	230
14.2.1	Minimum amount of default	231
14.2.2	Fast Track Corporate Resolution Process	237
14.2.3	Voluntary liquidation of Corporate persons	237
14.3	Insolvency resolution and Bankruptcy for Individuals and Partnership Firms	238
14.4	Institutional framework	245
14.5	Offences and Penalties	248
14.6	The Insolvency and Bankruptcy Code 2016 <i>vis-à-vis</i> SARFAESI Act, 2002	249
14.7	Benefits of the Code for the Borrowers	251
14.8	Implementation of the Code	252
14.9	Conclusion	254

## 15

### CORPORATE DEBT RESTRUCTURING

15.1	Background	256
15.2	Objective	256
15.3	Structure	256



	PAGE
<b>15.4</b> Other Features	261
<b>15.5</b> Legal Basis	262
<b>15.6</b> Exit Option & Other Important Issues	264

## **16**

### **ASSET RECONSTRUCTION COMPANIES (ARCs)**

<b>16.0</b> Securitisation and reconstruction of assets through ARCs	290
<b>16.1</b> Asset Reconstruction Companies (ARCs)	291
<b>16.1(A)</b> Non-Banking Finance Companies (NBFCs)	292
<b>16.1(B)</b> Housing Finance Companies	292
<b>16.2</b> Objectives/Vision/Mission of ARCs	293
<b>16.3</b> Advantages to banks/FIs from sale of NPAs	293
<b>16.4</b> Procedure/system of sale and transfer of assets by the Banks/ FIs to the ARCs	294
<b>16.5</b> RBI Guidelines on sale of financial assets by the Banks/FIs to the ARCs	295
<b>16.6</b> Resolution strategy by ARCs	299
<b>16.7</b> Funding	299
<b>16.8</b> Other important points	300
<b>16.9</b> Important Amendments, 2016	301
<b>16.10</b> Important definitions and relevant provisions under SARFAESI Act relating to ARCs	310
<b>16.11</b> Other functions of asset reconstruction company	320
<b>16.12</b> Settlement of disputes	321
<b>16.13</b> Joint financing	323

## **17**

### **SPECIMEN NOTICES/CERTIFICATES, ETC.**

<b>Annexure I</b>	Format of notice under section 13(2), read with section 13(8) & 13(13) of SARFAESI Act, 2002	326
<b>Annexure II</b>	Format of notice under section 13(2), read with section 13(13) & 13(8), of SARFAESI Act, 2002 (Suit Filed Cases)	329
<b>Annexure III</b>	Proforma for informing court/DRT	333
<b>Annexure IV</b>	Undertaking to be obtained from the borrower/ guarantor/partner/director/mortgagors, etc.	334
<b>Annexure V</b>	Possession notice Appendix IV	335
<b>Annexure V(A)</b>	Possession notice Proforma for publishing in the newspaper for immovable property	336
<b>Annexure V(B)</b>	Notice under Rule 4(2A) for movable property after possession	337

	PAGE
<b>Annexure V(C)</b>	Proforma General Notice Board after Symbolic possession 338
<b>Annexure VI</b>	Application before the Chief Metropolitan Magistrate/ District Magistrate 339
<b>Annexure VI(A)</b>	Affidavit to be submitted to the CMM/DM alongwith application u/s 14 - Proforma 343
<b>Annexure VI(C)</b>	Proforma CMM/DM Application u/s 14 in case of Consortium advances 345
<b>Annexure VI(F)</b>	Proforma Affidavit CMM/DM application u/s 14 Consortium Accounts 352
<b>Annexure VI(I)</b>	Index for CMM/DM application u/s 14 Single account 355
<b>Annexure VI(K)</b>	Index for CMM/DM application u/s 14 Consortium accounts 356
<b>Annexure VII</b>	Format for intimation to take possession 358
<b>Annexure VIII</b>	Panchnama Appendix I 359
<b>Annexure IX</b>	Inventory Appendix II 360
<b>Annexure X</b>	Certificate of sale Appendix III (for movable property) 361
<b>Annexure XI</b>	Sale certificate Appendix V (for immovable property) 362
<b>Annexure XII</b>	Application to the DRT under sub-section (10) of section 13 of the SARFAESI Act (Appendix VI) for Balance dues 363
<b>Annexure XIII</b>	Physical possession notice (General) to be affixed on the Immovable property 366
<b>Annexure XIII(A)</b>	Advance intimation/notice to the Borrower by the Court Receiver/Authorised Officer before taking the Physical Possession. 367
<b>Annexure XIII(B)</b>	Possession letter by the receiver to the police authorities for providing police force 368
<b>Annexure XIII(C)</b>	Possession Notice Board after Physical Possession to be displayed 369
<b>Annexure XIV</b>	Tamsuk deed (undertaking) - Proforma of undertak- ing to be obtained at the time of settlement of pro- tested bill/suit filed/decreed accounts (including accounts in which action taken under SARFAESI Act) from the borrower(s)/guarantor(s) 370
<b>Annexure XIVA</b>	Tamsuk deed (undertaking) - (For accounts not settled but party gave an undertaking to pay full dues of the bank in instalments or lump sum including accounts in which action taken under the SARFAESI Act) 372
<b>Annexure XV</b>	Notice for sale of assets to the borrower 374
<b>Annexure XVI</b>	Draft of tender notice (Type I) 375

	PAGE
<b>Annexure XVI(A)</b> Tender notice for sale of assets (Type II - displayed on website)	377
<b>Annexure XVII</b> Draft of auction notice (Other than e-auction)	379
<b>Annexure XVII (A)</b> Draft of e-auction notice by Bank without service provider	381
<b>Annexure XVII (B)</b> Draft of auction notice (Through Service Provider)	385
<b>Annexure XVIII</b> Notice to the debtor of the borrower under section 13(4)(d) of the SARFAESI Act	390
<b>Annexure XIX</b> Notice to the Corporate body wherein borrower is holding the shares under section 13(4)(d) of the SARFAESI Act	391
<b>Annexure XX</b> Notice to party holding the movable secured assets of the borrower under section 13(4)(d) of the SARFAESI Act	392
<b>Annexure XXI</b> Notice to the tenant/lessee of the borrower under section 13(4)(d) of the SARFAESI Act	394
<b>Annexure XXII</b> Notice u/s 13(2) of the SARFAESI Act, 2002 for publication in the newspapers	396
<b>Annexure XXIII-XXIV</b> Proforma of Decree/order for recovery Debts Recovery Tribunal	398
<b>Annexure XXV</b> Recovery certificate under section 19(22) - Proforma - Debts Recovery Tribunal	399
<b>Annexure XXVI</b> Recovery certificate - Demand Notice Proforma	401
<b>Annexure XXVII</b> Sale of non-performing financial assets (NPAs) - Notice Proforma	402
<b>Annexure XXVIII</b> Delinquency card (Client Data sheet) - Proforma	403
<b>Annexure XXIX</b> Possession Certificate from the purchaser of secured assets - Proforma	408
<b>Annexure XXX</b> Format - A for Recovery Camp	409
<b>Annexure XXXI</b> Format - B for Recovery Camp	411
<b>Annexure XXXII</b> Application for change of Receiver (Proforma)	413
<b>Annexure XXXII(A)</b> Proforma Affidavit for change of Court Receiver u/s 14 Consortium A/Cs	415
<b>Annexure XXXIII</b> Proforma - Vakalatnama	417
<b>Annexure XXXIV</b> Appendix Proforma application for application in DRT by Tenant/Lessee	419

## 18

### IMPORTANT CASE LAWS

◆ Important Case Laws	422
-----------------------	-----

## CONTENTS

**I-44**

PAGE

### 19

#### CASE STUDIES

- ◆ Case Studies 457

### 20

#### BOMBAY RELIEF UNDERTAKING (SPECIAL PROVISION) ACT, 1958

- ◆ Bombay Relief Undertaking (Special Provision) Act, 1958 483

#### APPENDICES

---

- APPENDIX 1 : SECURITISATION AND RECONSTRUCTION OF  
FINANCIAL ASSETS AND ENFORCEMENT OF  
SECURITY INTEREST ACT, 2002 (SARFAESI ACT) 487
- APPENDIX 2 : SECURITY INTEREST (ENFORCEMENT) RULES,  
2002 534
- APPENDIX 3 : SECURITISATION & RECONSTRUCTION OF  
FINANCIAL ASSETS AND ENFORCEMENT OF  
SECURITY INTEREST (CENTRAL REGISTRY)  
RULES, 2011 562
- APPENDIX 4 : RECOVERY OF DEBTS AND BANKRUPTCY ACT,  
1993 (DRT ACT) 568
- APPENDIX 5 : DEBTS RECOVERY TRIBUNAL (PROCEDURE)  
RULES, 1993 597
- APPENDIX 6 : DEBTS RECOVERY APPELLATE TRIBUNAL  
(PROCEDURE) RULES, 1994 615
- APPENDIX 7 : DEBTS RECOVERY TRIBUNALS (REFUND OF  
COURT FEE) RULES, 2013 625