Contents

PAGE

I-5

List of Circulars/Notifications			I-23
		BOOK ONE	
	SI	ECURITISATION AND RECONSTRUCTION OF FINANCIAL ASSETS AND ENFORCEMENT OF SECURITY INTEREST ACT, 2002	
		DIVISION ONE	
		GUIDE TO SARFAESI ACT, 2002	
		1	
		OVERVIEW OF SARFAESI ACT	
1.1	Backgr	round	1.5
	1.1-1	Historical background of the present SARFAESI Act	1.6
	1.1-2	Constitutional Validity of SARFAESI Act	1.7
	1.1-3	SARFAESI Act applies to Jammu and Kashmir	1.8
1.2	Salient	features of SARFAESI Act	1.9
	1.2-1	Enforcement of Security Interest	1.10
	1.2-2	Securitisation	1.11
	1.2-3	Asset Reconstruction	1.12
	1.2-4	Registration of securitization, reconstruction and creation of security interest	1.13
1.3	Some	problems in SARFAESI Act	1.14
	1.3-1	Lenders' Liability and Fair Practices Code	1.16
1.4		el proceedings under SARFAESI/RDBA, Civil Court solvency Code permissible	1.16
		I-9	

Chapter-Heads

I-10

1.4-1	Corporate applicant can file application for insolvency resolution even if Banks are contemplating invoking SARFAESI	PAG 1.1
1.4-2	Proceedings against guarantor under SARFAESI even if CIRP pending	1.1
1.4-3	RDB Act and SARFAESI Act are complimentary to each other	1.1
1.4-4	Parallel proceedings under SARFAESI/RDBA and Insolvency Code permissible	1.1
1.4-5	Action can be taken under SARFAESI Act even if proceedings pending before DRT	1.1
1.4-6	Civil suit need not be withdrawn	1.1
1.4-7	Proceedings under SARFAESI are 'civil proceedings'	1.2
	*	1.2
1.5-1	Act overrides State Relief Undertakings Act	1.2
1.5-2	Secured creditor can stay outside liquidation process and enforce his security under SARFAESI	1.2
	5 11	1.2
		1.2
1.7-1	Application of SARFAESI Act to NBFC	1.2
1.7-2	Application of SARFAESI Act to housing finance companies	1.2
1.7-3	Asian Development Bank is Financial Institution	1.2
1.7-4	SARFAESI Act extended to co-operative banks and regional rural banks	1.2
Protect	tion of Acts done in good faith	1.2
	2	
	ENFORCEMENT OF SECURITY INTEREST	
Bank c	an recover loans by enforcing security interest	1.2
2.1-1	When security can be enforced	1.2
2.1-2	Meaning of 'debt'	1.2
2.1-3	Financial lease	1.2
	1.4-2 1.4-3 1.4-4 1.4-5 1.4-6 1.4-7 SARFA instrum 1.5-1 1.5-2 Morato SARFA Centra provisi 1.7-1 1.7-2 1.7-3 1.7-4 Protect	vency resolution even if Banks are contemplating invoking SARFAESI 1.4-2 Proceedings against guarantor under SARFAESI even if CIRP pending 1.4-3 RDB Act and SARFAESI Act are complimentary to each other 1.4-4 Parallel proceedings under SARFAESI/RDBA and Insolvency Code permissible 1.4-5 Action can be taken under SARFAESI Act even if proceedings pending before DRT 1.4-6 Civil suit need not be withdrawn 1.4-7 Proceedings under SARFAESI are 'civil proceedings' SARFAESI Act overrides provisions of other laws and instruments 1.5-1 Act overrides State Relief Undertakings Act 1.5-2 Secured creditor can stay outside liquidation process and enforce his security under SARFAESI Moratorium under Insolvency Code applies to actions under SARFAESI Act Central Government can grant exemptions or apply provisions of Act 1.7-1 Application of SARFAESI Act to NBFC 1.7-2 Application of SARFAESI Act to housing finance companies 1.7-3 Asian Development Bank is Financial Institution 1.7-4 SARFAESI Act extended to co-operative banks and regional rural banks Protection of Acts done in good faith 2 ENFORCEMENT OF SECURITY INTEREST Bank can recover loans by enforcing security interest 2.1-1 When security can be enforced 2.1-2 Meaning of 'debt'

I-11 CONTENTS

			PAGE
2.2	Meanir	ng of 'security interest'	1.26
	2.2-1	Meaning of 'property'	1.27
	2.2-2	Hypothecation	1.27
	2.2-3	Exclusions from 'security interest'	1.27
	2.2-4	Meaning of 'financial asset'	1.30
	2.2-5	Financial Assistance - Meaning	1.31
2.3	Who is	'secured creditor'	1.31
	2.3-1	Meaning of 'bank'	1.32
	2.3-2	Financial Institution	1.32
	2.3-3	Public Financial Institution	1.33
2.4	When a	an action for enforcement of security can be initiated	1.33
	2.4-1	Who is 'Borrower'	1.34
	2.4-2	Security agreement	1.34
	2.4-3	Meaning of 'Default'	1.34
	2.4-4	Secured debt	1.35
	2.4-5	Foreclosure of loan	1.35
	2.4-6	Meaning of Non-Performing Asset	1.35
	2.4-7	Guidelines of RBI in respect of NPA	1.36
2.5	How to	enforce security interest	1.36
	2.5-1	Requirements of notice	1.37
	2.5-2	Mode of serving notice	1.37
	2.5-3	Provision when joint financing is involved	1.38
	2.5-4	Opportunity to borrower to reply	1.39
2.6		res that can be taken after non-payment within s from notice	1.40
	2.6-1	Can debtor of borrower be asked to make payment directly to Bank/FI	1.41
	2.6-2	Cost and expenses can be recovered from borrower	1.42
	2.6-3	Excess amount to be refunded to borrower	1.43
	2.6-4	Secured creditor can proceed against borrower for balance amount	1.43
	2.6-5	Secured creditor can directly proceed against guarantor	1.44
2.7	How th	ne secured creditor can exercise his right	1.45

		CONTENTS	I-12
			PAGE
	2.7-1	Restrictions on borrower after receipt of notice	1.45
	2.7-2	Secured Creditor gets only rights which borrower had	1.46
	2.7-3	Mortgaged property can be given on lease and then lessee cannot be disposed	1.46
2.8	Other r	elated provisions	1.47
	2.8-1	Effect of transfer of asset to third person	1.47
	2.8-2	Significance of 'as if transfer is made by owner of Asset'	1.47
	2.8-3	Right of secured creditor subject to statutory right	1.47
	2.8-4	Priority of other dues	1.50
2.9		ver can pay amount any time before sale or transfer and take back possession	1.53
	2.9-1	Time limit for taking action after serving of notice	1.54
2.10	Jurisdio	ction of civil court barred	1.55
	2.10-1	When Courts may interfere	1.55
2.11	Protect	ion to secured creditor for acts in good faith	1.56
		3	
		PROCEDURE FOR SALE OF ASSETS	
3.1	Sale of	asset directly or to ARC	1.57
	3.1-1	Prudential norms for sale transactions	1.57
	3.1-2	Assistance of Magistrate to take over position	1.57
3.2	Proced	ure in respect of movable secured asset	1.60
	3.2-1	Valuation of movable secured asset	1.62
	3.2-2	Sale of movable secured assets	1.62
	3.2-3	Transfer of mortgage, hypothecation or pledge of movable property or right or interest in	
		security	1.63
	3.2-4	Wide flexibility in sale of assets	1.64
	3.2-5	Certificate of sale	1.64
3.3		ure in respect of sale of immovable secured asset	1.64
	3.3-1	Valuation of immovable secured asset	1.65
	3.3-2	Procedure for sale of immovable secured assets	1.65

I-13 CONTENTS

			PAGE
	3.3-3	Provision in respect of immovable property subject to encumbrances	1.69
3.4	Appoin	tment of manager for secured assets	1.70
3.5	Provisi	ons if borrower company is under winding up	1.72
	3.5-1	Provision in respect of workmen's dues	1.74
	3.5-2	Permission of Company Court required after winding up order made?	1.74
3.6	Takeov	ver of management of defaulting borrower	1.74
	3.6-1	Change of directors/appointment of administrator	1.75
	3.6-2	Effect of the notice	1.75
	3.6-3	Effect of takeover of management	1.76
	3.6-4	Guidelines for exercise of power	1.77
		4	
		APPLICATION, APPEALS AND PENALTY UNDER SARFAESI ACT	
4.1	Applica	ation against order of Bank/FI before DRT	1.78
	4.1-1	Who can file application before DRT	1.78
	4.1-2	Application only after action has been taken under section 13(4) of SARFAESI Act	1.79
	4.1-3	Any person can make application under section 17(1)	1.80
	4.1-4	Application by lessee or tenant	1.81
	4.1-5	No automatic stay if application is filed	1.81
4.2	Jurisdi	ction of DRT where application to be filed	1.81
	4.2-1	Consideration of application by DRT	1.82
	4.2-2	DRT can consider and decide tenancy or leasehold rights	1.82
4.3	Appeal	against order of DRT	1.83
	4.3-1	Pre-deposit if appeal before DRAT	1.83
	4.3-2	Procedure for appeal	1.84
	4.3-3	Secured creditor or any person claiming right can file a caveat	1.85

		CONTENTS	I-14
			PAGE
4.4		nsation to borrower for wrongful action by	
		d creditor	1.85
4.5		ment for offences	1.86
	4.5-1	Offences by company	1.86
		5	
		SECURITISATION	
5.1	What is	s 'securitisation'	1.88
	5.1-1	RBI guidelines on securitization of standard assets	1.89
	5.1-2	Assignment of debts/NPAs between banks <i>inter se</i> is permissible	1.89
5.2	Purpos	e of securitisation	1.89
	5.2-1	Securitisation with or without recourse	1.91
	5.2-2	Definition of 'Securitisation'	1.91
	5.2-3	Assets that can be securitised	1.91
	5.2-4	Long dated assets and short dated funding sources	1.92
	5.2-5	Mortgage securitisation or asset securitisation	1.92
5.3	How se	ecuritisation process works	1.92
	5.3-1	Process of securitisation	1.93
	5.3-2	Summary of process	1.94
	5.3-3	Advantages of Securitisation	1.94
5.4	Credit origina	rating is of assets securitised and not of the tor	1.96
5.5	Public instrun	issue and listing of securitised certificates or nents	1.96
5.6	Accour	nting for securitisation	1.97
5.7	Legal f	ramework for securitisation	1.97
	5.7-1	Qualified Buyer (QB)	1.97
	5.7-2	Forming a scheme and issue of security receipt	1.99
	5.7-3	If assets not realised as per scheme	1.100
	5.7-4	Registration of security receipt under Registration Act not required	1.100

I-15 CONTENTS

			PAGE
		6	
		ASSET RECONSTRUCTION COMPANIES	
6.1	Role of	ARC in SARFAESI Act	1.101
	6.1-1	Registration of Asset Reconstruction Company	1.101
	6.1-2	Requirements of Asset Reconstruction Company for registration	1.102
6.2	Proced	ure for registration of ARC	1.103
	6.2-1	Cancellation of registration	1.103
	6.2-2	Business that can be carried out by ARC	1.104
	6.2-3	Asset Reconstruction company exempt from certain NBFC provisions	1.104
6.3	Powers	s of RBI over ARC	1.105
6.4	RBI gu	idelines for ARC	1.105
	6.4-1	Policy of asset reconstruction	1.106
	6.4-2	Securitisation and ARC	1.106
	6.4-3	Other requirements in respect of ARC	1.106
6.5	Operat	ional guidelines to ARC	1.107
6.6	Penalty	on ARC for non-compliance	1.107
6.7	Acquiri	ing financial assets by ARC from Bank/FI	1.108
	6.7-1	Modes of acquiring financial asset	1.109
	6.7-2	Is it transfer of actionable claim	1.110
	6.7-3	Company enters into shoes of Bank/FI after acquiring asset	1.110
	6.7-4	Transfer of pending applications to one DRT	1.111
6.8	Notice	to borrower/Registrar etc.	1.112
	6.8-1	Effect of the notice	1.112
	6.8-2	Arbitration Mandatory	1.113
6.9	Asset R	Reconstruction	1.113
	6.9-1	Measures for asset reconstruction	1.114

		CONTENTS	I-16
			PAGE
		7 REGISTRATION OF TRANSACTIONS UNDER SARFAESI ACT	
7.1	Central	Registry	1.115
	7.1-1	Registration with Central Registry in addition to other registration that may be required	1.116
	7.1-2	Maintenance of Central Register	1.116
	7.1-3	Integration of Central Registry with other registering authorities	1.117
7.2	Registr	ation of agreement	1.118
	7.2-1	Rectification in matter of delay or omission registration, modification and satisfaction	1.118
	7.2-2	Registration under Registration Act required in case of immovable property?	1.118
	7.2-3	Satisfaction or payment of security interest	1.119
	7.2-4	Inspection of Central Register	1.119
7.3	Registra creditor	ation of security interest by Secured and other rs	1.120
	7.3-1	Creditors other than secured creditors can register security interest	1.120
	7.3-2	Registration of transactions will be deemed to be public notice	1.121
	7.3-3	No right of enforcement of securities unless security interest is registered	1.122
	7.3-4	Priority to secured creditors if debt registered	1.122
7.4	Penalty	for default	1.123
SUBJI	ECT INDE	x	1.125
		DIVISION TWO	

DIVISION TWO

	SECURITISATION AND RECONSTRUCTION OF FINANCIAL ASSETS AND ENFORCEMENT OF SECURITY INTEREST ACT, 2002	
•	Arrangement of Sections	2.3
•	Text of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002	2.7
•	Subject Index	2.55

I-17 CONTENTS

1.1-1 Purpose of RDB Act

	PAGE
DIVISION THREE	
RULES	
◆ Security Interest (Enforcement) Rules, 2002	3.3
◆ Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (Central Registry)	
Rules, 2011	3.35
◆ Tribunals Reforms Act, 2021	3.43
DIVISION FOUR	
CIRCULARS/DIRECTIONS/NOTIFICATIONS/ORDERS	
 Reserve Bank of India (Securitisation of Standard Assets) Directions, 2021 	4.3
◆ Master Circular : Asset Reconstruction Companies	4.3 4.48
 Review of Regulatory Framework for Asset Reconstruction 	
Companies (ARCs)	4.85
 Circulars & Notifications issued under Securitisation and Reconstruction of Financial Assets and Enforcement of 	
Security Interest Act, 2002	4.98
◆ Removal of Difficulty Order of 2002	4.108
◆ Removal of Difficulty Order of 2004	4.110
 Compendium of Old Instructions issued prior to Master Circular on Asset Reconstruction Companies 	4.112
BOOK TWO	
RECOVERY OF DEBTS AND BANKRUPTCY ACT, 1993	
DIVISION FIVE	
GUIDE TO RECOVERY OF DEBTS AND BANKRUPTCY ACT, 1993	
BACKGROUND OF RDB ACT	
1.1 Expeditious Recovery of bad debts	5.5

5.6

		CONTENTS	I-18
			PAGE
	1.1-2	Overall scheme of the Act	5.6
	1.1-3	RDB Act is mainly a procedural Act	5.7
	1.1-4	Jurisdiction of DRT under SARFAESI Act	5.7
	1.1-5	RDB Act and SARFAESI Act are complimentary to each other, actions under both possible	5.8
	1.1-6	Action can be taken under SARFAESI Act even if proceedings pending before DRT	5.8
	1.1-7	Parallel proceedings under SARFAESI/RDBA and Insolvency Code permissible	5.8
1.2	Priority	y to secured creditors under RDB Act	5.10
1.3	Overrio	ding provisions of RDB Act	5.10
1.4	Jurisdi	ction of civil court is barred	5.13
	1.4-1	Court decree can be executed by DRT	5.14
	1.4-2	Decree of foreign court should be executed	
		through DRT only	5.14
		2	
		ORIGINAL APPLICATION (OA) TO DRT FOR RECOVERY OF DEBTS	
2.1	Who ca	an apply to DRT under RDBA	5.15
	2.1-1	Banks and Financial Institutions can apply to DRT for recovery of debt due	5.15
2.2	Moneta	ary limit for applicability of the RDB Act	5.17
	2.2-1	Limitation Act applicable to DRT	5.17
2.3	Meanir	ng of 'debt'	5.18
	2.3-1	Secured creditor	5.19
	2.3-2	Wide definition of 'debt'	5.20
	2.3-3	Debt becomes due only when it is payable	5.21
		3	
		DEBT RECOVERY TRIBUNAL	
3.1	DRT as	s Adjudicating Authority for recovery of loan	5.22
3.2	Powers	s and jurisdiction of DRT	5.24
	3.2-1	Counter-claims can be considered by DRT	5.24

I-19 CONTENTS

			PAGE
3.3	Other I	Powers of DRT and DRAT	5.26
	3.3-1	DRT and DRAT can review their interim and final orders	5.27
	3.3-2	DRT cannot adjudicate workmen's claims	5.27
3.4	Proced	ure for Application before Debt RecoveryTribunal	5.28
	3.4-1	Applications, documents and statements in electronic form	5.30
	3.4-2	Procedure after filing of Original Application (OA)	5.30
	3.4-3	Final order, distribution of assets and recovery	5.33
3.5	Procee	dings against guarantor before DRT	5.34
3.6	Proced	ure in office of DRT	5.34
3.7	Commo	on provisions relating to DRT and DRAT	5.35
3.8	List of	DRT and DRAT benches as in 2022	5.37
		4	
	A	PPEAL AGAINST ORDER OF DRT BEFORE DRAT	
4.1	Appeal	before DRAT	5.41
4.2	Jurisdi	ctions of DRAT	5.42
4.3	Proced	ures at DRAT	5.43
	4.3-1	Pre-deposit for filing appeal	5.44
	4.3-2	Appeal against order of Adjudicating Authority or under Insolvency and Bankruptcy Code	5.45
	4.3-3	Appeal against interim orders of DRT	5.45
4.4	DRAT a	and DRT can review their interim and final orders	5.45
4.5	Further	r appeals after order of DRAT	5.46
	4.5-1	Which High Court will have jurisdiction	5.47
		5	
		RECOVERY AFTER ORDER	
5.1	Recove	ery powers after issue of certificate	5.49
	5.1-1	Modes of recovery	5.49
5.2	Appeal	against order of recovery officer	5.50
5.3	Recove	ery procedures	5.50

CONTENTS	I-20

POWERS	AND	LIMITATIONS	OF TRIBUNAL	ſ

6.1	General	Provisions in respect of Tribunal	5.53
	6.1-1	DRT and DRAT are Tribunals constituted under Statute	5.54
	6.1-2	Tribunal has trappings of 'Court' but is not a 'Court'	5.54
6.2	Inherent	and Implied Powers of Tribunal	5.56
	6.2-1	Power includes power to execute/implement the order	5.57
	6.2-2	Some inherent and incidental powers of Tribunal	5.58
	6.2-3	Tribunal can recalls/restore orders	5.59
6.3	Tribunal	l is final fact finding authority	5.62
6.4		cannot review its orders unless the powers are ally conferred on them	5.64
6.5	Mistakes apparent from records can be rectified by Tribunal		5.65
	6.5-1	Rectification of order by Tribunal if Point raised but not considered	5.67
	6.5-2	Rectification of order if subsequent contrary decisions of other Courts, particularly SC or retrospective amendment to Act	5.68
		7 LIMITATION ACT	
7.1	Uncertai	inty in litigation bad	5.69
	7.1-1	Limitation Act does not extinguish right, it only extinguishes remedy	5.70
	7.1-2	Question of limitation must be considered even if not raised	5.71
	7.1-3	No equity in Limitation Act, time period provided can be arbitrary	5.71
	7.1-4	Limitation Act applies only to Courts	5.71
7.2	Bar of li	mitation in filing a suit	5.72
	7.2-1	Period of limitation as prescribed in Schedule to the Limitation Act	5.72

I-21 CONTENTS

5.73
5.74
5.74
5.74
5.75
ng 5.75
5.76
5.76
at 5.77
5.77
5.78
5.78
5.78
5.79
5.79
5.81
5.82
n 5.83
5.83
d <i>5.84</i>
5.84
5.85
5.86

	CONTENTS	I-22
8.4	Provisioning in case of Delayed Implementation of Resolution Plan	5.87
8.5	Prudential Norms	5.87
8.6	Supervisory Review by RBI	5.87
8.7	Disclosures by lenders in financial statements	5.88
8.8	Exceptions to the directions for stressed assets	5.88
SUB	JECT INDEX	5.89
	DIVISION SIX	
	RECOVERY OF DEBTS AND BANKRUPTCY ACT, 1993	
•	Arrangement of Sections	6.3
•	Text of Recovery of Debts and Bankruptcy Act, 1993	6.7
•	Subject Index	6.37
	DIVISION SEVEN	
	RULES	
•	Debts Recovery Tribunal (Financial and Administrative	
·	Power) Rules, 1997	7.3
•	Debts Recovery Tribunal (Procedure) Rules, 1993	7.7
•	Debts Recovery Tribunal (Procedure for Appointment as Presiding Officer of the Tribunal) Rules, 1998	7.27
•	Debts Recovery Tribunal (Procedure for Investigation of Misbehaviour or Incapacity of Presiding Officer) Rules, 2010	7.33
•	Debts Recovery Appellate Tribunal (Procedure) Rules, 1994	7.41
•	ment as Chairperson of the Appellate Tribunal) Rules, 1998	7.53
•	Debts Recovery Appellate Tribunal (Financial and Administrative Power) Rules, 1997	7.59
•	Debts Recovery Tribunals (Refund of Court Fee) Rules, 2013	7.63
•	Debts Recovery Tribunals & Debts Recovery Appellate Tribunals Electronic Filing Rules, 2020	7.67
	DIVISION EIGHT	
	NOTIFICATIONS	
•	Notifications	8.3