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5th Year, BA LL.B.**THE SARFAESI ACT, 2002- ANALYSIS****ABSTRACT-**

A central database of security interests created on property rights is provided by the SARFAESI Act, which is described as "an act to govern Securitization and reconstruction of financial assets, as well as the enforcement of security interests, and to provide for issues associated with or incidental thereto." With the SARFAESI Act, banks and other financial institutions (FIs) would be able to recover on NPAs without a judge being involved. Section 2(1) of the Act defines non-performing assets. These are the financial institutions that are active in India and about which the Indian government has been informed. The Act outlines two general methods for collecting NPAs. This entails either assuming control of the secured assets of the borrower (with the authority to lease, assign, or resell the secured assets) or assuming management of the borrower's business until the NPA is recovered. The Act also permits financial institutions like banks to sell financial assets to asset reconstruction firms (ARCs). Following the Reserve Bank of India's (RBI) guidelines, the financial assets may be sold to ARCs.¹

INTRODUCTION-

Before the borrower's account is classified as an NPA in the secured creditor's (banks or financial institutions) books of account in compliance with the RBI rules, the secured creditor has no authority to pursue the security interest under the Act. A 60-day notice requesting repayment of the debt and outlining the borrower's assets on which the secured creditor intends to exercise its security interest must be served on the borrower. Following the expiration of the 60-day warning period, the secured creditor may assert its security claim over secured assets if the borrower fails to fulfill its obligation to the secured creditors by Taking

¹ Available at: <https://legislative.gov.in/sites/default/files/A2002-54.pdf> (Last accessed on 17th March 2023).

- control of the secured assets;
- Take over management of the secured assets, as well as the right to transfer the secured assets via lease, assignment, or sale;
- Designate someone to administer the secured assets; and
- Compel any individual who has acquired any of the borrower's secured assets to pay the sums required to settle the obligation. Secured creditors may seek recovery of the remaining balances through the Debts Recovery Tribunal (DRT) or the appropriate court if they are unable to obtain the full amount due through the execution of a security claim over the assets secured.²

A secured creditor is allowed to exercise both the DRT and the SARFAESI Act's remedies concurrently. The borrower's account must be classified as an NPA by the secured creditor and have an overdue balance of INR 100,000 or more for the SARFAESI Act to be applicable. Additionally, as stated in Section 31 of the SARFAESI Act, the Act's criteria are not applicable in some circumstances, such as an account where the remaining debt is less than 20% of the initial principal and interest.

ELEMENTS

India as a whole is subject to the SARFAESI Act. The following four statutes are subject to modification under the provisions of the SARFAESI Act, 2002:

- The recoupment of debts owed under the 1993 Banks and Financial Institutions Act (RDDBFI).
- The Depositories Act of 1996, as well as any issues that are related to or incidental to it.
- The Act of 2002 Concerning the Reconstruction, Securitization, and Enforcement of Security Interests
- 1899 Indian Stamp Act

Purpose of the SARFAESI ACT, 2002

The SARFAESI Act has two primary goals, specifically: obtaining the non-performing assets (NPAs) of banks and financial institutions quickly and efficiently. It allows banks and financial institutions to auction off residential and commercial properties if a borrower cannot pay their loan.

Need of SARFAESI ACT

² Available at: <https://indiankanoon.org/doc/52229129/> (Last Accessed on 17th March 2023).

Economic indiscipline or financial illiteracy is a defining feature of the Indian industry. The Recoveries of Debts Due to Banks and Financial Institutions Act, 1993, which established a special Debt Recovery Tribunal ('DRT'), defined under Section 2(1)(i) of the Act, to recover NPA, was passed in response to the steadily rising Non-Performing Assets ('NPA'), a fine euphemism coined to describe subpar loans. However, this did not hasten the process of recovery, and the stringent civil law requirements made the attachment and foreclosure of the assets pledged as security for the loan all but useless. In addition, hefty statutory provisions for non-performing assets were causing the balance sheets of banks and other financial institutions to turn negative (NPAs). Given that one in five borrowers defaults, the government was required to establish appropriate procedures for recovering the debt in addition to foreclosing on the security. The SARFAESI Act, 2002 (also known as the Securitization Act), makes an effort to achieve these two objectives while also offering a comprehensive legal framework for asset securitization and asset reconstruction.³

Conclusion

The administration has made it clear that it aims to significantly reduce the amount of non-performing assets (NPAs) and get rid of the economic barriers they present. By lowering NPAs, the SARFAESI Act is a strategy for accomplishing this goal. As a result, the Act's effectiveness or success must be evaluated in light of the outcomes attained throughout its execution. It will be viewed as a successful implementation of the policy if the Act has caused a downward cycle of NPAs. The majority of banks have non-performing assets that are much lower than before, and many have budgeted for even lower NPA levels this fiscal year.⁴

Before, cooperative banks were not included in the list of banks to which the SARFAESI Act applied. The Indian government updated this law in 2013 to legally identify cooperative banks as banks eligible to use it. This approach has tremendously assisted cooperative banks in avoiding unnecessarily long delays in collecting challenging debts that are subject to cooperative tribunals and civil courts.

The Indian Banking System currently consists of 96,248 rural cooperative banks and 1,544 urban cooperative banks, both of which have sizable deposits from regular investors. Given their size and the urgency with which they must be recovered, the SARFAESI Act is essential to the efficient running of cooperative banks.

³ Available at: <https://www.indiacode.nic.in/handle/123456789/2006> (Last Accessed on 17th March 2023).

⁴ Available at: <https://www.legalraasta.com/blog/sarfaesi-act/> (Last Accessed on 17th March 2023).